

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

LINDA BYRD, on behalf of plaintiff and a)	
class,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:12-cv-00968-SEB-DKL
)	
LVNV FUNDING, LLC; RESURGENT)	
CAPITAL SERVICES, L.P.; and ALEGIS)	
GROUP, LLC,)	
)	
Defendants.)	

CLASS SETTLEMENT AGREEMENT

The parties to this Class Settlement Agreement ("Agreement") are Plaintiff LINDA BYRD ("BYRD" or "Plaintiff"), individually and on behalf of the class defined in Section F below, and Defendants LVNV FUNDING LLC; RESURGENT CAPITAL SERVICES, L.P.; AND ALEGIS GROUP LLC ("Defendants"), as listed in Section E, below.

RECITALS

A. Case, Parties and Nature of the Litigation.

LINDA BYRD, individually and on behalf of a class, filed the above-captioned action in the United States District Court for the Southern District of Indiana (the "Litigation"). In her Complaint, Plaintiff claims that Defendants violated the Fair Debt Collection Practices Act, 15 U.S.C. §1692 *et seq.* ("FDCPA") by filing a collection suit against Plaintiff in a judicial district in which she neither lived nor signed the underlying contract.

The parties have reached a settlement of all claims raised in the Litigation.

B. Compromise of Disputed Claims.

1. Defendants denies liability to Plaintiff and the Class (defined below in Section F)

for the claims alleged, but considers it desirable that the Litigation and the claims alleged therein be settled upon the terms and conditions set forth in this Agreement, in order to avoid further expense and burdensome, protracted litigation, and to put to rest all claims, known or unknown, that have been or might be asserted by Plaintiff or the Class members against Defendants.

2. Plaintiff, fully believing that Defendants violated the FDCPA, desires to settle her claims against Defendants, having taken into account through his counsel 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.

3. Class Counsel (defined below in Section G) has investigated the facts available to them and the applicable law.

4. Based on the foregoing, and upon an analysis of the benefits which this Agreement affords the Class, Class Counsel considers it to be in the best interest of the Class to enter into this Agreement.

5. In consideration of the foregoing and other good and valuable consideration, Plaintiff, Class Counsel, and Defendants stipulate and agree that the claims of the named Plaintiff and the Class against Defendants in the Litigation should be and are hereby compromised and settled, subject to the approval of this Court, upon the following terms and conditions.

C. Effective Date

This Agreement shall become effective (hereinafter the "Effective Date") thirty-five (35) days after this Court's entry of a final order approving this Agreement as fair, reasonable and adequate to the Class; or if an appeal has been sought, the expiration of five (5) days after the disposition of any such appeal from any such order, which disposition approves the Court's final order approving the Agreement. The parties shall each bear their own costs and expenses in

responding to any appeal taken from the final approval order. The parties waive their rights to appeal from any final order entered in accordance with the terms of this Agreement.

D. Class Representatives

The "Plaintiff" and Class Representative is LINDA BYRD.

E. The Defendants

The "Defendants" are LVNV FUNDING LLC; RESURGENT CAPITAL SERVICES, L.P.; AND ALEGIS GROUP LLC.

F. The Class

The parties stipulate to the certification of a class for settlement purposes only. The Class is defined as follows:

(a) all natural persons (b) sued by LVNV (c) in a township small claims court (d) for a township other than one in which the person resided or signed a contract on which the debt is based (e) where either the original action or a proceeding supplemental was filed on or after a date one year prior to the filing of this action, and less than 20 days after the filing of this action.

Defendants represents that there are approximately 399 members of the Class as defined above.

G. Class Counsel

"Class Counsel" shall refer to Edelman, Combs, Lattuner & Goodwin, LLC.

H. Relief to Plaintiff and the Class.

1. **Plaintiff LINDA BYRD.** No later than five (5) days after the Effective Date, Defendants shall pay \$1,000 in statutory damages and an incentive award of \$1,500 for a total of \$2,500 to Plaintiff LINDA BYRD in settlement of her individual claims and in recognition of her services as Class Representative.

2. **Recovery to Class members with a \$0 balance as of the entry date of the Preliminary Approval Order.** Defendants agree to pay TWO HUNDRED DOLLARS (\$200) to

each Class member whose account has a \$0 balance as a result of payment as of the entry date of the Preliminary Approval Order. 2015. However, any Class member who has filed for Chapter 7 bankruptcy prior to the date the court enters a Preliminary Approval Order approving the terms of this Agreement, shall be excluded from the recovery of any cash payment under this settlement. The settlement checks shall be sent via U.S. mail no later than 5 days after the Effective Date. Defendants' obligation under this paragraph will be considered fulfilled upon the mailing of the settlement checks, regardless of whether any settlement check is received, returned, or cashed, except all checks returned with a forwarding address will be forwarded accordingly.

3. **Recovery to Class members with an account balance less than \$500 as of the entry date of the Preliminary Approval Order.** No later than five (5) days after the Effective Date, Defendants further agree to forgive each debt less than \$500 owed by the Class members to LVNV Funding LLC as of April 29, 2015, and to reflect this debt forgiveness in the accounts of each of the respective Class members. LVNV Funding, LLC will cause to be filed a satisfaction of judgment in each of the small claims cases filed against these class members.

4. **Recovery to Class members with an account balance between \$501 and \$1,000 as of the entry date of the Preliminary Approval Order.** No later than five (5) days after the Effective Date, Defendants agree to post a credit of 40 % to the accounts of each of the Class members. This credit shall only be applied to the account owned by LVNV Funding LLC.

5. **Recovery to Class members with an account balance between \$1001 and \$4999 as of the entry date of the Preliminary Approval Order.** No later than five (5) days after the Effective Date, Defendants agree to post a credit of 20 % to the accounts of each of the Class members. This credit shall only be applied to the account owned by LVNV Funding

LLC.

6. **Recovery to Class members with an account balance higher than \$5000** as of the entry date of the Preliminary Approval Order. No later than five (5) days after the Effective Date, Defendants agree to post a credit of 10 % to the accounts of each of the Class members. This credit shall only be applied to the account owned by LVNV Funding LLC.

7. A person shall be determined to be in the \$0 balance group, less than \$500 account balance group, the \$500 to \$1000 balance group, the \$1001 to \$4999 balance group, or the \$5000 and greater account balance group as of the entry date of the Preliminary Approval Order.

For any Class member with any balance less than \$500, who makes account payments (voluntarily or involuntarily) between the entry date of the Preliminary Approval Order and the Effective Date that result in the Class member's account being classified in a different balance group, Defendants shall provisionally apply the credit that was applicable to the Class member's account as of the entry date of the Preliminary Approval Order. Defendants will also refund any overpayments made by any such Class member with any balance less than \$500, who makes account payments (voluntarily or involuntarily) between the entry date of the Preliminary Approval Order and the Effective Date that result in the Class member's account being classified in a different balance group.

Defendants shall not sell, refer, transfer or assign any debt forgiven under this Agreement. If the application of any credit for any class member set forth above exceeds the amount owed by that same class member as of the Effective Date, the remaining portion of that credit shall not be converted into any cash payment to the same class member or applied to any other debt.

8. Any amount that remains undistributed to Class members after the deadline has expired for Class members to cash their settlement checks ("Void Date) shall be donated to

Indiana Legal Services on a cy pres basis.

9. The Void Date shall be 60 days from the date the checks are mailed to class members.

I. Release.

1. **Release by Plaintiff.** As consideration for this Agreement, as of the Effective Date, Plaintiff releases and forever discharges Defendants, and its past, present or former parents, officers, directors, partners, members, principals, employees, agents, servants, predecessors, successors, subsidiaries, affiliates, shareholders, heirs, executors, trustees, attorneys, personal and legal representatives, beneficiaries, divisions, administrators, insurers, and assigns ("Released Parties") of and from all claims related to debts that are the subject of this action, including all collection and credit reporting activity that occurred from the beginning of time up through and including the Effective Date.

2. **Release by the Class.** Each Class member not opting out, as of the Effective Date, releases and forever discharges the Released Parties of and from all causes of action, suits, claims, demands, liabilities, judgments, debts, charges, and damages, including any indemnity claims for payment of attorney's fees and costs, that were made or which could have been made by Plaintiff on behalf of the above-defined Class, arising out of the allegations that were made in the Litigation, for anything of any kind or nature whatsoever, known or unknown at this time, that occurred from the beginning of time up through and including the Effective Date. Excluded from this release are any and all claims and defenses that Class members could assert against the Released Parties for lawsuits filed by the Released Parties against Plaintiff or Class members on or after the date set by the Court for Class members to opt out of the Class.

3. These releases are conditioned upon the approval of the Agreement and Final

Approval of the settlement by the Court and Defendants meeting its obligations therein.

4. Other than the credits provided for under this Agreement, nothing herein shall prevent Defendants from continuing to attempt to collect any remaining debts allegedly owed by the Class members, nor will it prevent Class members from asserting any defenses they have to the debts. In particular, Class members do not release any claims or defenses they may have regarding (1) whether any debt is in fact owed, (2) the crediting of payments on any debt, or (3) the proper reporting of any debts to credit bureaus. Class members also do not release any right to move to vacate judgments or orders entered against them, or claims that seized assets are exempt.

5. If this Agreement is not approved by the Court or for any reason does not become effective, it shall be deemed null and void and shall be without prejudice to the rights of the parties hereto and shall not be used in any subsequent proceedings in this or any other litigation, or in any manner whatsoever.

J. Attorney's Fees, Notice Costs and Related Matters.

1. Plaintiff's counsel will receive, subject to court approval, Fifty Thousand dollars (\$50,000) as the total attorneys' fees and costs incurred in the Litigation. Plaintiff's counsel will not request additional fees or costs from Defendants or the Class members, and Defendants will not oppose or cause to be opposed an application for total attorneys' fees and costs in an amount not to exceed \$50,000. These fees and costs shall be paid no later than the Effective Date.

2. Plaintiff will bear the costs of notice and settlement administration.

3. Defendants will maintain a list of Class members and account numbers that identifies the accounts subject to the settlement and the release for a period of two years after the entry of the Final Approval Order.

4. The parties may destroy documents generated in class administration six months

after the final order is entered and no longer subject to appeal.

K. Notice.

Plaintiff will cause notice to be provided to the Class by U.S. Mail. Plaintiff shall, within 30 days of entry of the Preliminary Approval Order, cause actual notice, in the form of Exhibit A, to be sent to the last known addresses of the Class members, according to Defendants records. Exhibit A shall be sent to all Class members and shall not include a claim form. Each notice shall be sent with a request for forwarding addresses. In the event that a notice is returned as undeliverable and a forwarding address is provided, Plaintiff shall forward any such returned notice to the address provided as soon as practicable. Class members shall have 45 days from the preliminary approval hearing to opt-out or object to the settlement. In order for the opt-out or request for exclusion to be deemed valid, the Class member must set forth his or her full name, address, and telephone number, along with a statement that he or she wishes to be excluded.

L. Preliminary approval.

1. As soon as practicable after execution of the Agreement, the parties shall make application to the court for an order which:

- a. Preliminarily approves this Agreement.
- b. Schedules a hearing for final approval of the Agreement by the court.
- c. Approves the form of notice to the Class, to be directed to the last known

address of the Class members as shown on Defendants records. If as a result of the mailing, a forwarding address is furnished by the Postal Service but the notice is not forwarded by the Postal Service, the notice will be re-mailed to the address(es) provided.

d. Finds that mailing of the Class notices and the other measures specified in Section J are the only notices required and that such notice satisfies the requirements of due process and Fed. R. Civ. P. 23.

e. Certifies for settlement purposes the Class defined in Section F.

2. The parties agree to request the form of notice attached hereto as Exhibit A, and propose the form of preliminary approval order attached hereto as Exhibit B. The fact that the court may require non-substantive changes in the notices or order does not invalidate this Agreement.

M. Final approval.

1. At the conclusion of, or as soon as practicable after, the close of the hearing on the fairness, reasonableness and adequacy of the Agreement, Class Counsel and counsel for Defendants shall request that this Court enter a Final Order approving the terms of the Agreement as fair, reasonable and adequate, providing for the implementation of those terms and provisions, finding that the notice given to the Class satisfies the requirements of due process and Rule 23, dismissing the claims of the named Plaintiff and the Class without prejudice and without costs, directing the entry of a final order, and retaining jurisdiction to enforce the provisions of this Agreement.

2. The parties agree to request the form of final order attached hereto as Exhibit C. The fact that the court may require non-substantive changes in the final order does not invalidate this Agreement.

N. Dismissal with prejudice.

Thirty (30) days after the Void Date, no later than 95 days after the Effective Date, the Parties shall file a Notice of Compliance that the Parties have complied with the terms of the Agreement, all Class members have been issued checks or credits, and any undistributed funds or uncashed checks have been donated to Indiana Legal Services on a cy pres basis. Ten days after the Notice of Compliance has been filed, the Court shall enter an order converting the dismissal to a dismissal with prejudice absent a timely motion by either Plaintiff or Defendants.

O. Release of Attorney's Lien.

In consideration of this Agreement, Class Counsel hereby waives, discharges and releases the "Released Parties" as defined in paragraph 1 of Section I above of and from any and all claims for attorney's fees, by lien or otherwise, for legal services rendered by Class Counsel in connection with this case. Class Counsel further represent and certify that they will pay any amounts due for attorneys' fees pursuant to agreement with them, and hold the Released Parties harmless from any such claim.

P. Miscellaneous provisions.

1. 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 Defendants of any liability or wrongdoing whatsoever.

2. The parties and their attorneys agree to cooperate fully with one another in seeking court approval of the Agreement, and to use their best efforts to effect the consummation of this agreement and the settlement provided for herein.

3. Notices of objections to this Agreement shall be sent to:

~~Michelle Toggiani~~
EDELMAN, COMBS, LATTURNER AND GOODWIN, LLC
20 South Clark Street
Suite 1500
Chicago, IL 60603

and notices to Defendants shall be sent to:

Nabil Foster
HINSHAW & CULBERTSON, LLP
222 N. LaSalle Street
Suite 300
Chicago, Illinois 60601

The persons and addresses designated in this paragraph may be changed by any signatory hereto by written notice to the other signatories hereto.

4. 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. No representations, warranties, or inducements have been made to any of the Parties, other than those representations, warranties, and covenants contained in this Agreement.

5. This 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 Agreement may be treated as originals.

6. Each and every term of this Agreement shall be binding upon and inure to the benefit of Plaintiff, 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 Agreement.

7. Should any of the provisions set forth herein be determined to be invalid by any court, agency, or any other tribunal of competent jurisdiction, such determination shall not affect the enforceability of the other provisions herein and to this end, the provisions of this Agreement are declared severable. The Parties may mutually elect to proceed with the Settlement, notwithstanding any unenforceable provision.

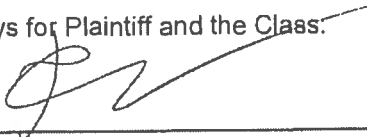
8. This Agreement shall be deemed to be jointly drafted by the Parties and, in construing and interpreting this Agreement, no provision of this Agreement shall be construed or interpreted against any party because such provision, or this Agreement as a whole, was purportedly prepared or requested by such party.

IN WITNESS WHEREOF, the parties hereto, acting by and through their respective counsel of record, have so agreed, on _____, 2015.

Individually and as Class Representative:

LINDA BYRD

Attorneys for Plaintiff and the Class:



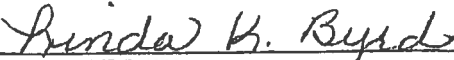
Daniel A. Edelman
Michelle T. [REDACTED]
EDELMAN, COMBS, LATTURNER & GOODWIN, LLC
20 S. Clark Street, Suite 1500
Chicago, Illinois 60603
(312) 739-4200
(312) 419-0479 (FAX)

LVNV FUNDING LLC;
RESURGENT CAPITAL SERVICES, L.P.; AND
ALEGIS GROUP LLC
BY:

Their duly authorized representative
Attorneys for Defendants
David M. Schultz
Nabil G. Foster
HINSHAW & CULBERTSON, LLP
222 N. LaSalle Street
Suite 300
Chicago, Illinois 60601
(312) 704-3000
(312) 704-3001 (FAX)

IN WITNESS WHEREOF, the parties hereto, acting by and through their respective counsel of record, have so agreed, on _____, 2015.

Individually and as Class Representative:


LINDA BYRD

Attorneys for Plaintiff and the Class:



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LVNV FUNDING LLC;
RESURGENT CAPITAL SERVICES, L.P.; AND
ALEGIS GROUP LLC
BY:



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