

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA**

Alex Cooper, on behalf of himself and others similarly situated,	:	Civil Action No.: 1:21-cv-01562-TWP-DML
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
InvestiNet, LLC,	:	
	:	
Defendant.	:	
	:	

Class Action Settlement Agreement

This class action settlement agreement (“Agreement”) is entered into between Alex Cooper (“Plaintiff” or “Class Representative”), individually and on behalf of the “Class Members” (as defined below), and InvestiNet, LLC (“Defendant”). This Agreement is intended by Plaintiff and Defendant, 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 June 8, 2021, Plaintiff filed a class action complaint (the “Lawsuit”) against Defendant in the United States District Court, Southern District of Indiana, Case No. 1:21-cv-01562-TWP-DML, asserting putative class claims arising under the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692, *et seq.*;

Plaintiff alleges that Defendant violated the FDCPA regarding its debt collection efforts with respect to Plaintiff and certain Indiana 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 the 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 have conducted an evaluation of the claims to determine how best to serve the interests of the Class Members;

Plaintiff's counsel believe—in view of the costs, risks, and delays of continued litigation and appeals, including the amount of money potentially available to the Class Members in light of Defendant's net worth and the cap on damages set forth in the FDCPA, 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 exchanged information concerning the size of the class, Defendant's financial position, and the potential defenses to Plaintiff's claims, 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 Plaintiff and 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. 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 may 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 agree as follows:

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

A. “Effective Date” means the first business day 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 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 Member” means any person who meets the following definition:

All persons (a) with an Indiana address, (b) to which InvestiNet, LLC sent, or caused to be sent, a written debt collection communication, (c) in connection with the collection of a consumer debt, (d) from June 9, 2020 through June 8, 2021, (e) that was printed or mailed by CompuMail, Inc.

D. “Participating Class Member” means a Class Member who submits a timely and valid claim to participate in the settlement.

E. “Released Claims” means claims under section 1692c(b) of the FDCPA arising out InvestiNet, LLC’s provision of information regarding Class Members or their alleged debts to CompuMail, Inc. between June 9, 2020 and June 8, 2021. Nothing herein prevents Defendant from

collecting or attempting to collect any remaining debts allegedly owed by any Class Member, nor will it prevent Plaintiff or any Class Member from asserting any defenses he or she has to the alleged debts.

F. “Released Parties” means Defendant, and each of its past, present, and future directors, officers, employees, insurers, co-insurers, re-insurers, shareholders, attorneys, and any parent, subsidiary, predecessor, or successor company. Released Parties also includes any person or entity that could be sued based upon the acts alleged against the Defendant in this lawsuit, including Defendant’s clients, agents, representatives and suppliers or servicers.

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 Michael L. Greenwald and Alexander D. Kruzyk of Greenwald Davidson Radbil PLLC should be appointed as counsel for the Class Members (“Class Counsel”).

4. ORDER OF PRELIMINARY APPROVAL – 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, Plaintiff will file an unopposed motion requesting that the Court enter the Final Approval Order and Judgment in substantially the same form attached as **Exhibit B**.

6. ADMINISTRATION AND NOTIFICATION PROCESS – Class-Settlement.com—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 and process claim forms, will be paid by Defendant separate and apart from the Settlement Fund (defined below). The Class Administrator will be responsible for mailing the approved class action notice, receiving and processing claim forms and op-out requests, and mailing settlement checks to the Class Members. Defendant will provide the names and last-known addresses of all Class Members to the Class Administrator, in a Microsoft Excel spreadsheet or some other editable format, within five days of the filing of Plaintiff’s unopposed motion for preliminary approval of class action settlement.

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 with a claim form 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. 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**. A 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 will serve 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 any and 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 60 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 a timely exclusion. 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—subject to the Court's approval—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, and must sign said request for exclusion.

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 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.

E. In the written objection, the objecting Class Member must—subject to the Court’s approval—state his or her full name, address, telephone number, and email address (if available); state the reasons for his or her objection; state the name, address, bar number and telephone number of his or her counsel, if represented by an attorney; attach documents establishing, or provide information sufficient to allow the Parties to confirm, that the objector is a Class Member; and state whether he or she intends to appear at the settlement approval 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, and will be excluded from the class.

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. 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.

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 any and all causes of action, suits, debts, dues, damages, including compensatory and punitive damages, medical payment

benefits, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, claims and demands of whatsoever kind or nature, in law or in equity, whether asserted or unasserted, actual or contingent, anticipated or unanticipated, known or unknown, which Plaintiff ever had or now has against Defendant from the beginning of time through the Effective Date. 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 exclude himself or herself 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. Settlement Fund – Defendant, in consultation with the Class Administrator, will establish a non-reversionary settlement fund of \$18,800 (“Settlement Fund”) within 7 days of Final Order Day. The amount of the Settlement Fund is contingent on there being no more than 9,400 Class Members, including Plaintiff. If Defendant later determines there to be more than 9,400 Class Members, Defendant will add \$2 to the Settlement Fund for each additional Class Member above 9,400.

Within 21 days of the Final Order Day, the Class Administrator will send via U.S. mail a settlement check for a pro rata share of the settlement fund 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 Indiana Legal Services, Inc. as a *cy pres* recipient.

B. Payment to Plaintiff – Separate and apart from the Settlement Fund, Defendant will pay \$1,000 to Plaintiff (“Payment to Plaintiff”) within 7 days of the Final Order Day for his “additional” damages pursuant to 15 U.S.C. § 1692k(a)(2)(B)(i).

C. Attorneys’ Fees, Expenses, and Costs of Class Counsel – Plaintiff is the prevailing party under Fed. R. Civ. P. 23(h) and 15 U.S.C. § 1692k(a)(3). Prior to the objection and exclusion deadline, Plaintiff will file a motion for attorneys’ fees, expenses, and costs. Defendant may oppose the amounts sought. Prior to Plaintiff moving for attorneys’ fees, expenses, and costs, the Parties will engage in good faith discussions to attempt to resolve the issue of Plaintiff’s attorneys’ fees, expenses, and costs. Any attorneys’ fees, expenses, and costs awarded to Plaintiff by the Court (the “Attorneys’ Fees, Expenses, and Costs of Class Counsel”) will be paid by Defendant separate and apart from the Settlement Fund, Costs of Settlement Administration (defined below), and Payment to Plaintiff.

Defendant will forward to Class Counsel payment of Attorneys’ Fees, Expenses, and Costs of Class Counsel no later than 7 days after the date that the order approving them becomes final. The order awarding Attorneys’ Fees, Expenses, and Costs of Class Counsel becomes final upon the expiration of any available appeal period following entry of said order, or, if an appeal is taken from the order, the conclusion of any such appeal. Upon payment of Attorneys’ Fees, Expenses, and Costs of Class Counsel, the Released Parties will have no further obligation with respect to

Class Counsel's attorneys' fees, costs, and expenses, or the attorneys' fees, costs, or expenses of any other attorney on behalf of Plaintiff or any Participating Class Member. This Agreement is not contingent on the Court awarding any specific amount of attorneys' fees, costs and expenses to Class Counsel.

D. Costs of Settlement Administration – Separate from the Settlement Fund, Payment to Plaintiff, and the Attorneys' Fees, Expenses, and Costs of Class Counsel, Defendant will be responsible for paying all costs of class notice and administration of the settlement (“Costs of Settlement Administration”).

11. COVENANT NOT TO SUE – Plaintiff agrees and covenants, and each Class Member who does not exclude herself or himself will be deemed to have agreed and covenanted, not to sue any of the Released Parties with respect to any of the Released Claims. At the time this Agreement is executed, neither Plaintiff nor Class Counsel are aware of the identity of any other Class Members.

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 preliminarily approve the settlement; or

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

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, Expenses, and Costs of Class Counsel 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, 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 Indiana law.

18. Any dispute, challenge, or question relating to this Agreement is to be heard only by this Court. However, should this Court determine that it lacks jurisdiction over Plaintiff's claims, the Parties will consummate their settlement in Indiana state court.

19. The Parties agree that this Court has subject matter jurisdiction over the claims at issue, that Plaintiff and Class Members have Article III standing to assert their claims in this Court, 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 electronic, 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 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 notices, requests, demands, claims and other communications hereunder must be: (a) in writing; (b) delivered by U.S. Mail and email; (c) deemed to have been duly given on the latest date of receipt of U.S. Mail and email; and (d) addressed to the intended recipients as set forth below:

If to Plaintiff or the Class:
Michael L. Greenwald
Greenwald Davidson Radbil PLLC
7601 N. Federal Highway, Suite A-230
Boca Raton, FL 33487
mgreenwald@gdrlawfirm.com

If to Defendant:
Michael S. Poncin
Moss & Barnett
150 South Fifth Street, Suite 1200
Minneapolis, MN 55402
Mike.Poncin@lawmoss.com

IN WITNESS WHEREOF, the Parties and their duly authorized attorneys have caused this Agreement to be executed:

Alex Cooper

Dated: _____, 2021

Michael L. Greenwald
Greenwald Davidson Radbil PLLC
7601 N. Federal Highway, Suite A-230
Boca Raton, FL 33487

Dated: _____, 2021

Proposed Class Counsel

InvestiNet, LLC

Dated: _____, 2021

Michael S. Poncin
Moss & Barnett
150 South Fifth Street, Suite 1200
Minneapolis, MN 55402

Dated: _____, 2021

Counsel for Defendant InvestiNet, LLC