

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MARY S. KAUSCH, on behalf of herself and	)	
others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.: 4:15-cv-00537-AGF
	)	
BERMAN & RABIN, P.A.,	)	
	)	
Defendant.	)	
	)	

**CLASS ACTION SETTLEMENT AGREEMENT**

This class action settlement agreement (“Agreement”) is entered into between Mary S. Kausch (“Plaintiff” or “Class Representative”), individually and on behalf of the “Class Members” (as defined below), and Berman & Rabin, P.A. (“Berman”). This Agreement is intended by Berman and Plaintiff, on behalf of herself and the Class Members (collectively, the “Parties”), to fully, finally, and forever resolve, discharge, and settle the “Released Claims” (as defined below), upon and subject to the terms and conditions contained herein.

RECITALS

WHEREAS, on March 26, 2015, Plaintiff filed a class action complaint (the “Lawsuit”) against Berman in the United States District Court for the Eastern District of Missouri, Case No. 4:15-cv-00537-AGF, asserting putative class claims arising under the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692g(a)(4);

WHEREAS, Plaintiff alleges that Berman violated the FDCPA regarding certain of its

disclosures contained in its initial debt collection letters sent to Missouri consumers;

WHEREAS, Berman expressly denies any liability whatsoever to Plaintiff or the Class Members, and denies that it violated the FDCPA;

WHEREAS, the Parties desire and intend to settle and resolve all of the claims asserted in the Lawsuit;

WHEREAS, the Parties wish to avoid the expense and uncertainty of continued litigation;

WHEREAS, counsel for the Class Members have conducted an evaluation of the claims to determine how best to serve the interests of the Class Members;

WHEREAS, Plaintiff and counsel for the Class Members believe, in view of the costs, risks, and delays of continued litigation and appeals balanced against the benefits of this settlement to the Class Members, that the class settlement as provided in this Agreement is in the best interest of the Class Members and is a fair, reasonable, and adequate resolution of the Lawsuit;

WHEREAS, prior to entering into this Agreement, counsel for the Parties engaged in extensive arm's-length negotiations and exchanges of information that resulted in an agreement on the principal terms of this settlement;

WHEREAS, the Parties desire and intend to seek Court approval of the settlement of the Lawsuit as set forth in this Agreement and, upon Court approval, to seek entry of a Final Approval Order and subsequently an order dismissing with prejudice the claims of the Class Members as set forth herein;

WHEREAS, the Parties and their counsel agree to recommend approval of this Agreement to the Court and to any regulatory authority responding to the proposed settlement

pursuant to the Class Action Fairness Act of 2005 (hereinafter referred to as “CAFA”), 28 U.S.C. §§ 1332(d), 1453, and 1711-1715;

WHEREAS, the Parties agree to undertake all steps necessary to effectuate the terms and purposes of this Agreement, to secure the Court’s approval of same, and contemplate that they will oppose any objections to the proposed settlement, including objections by any regulatory authority after CAFA notices are issued, and oppose any appeals from any orders of final approval.

WHEREFORE, in consideration of the promises, representations, and warranties set forth, the Parties stipulate and agree:

1. DEFINITIONS – The following definitions apply to this Agreement:

A. “Effective Date” means the first business day after “Final Order Day” (as defined below).

B. “Final Order Day” means the first business day upon which the Final Approval Order becomes “Final.” The Final Approval Order becomes “Final” upon the expiration of any available appeal period following entry of the Final Approval Order. If any appeal is filed from the Final Approval Order, then the Final Order Day will be the first date after the conclusion of all appeals, so long as the Final Approval Order is not reversed or vacated.

C. “Class Members” means:

All persons with an address in Missouri to whom Berman & Rabin P.A. mailed an initial debt collection communication that stated: “If you notify this firm within thirty (30) days after your receipt of this letter, that the debt or any portion thereof, is disputed, we will obtain verification of the debt or a copy of the judgment, if any, and mail a copy of such verification or judgment to you,” between March 26, 2014 and March 26, 2015, in connection with the collection of a consumer debt on behalf of Bank of America, N.A.

Berman represents that there are 237 class members, including Plaintiff.

D. “Released Claims” means all claims arising out of the following language in the initial debt collection letters sent by Berman & Rabin, P.A. to Plaintiff or Class Members on behalf of Bank of America, N.A. from March 26, 2014 to March 26, 2015: “If you notify this firm within thirty (30) days after your receipt of this letter, that the debt or any portion thereof, is disputed, we will obtain verification of the debt or a copy of the judgment, if any, and mail a copy of such verification or judgment to you.”

E. “Released Parties” means Berman & Rabin, P.A., each of its past, present, and future directors, officers, employees, partners, principals, clients, insurers, co-insurers, re-insurers, shareholders, attorneys, and any related or affiliated company, including any parent, subsidiary, predecessor, or successor company.

2. CLASS CERTIFICATION – Plaintiff will seek, and Defendant will not oppose, preliminary approval of the settlement on behalf of the class defined above in ¶ 1(C).

3. CLASS REPRESENTATIVE AND CLASS COUNSEL APPOINTMENT – The Parties agree that Plaintiff Mary S. Kausch should be appointed as the Class Representative for the Class Members and that Jesse S. Johnson of Greenwald Davidson Radbil PLLC should be appointed as counsel for the Class Members (“Class Counsel”).

4. ORDER OF PRELIMINARY APPROVAL – Within 14 days after this Agreement is fully executed, Plaintiff will file an unopposed motion that the Court enter an Order of Preliminary Approval of Class Action Settlement in substantially the same form attached as

**Exhibit A.**

5. FINAL ORDER AND JUDGMENT – If the settlement is approved preliminarily by the Court, and all other conditions precedent to the settlement have been satisfied, counsel for the Parties will jointly request that the Court enter a Final Order.

6. ADMINISTRATION AND NOTIFICATION PROCESS – First Class, Inc., a third-party class administrator jointly selected by and agreeable to the parties (“Class Administrator”), will administer the settlement and notification of the settlement to the Class Members. The costs and expenses for the administration of the settlement and class notice, including all work necessary to identify current contact information for the Class Members, will be paid by Berman separate and apart from the Settlement Fund as defined below. The Class Administrator will be responsible for mailing the approved class action notice and settlement checks to the Class Members.

7. The Class Administrator will, as expeditiously as possible, but not to exceed 30 days from the Court’s entry of the Order of Preliminary Approval of Class Action Settlement, provide notice of the settlement to the Class Members. The Class Administrator will send via U.S. mail written notice of the settlement to each Class Member at his or her last known valid address, as provided by Berman, address correction requested. Before sending the written notice, the Class Administrator will confirm and, if necessary, update the addresses for the Class Members through the standard methodology it currently uses to update addresses, including attempting to identify the name and address of each Class Member. If any notice is returned with a new address, the Class Administrator will re-mail the notice to the new address and will update the Class Member address list with all forwarding addresses. The notice to the Class Members will be in substantially the form attached as **Exhibit B**.

8. CAFA NOTICE. Berman will be responsible for serving the notice required by 28 U.S.C. § 1715 within 10 days of the filing of the Preliminary Approval Motion.

9. REQUESTS FOR EXCLUSION AND OBJECTIONS – Any Class Member who desires to be excluded from the Class must send a written request for exclusion to the Class Administrator with a postmark date no later than 60 days after the Court’s entry of the Order of Preliminary Approval of Class Action Settlement. A list of all persons who timely exclude themselves will be filed with the Court, along with the Parties’ Motion for Final Approval of Class Action Settlement.

10. In the written request for exclusion, the Class Member must set forth his or her full name, address, telephone number and email address (if available), along with a statement that he or she wishes to be excluded.

11. Any Class Member who submits a valid and timely request for exclusion will not be bound by the terms of this Agreement.

12. Any Class Member who intends to object to the fairness of this settlement must file a written objection with the Court within 60 days from the Court’s entry of the Order of Preliminary Approval of Class Action Settlement. Further, any such Class Member must, within the same time period, provide a copy of the written objection to Class Counsel and Counsel for Defendant via U.S. Mail.

13. In the written objection, the Class Member must state: the name of the case and the case number; his or her full name, address, and telephone number; the reasons for his or her objection; whether he or she intends to appear at the fairness hearing on his or her own behalf or through counsel; if appearing through counsel, his or her attorney’s name, address, bar number, and

telephone number; and a list of any legal authority he or she intends to present at the fairness hearing.

14. Any Class Member who does not file a valid and timely objection to the settlement will be barred from seeking review of the settlement by appeal or otherwise.

15. Subject to approval by the Court, a fairness hearing will be conducted regarding the settlement within 90-120 days from the Court's entry of the Order of Preliminary Approval of Class Action Settlement. Under Rule 23(c)(2)(B)(iv) of the Federal Rules of Civil Procedure, the Class Members will be notified that they may enter an appearance through an attorney at their own expense if the member so desires.

16. RELEASES – As of the Effective Date, Plaintiff and the Class Members fully, finally, and forever settle, release, and discharge the Released Parties from the Released Claims, and are forever barred from asserting any of the Released Claims in any court or forum whatsoever against any of the Released Parties.

17. SETTLEMENT CONSIDERATION – In consideration for the foregoing releases, the Parties agree to the following:

A. Settlement Fund – Berman, in consultation with the Class Administrator, will cause to be established a Settlement Fund (the “Settlement Fund”) in the amount of \$3,555.00 (\$15.00 for each of the 237 members of the Class), within 10 days after Final Order Day. Should the Parties discover that there are additional, or fewer, Class Members, the Settlement Fund will be adjusted accordingly such that the Settlement Fund consists of \$15.00 per Class Member.

Within 15 days after the Effective Date, the Class Administrator will send via U.S. mail a settlement check to each Class Member who does not timely exclude himself or herself from

the Class. Each Class Member who does not exclude himself or herself will receive a pro-rata distribution from the Settlement Fund. Berman's obligations pursuant to 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 that the Class Administrator will be obligated to take reasonable steps to forward all settlement checks returned with a forwarding address to such forwarding addresses. Each settlement check will be void 90 days after mailing.

To the extent that any funds remain in the Settlement Fund after the void date (from uncashed checks or otherwise), the uncashed amount will be paid to Legal Services of Eastern Missouri as a *cy pres* recipient.

B. Payment to Plaintiff – Separate and apart from the Settlement Fund, Berman will pay \$1,000.00 to Plaintiff pursuant to 15 U.S.C. § 1692k(a)(2)(B)(i). Berman also will pay an additional \$500.00 to Plaintiff as an incentive award, subject to Court approval.

C. Agreement to No Longer Use Certain Language in Initial Debt Collection Letters – Berman agrees, as of the date of the execution of this Agreement, to no longer use the following language in its initial debt collection letters: “If you notify this firm within thirty (30) days after your receipt of this letter, that the debt or any portion thereof, is disputed, we will obtain verification of the debt or a copy of the judgment, if any, and mail a copy of such verification or judgment to you.” Instead, Berman will notify consumers in its initial debt collection letters that the consumer must notify Berman, in writing, that if the consumer disputes all or a portion of their debt, Berman will obtain verification of the debt or a copy of the judgment, if any, and mail a copy of such verification or judgment to the consumer.

D. Attorneys' Fees and Expenses of Class Counsel – In advance of the Final Settlement Hearing, Class Counsel will file an application for reasonable attorneys' fees, costs, and expenses. Berman will not challenge any requested fees, costs, and expenses that do not exceed \$17,500, and Class Counsel will not seek more than \$37,500 for attorneys' fees, costs, and expenses. Any amount awarded to Class Counsel for attorneys' fees, costs, and expenses will be paid by Berman separate and apart from the Settlement Fund, costs of Settlement Administration, and payment to Plaintiff.

Berman will forward to Class Counsel payment for the attorneys' fees, costs and expenses awarded by the Court no later than 10 days after the Court's order related to such fees, costs, and expenses becomes final (i.e., non-appealable). Upon payment of attorneys' fees, costs, and expenses to Class Counsel, the Released Parties will have no further obligation with respect to Class Counsel's fees, costs, and expenses, or the fees, costs, or expenses of any other attorney on behalf of Plaintiff or any Class Member.

E. Settlement Administration – Separate from the Settlement Fund, the payment to Plaintiff, and the Attorney's Fees and Expenses of Class Counsel, Berman will be responsible for paying the costs of administration of the settlement.

18. COVENANT NOT TO SUE – Plaintiff agrees and covenants, and each Class Member will be deemed to have agreed and covenanted, not to sue any Released Party with respect to any of the Released Claims, and agrees to be forever barred from doing so, in any court of law or equity.

19. TERMINATION – After completing a good faith negotiation, Class Counsel and Berman will each have the right to terminate this Agreement by providing written notice to the other within 7 days following:

A. The Court’s refusal to enter an Order of Preliminary Approval of Class Action Settlement in substantially the form attached as Exhibit A; or

B. The Court’s refusal to approve the settlement following notice to the Class Members and the fairness hearing.

20. If either Class Counsel or Berman terminates this Agreement as provided herein, the Agreement will be of no force and effect, and the Parties’ rights and defenses will be restored, without prejudice, to their respective positions as if this Agreement had never been executed.

21. The procedure for and the allowance or disallowance by the Court of any applications by Plaintiff or Class Counsel for attorneys’ fees and expenses are not part of the settlement set forth herein and are to be considered by the Court separately from the Court’s consideration of the fairness, reasonableness, and adequacy of the settlement set forth herein. Any order regarding an application for attorneys’ fees and expenses will not operate to terminate or cancel this settlement, or affect the finality of the settlement of this matter.

22. MISCELLANEOUS PROVISIONS – Any exhibits to this Agreement are an integral part of the settlement and are expressly incorporated herein as part of this Agreement.

23. This Agreement is for settlement purposes only. The Parties acknowledge that this Agreement is not an admission of wrongdoing, negligence, or liability by Berman or any Released Party. Berman expressly denies any liability whatsoever to Plaintiff or the Class Members.

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

25. This Agreement contains the entire agreement between the Parties and supersedes any and all other agreements between the Parties, including any and all other mediation and settlement agreements. The terms of this Agreement are contractual.

26. This Agreement is to be interpreted in accordance with Missouri law.

27. Any dispute, challenge, or question relating to this Agreement is to be heard only by this Court.

28. The Parties will request that the Court retain continuing and exclusive jurisdiction over the Parties to this Agreement, including the Plaintiff and all Class Members, and over the administration and enforcement of this Agreement.

29. This Agreement will be binding upon and inure to the benefit of the Parties and their representatives, heirs, successors, and assigns.

30. In the event that any material provisions of this Agreement are held invalid or unenforceable for any reason, such invalidity or unenforceability does not affect other provisions of this Agreement if Berman and Class Counsel mutually elect to proceed as if the invalid or unenforceable provision had never been included in the Agreement.

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

32. This Agreement may be signed in counterparts and the separate signature pages executed by the Parties and their counsel may be combined to create a document binding on all of the Parties and together constitutes one and the same instrument.

33. NOTICES/COMMUNICATIONS. All requests, demands, claims and other communications hereunder must: (a) be in writing; (b) be delivered by U.S. Mail; (c) be deemed to have been duly given on the date received; and (d) be addressed to the intended recipients as set forth below:

If to Plaintiff or the Class:

Jesse S. Johnson  
Greenwald Davidson Radbil PLLC  
5550 Glades Road, Suite 500  
Boca Raton, Florida 33431

and

If to Berman & Rabin, P.A.:

Benjamin N. Hutnick  
Berman & Rabin, P.A.  
15280 Metcalf  
Overland Park, KS 66223

[Signatures on following page]

IN WITNESS WHEREOF, the Parties and their duly authorized attorneys have caused this Agreement to be executed this \_\_\_ day of November, 2015.

SIGNATURES

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Mary S. Kausch

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Jesse S. Johnson  
Greenwald Davidson Radbil PLLC  
5550 Glades Road, Suite 500  
Boca Raton, FL 33431  
Telephone: 561.826.5477  
Fax: 561.961.5684  
jjohnson@gdrlawfirm.com

Class Counsel

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Representative of Berman & Rabin, P.A.

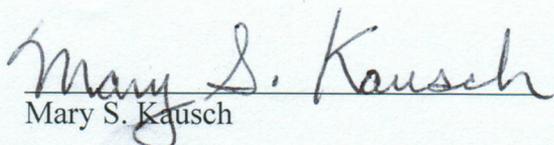
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Benjamin N. Hutnick  
Berman & Rabin, P.A.  
15280 Metcalf  
Overland Park, KS 66223  
Telephone: 913.649.1555  
Fax: 913.652.9474  
bhutnick@bermanrabin.com

Attorneys for Defendant

IN WITNESS WHEREOF, the Parties and their duly authorized attorneys have caused this Agreement to be executed this \_\_\_ day of November, 2015.

SIGNATURES

  
Mary S. Kausch

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Greenwald Davidson Radbil PLLC  
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Boca Raton, FL 33431  
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Class Counsel

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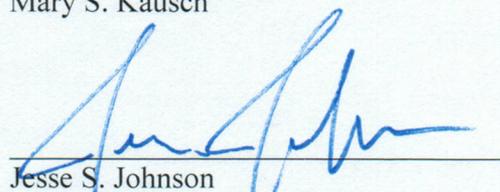
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Telephone: 913.649.1555  
Fax: 913.652.9474  
bhutnick@bermanrabin.com

Attorneys for Defendant

IN WITNESS WHEREOF, the Parties and their duly authorized attorneys have caused this Agreement to be executed this 16<sup>th</sup> day of November, 2015.

SIGNATURES

\_\_\_\_\_  
Mary S. Kausch



\_\_\_\_\_  
Jesse S. Johnson  
Greenwald Davidson Radbil PLLC  
5550 Glades Road, Suite 500  
Boca Raton, FL 33431  
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jjohnson@gdrlawfirm.com

Class Counsel

\_\_\_\_\_  
Representative of Berman & Rabin, P.A.

\_\_\_\_\_  
Benjamin N. Hutnick  
Berman & Rabin, P.A.  
15280 Metcalf  
Overland Park, KS 66223  
Telephone: 913.649.1555  
Fax: 913.652.9474  
bhutnick@bermanrabin.com

Attorneys for Defendant

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Mary S. Kausch

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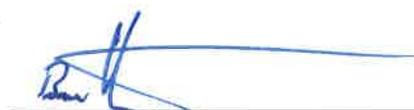
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Class Counsel



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Representative of Berman & Rabin, P.A.



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Attorneys for Defendant