

Class Action Settlement Agreement

This class action settlement agreement (“Agreement”) is entered into between Thomas E. Whatley (“Plaintiff” or “Class Representative”), individually and on behalf of the “Class Members” (as defined below), and TRS Recovery Services, Inc. (“Defendant”). This Agreement is intended by Defendant and Plaintiff, on behalf of themselves 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

On February 22, 2017, Plaintiff filed a class action complaint (the “Lawsuit”) against Defendant in the United States District Court, Eastern District of Texas, Case No. 4:17-cv-00133, asserting putative class claims arising from the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692, *et seq.*

Plaintiff alleges that Defendant violated the FDCPA regarding a form debt collection letter that Defendant sent to Texas consumers;

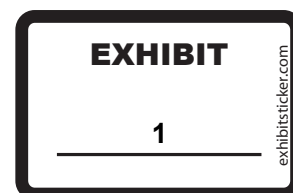
Defendant expressly denies any liability whatsoever to Plaintiff or the Class Members, or that it violated the FDCPA;

The Parties desire and intend to settle and resolve all claims asserted in the Lawsuit;

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

The Parties believe that settlement by way of this Agreement is in their best interests;

Plaintiff’s counsel has conducted an evaluation of the claims to determine how best to serve the interests of the Class Members;



Plaintiff's counsel believes, in view of the costs, risks, and delays of continued litigation and appeals, balanced against the benefits of 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;

Prior to entering into this Agreement, counsel for the Parties engaged in written discovery and extensive settlement discussions, including a mediation with Saul Solomon, Esq. in Nashville, Tennessee, which helped to inform their negotiations;

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 dismissing with prejudice the claims of the Class Members as set forth herein;

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 ("CAFA"), 28 U.S.C. §§ 1332(d), 1453, and 1711-1715; and

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 not taken by the Parties.

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 date after the "Final Order Day" (as defined below).

B. “Final Order Day” means the 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 timely 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 any person who meets the following definition:

All persons with a Texas address to whom TRS Recovery Services, Inc., on behalf of TeleCheck Services, Inc., mailed an initial debt collection communication between February 22, 2016 and February 22, 2017, in connection with the collection of a consumer debt.

Defendant represents that it has identified a total of 13,885 potential Class Members.

D. “Released Claims” means all claims, duties, obligations, damages, or liabilities, whether known or unknown, asserted or unasserted, foreseen or unforeseen, actual or contingent, that arise out of initial debt collection letters sent by Defendant on behalf of TeleCheck Services Inc., and that relate to the allegations in Plaintiff’s complaint. Nothing herein prevents Defendant from collecting or attempting to collect any remaining debts allegedly owed by the Class Members, nor will it prevent Plaintiff and Class Members from asserting any defenses they have to the alleged debts.

E. “Released Parties” means TRS Recovery Services, Inc., and 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 should be appointed as the Class Representative for the Class Members and that James L. Davidson of Greenwald Davidson Radbil PLLC should be appointed as counsel for the Class Members (“Class Counsel”).

4. **ORDER OF PRELIMINARY APPROVAL** – Counsel for Plaintiff will file an unopposed motion requesting that the Court enter an Order of Preliminary Approval of Class Action Settlement in substantially the same form attached as **Exhibit A**.

5. **FINAL APPROVAL 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 Approval Order in substantially the same form attached as **Exhibit B**.

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 will be paid from the Settlement Fund (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 21 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 as follows:

A. **Written Class Notice** – 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, address correction requested, as provided by Defendant. 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. If any notice is returned undeliverable without a new address, the Class Administrator will run a skip trace to attempt to locate an updated address and will re-mail the notice to the new address if a new address can be located. The written notice to the Class Members will be in substantially the form attached as **Exhibit C**. The website notice, which will be posted on Class Counsel's website, will be in substantially the form attached as **Exhibit D**.

B. CAFA Notice – Defendant, with the assistance of the Class Administrator, will be responsible for serving the CAFA notice required by 28 U.S.C. § 1715, within 10 days of the filing of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement.

8. REQUESTS FOR EXCLUSION AND OBJECTIONS – The Class Administrator will administer the receipt of all requests for exclusion.

A. 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 75 days after the Court's entry of the Order of Preliminary Approval of Class Action Settlement. After that deadline passes, the Class Administrator will provide to Class Counsel and Defendant's counsel a list of the names of each Class Member who submitted an exclusion, and whether each such exclusion was timely. A copy of this list will be provided to the Court in connection with Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement.

B. 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.

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

D. Any Class Member who intends to object to the fairness of this settlement must file a written objection with the Court within 75 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, provide a copy of the written objection to Class Counsel and Counsel for Defendant via U.S. Mail.

E. In the written objection, the Class Member must state: his or her full name, address, telephone number, and email address (if available); the evidence or proof that the objector is a Class Member; the reasons for his or her objection; the name, address, bar number and telephone number of the objecting Class Member's counsel, if represented by an attorney; a statement of the specific basis for each objection; a list of any legal authority the objector will present at the Final Approval Hearing; and whether he or she intends to appear at the fairness hearing on his or her own behalf or through counsel.

F. 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.

G. Any Class Member who submits both an objection and an exclusion will be treated as having submitted an exclusion. Any Class Member who submits a claim and an exclusion will be treated as having submitted an exclusion.

H. When responding to any inquiry from a Class Member, Plaintiff and Class Counsel will confirm that they believe the settlement is fair and reasonable.

I. Subject to approval by the Court, a fairness hearing will be conducted regarding the settlement approximately 120 days from the Court's entry of the Order of Preliminary Approval of Class Action Settlement.

9. RELEASES –

A. Release by Plaintiff. As consideration for this Agreement, as of the Effective Date, Plaintiff releases and forever discharges the Released Parties from all claims and damages he has, or may have had, against Defendant, whether known or unknown, asserted or unasserted, foreseen or unforeseen, actual or contingent, in any way relating to the Lawsuit or the facts alleged therein. This release does not limit or foreclose any defenses Plaintiff may have regarding the underlying debt Defendant sought to collect from him.

B. Release by the Class. Each Class Member who did not timely and validly opt out, releases and forever discharges, as of the Effective Date, the Released Parties from the Released Claims.

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

A. Cash Compensation/Settlement Fund – Defendant will pay \$120,000 (the “Cash Compensation”) to compensate Plaintiff, Class Members who elect to participate in the settlement, and for settlement administration costs. Within 20 days after the Final Order Day, Defendant, in consultation with the Class Administrator, will cause to be established a non-reversionary settlement fund (“Settlement Fund”) which will consist of the remainder of the Cash Compensation after deducting costs for settlement administration already paid, and a \$1,000 individual damages

award for Plaintiff. Each Class Member who does not timely exclude himself or herself from the settlement will receive a pro-rata portion of the Settlement Fund. Should Defendant discover more than 250 additional Class Members than 13,885, the Parties agree to negotiate in good faith an increase in the amount of the Cash Compensation.

Within 21 days after the Final Order Day, the Class Administrator will send via U.S. mail a settlement check to each participating Class Member. Defendant'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), such funds will be paid to Legal Aid of NorthWest Texas as a *cy pres* recipient.

B. Payment to Plaintiff – Defendant will pay Plaintiff \$1,000.00 out of the Cash Compensation for any alleged individual damages pursuant to 15 U.S.C. § 1692k(a)(2)(B)(i) and for his work as a proposed class representative. Defendant will forward to Class Counsel the \$1,000 payment for Plaintiff no later than 20 days after Final Order Day.

C. Change in Defendant's Conduct – To the extent that Defendant has not already done so, Defendant will make three changes to its form initial debt collection letter within 20 days of Final Order Day:

1. Defendant will add “in writing” into the validation notice with regard to the method by which a consumer must request the name or address of the original creditor;
2. Defendant will remove “during debt collection” from the Privacy Notice; and
3. Defendant will add the language “**Nothing stated or described above interferes with any right you may have to have this debt validated**” in bold on the first page of the letter below the language “**SEE REVERSE SIDE FOR FEDERAL VALIDATION NOTICE...**”

While Defendant consulted with Class Counsel in agreeing to these changes, Class Counsel did not provide any legal advice to Defendant regarding these changes, including whether they comply with the FDCPA, or any other federal or state law which Defendant may be subject to. If Defendant reasonably determines in the future that compliance with the FDCPA, or any other federal or state law or other requirement which Defendant may be subject to, requires changes to these three provisions, or any other provisions in its form debt collection letters, nothing in this Agreement shall prohibit Defendant from making such changes.

D. Attorneys’ Fees and Expenses of Class Counsel – Defendant agrees to pay reasonable attorneys’ fees, costs and expenses incurred by Plaintiff in the Lawsuit not to exceed the total sum of \$62,500. Separately, Defendant will pay to the mediator all fees, costs and expenses of the mediator for the parties’ mediation with Saul Solomon. In advance of the final fairness hearing, Class Counsel will file an application for reasonable attorneys’ fees, costs, and expenses, not to exceed \$62,500, and may indicate the application is unopposed. Defendant will pay the reasonable attorneys’ fees and litigation costs and expenses, as allowed by the Court. The

amount to be paid to Class Counsel for attorneys' fees, costs, and expenses will be paid by Defendant separate and apart from the Cash Compensation.

Defendant will forward to Class Counsel payment for the attorneys' fees, costs and expenses approved or awarded by the Court no later than 20 days after the date of the order approving or awarding such fees, costs, and expenses. 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 – Defendant will pay the costs of notice and administration of the settlement out of the Cash Compensation directly to the settlement administrator at the time the costs become due and payable. The payment for the costs of class notice and administration of the settlement will be due and payable prior to the deadline for the parties to mail class notice.

11. COVENANT NOT TO SUE – Plaintiff agrees and covenants, and each Class Member who did not timely exclude himself or herself from the settlement will be deemed to have agreed and covenanted, not to sue any of the Released Parties with respect to any of the Released Claims.

12. TERMINATION – Only after attempting and completing good-faith negotiations to salvage the settlement, Plaintiff and Defendant will each have the right to terminate this Agreement if one of the following occurs:

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

B. The Court refuses to approve the settlement following notice to the Class Members and the final fairness hearing; or

C. There are more than 250 additional Class Members than 13,885, and the Parties are unable to negotiate in good faith an increase in the amount of the Cash Compensation; or

D. If more than 50 (fifty) Class Members submit timely and valid requests for exclusion.

Written notice of termination must be provided to the other party within 7 days of the above event forming the basis of the termination.

If either Plaintiff or Defendant terminates this Agreement as provided in this paragraph, 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.

The procedure for and the allowance or disallowance by the Court of any applications by Plaintiff or Class Counsel for attorneys' fees, costs, and expenses 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, costs, and expenses will not operate to terminate or cancel this settlement, or affect the finality of the settlement of this matter.

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

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

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

16. This Agreement contains the entire agreement between the Parties and supersedes any and all other agreements between the Parties. The terms of this Agreement are contractual.
17. This Agreement is to be interpreted in accordance with Texas law.
18. Any dispute, challenge, or question relating to this Agreement is to be heard only by this Court.
19. The Parties agree that this Court has subject matter jurisdiction over the claims at issue and will request that the Court retain continuing and exclusive jurisdiction over the Parties to this Agreement, and over the administration and enforcement of this Agreement.
20. This Agreement will be binding upon and inure to the benefit of the Parties and their representatives, heirs, successors, and assigns.
21. In the event that any material provisions of this Agreement are held invalid or unenforceable for any reason, such invalidity or unenforceability will not affect other provisions of this Agreement, if Plaintiff and Defendant mutually elect to proceed as if the invalid or unenforceable provision had never been included in the Agreement.
22. 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.
23. This Agreement may be signed in counterparts, and by scanned and/or facsimile signatures. 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.
24. The Parties understand that this Agreement is a public document that will be filed with the Court for its review and approval.

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

If to Plaintiff or the Class:

James L. Davidson
Greenwald Davidson Radbil PLLC
5550 Glades Road, Suite 500
Boca Raton, FL 33431

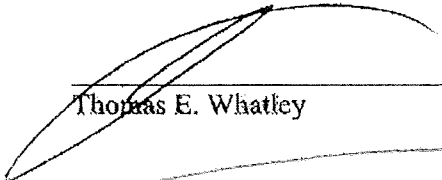
If to Defendant:

David R. Esquivel
Bass, Berry & Sims PLC
150 3rd Avenue South, Suite 2800
Nashville, TN 37201

[SIGNATURES ON FOLLOWING PAGE]


IN WITNESS WHEREOF, the Parties and their duly authorized attorneys have caused this

Agreement to be executed:



Thomas E. Whatley

Dated: March 28, 2018

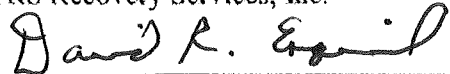


James L. Davidson
Greenwald Davidson Radbil PLLC
5550 Glades Road, Suite 500
Boca Raton, FL 33431
Telephone: 561-826-5477

Dated: March 29, 2018

Proposed Class Counsel

TRS Recovery Services, Inc.



David R. Esquivel
Bass, Berry & Sims PLC
150 3rd Avenue South, Suite 2800
Nashville, TN 37201

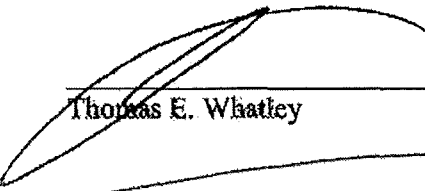
Dated: March __, 2018

Dated: March 29, 2018

Counsel for Defendant

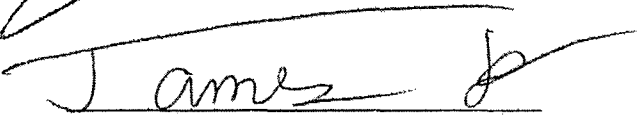
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Agreement to be executed:



Thomas E. Whatley


Dated: March 28, 2018



James L. Davidson
Greenwald Davidson Radbil PLLC
5550 Glades Road, Suite 500
Boca Raton, FL 33431
Telephone: 561-826-5477

Dated: March 29, 2018

Proposed Class Counsel



TRS Recovery Services, Inc.

Dated: March 29, 2018

David R. Esquivel
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150 3rd Avenue South, Suite 2800
Nashville, TN 37201

Dated: March __, 2018

Counsel for Defendant