

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CARLOS ACUNA, on behalf of himself and others similarly situated,	:	Civil Action No.: 9:21-cv-81256-WPD
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
MEDICAL-COMMERCIAL AUDIT, INC. d/b/a MCA MANAGEMENT COMPANY,	:	
	:	
Defendant.	:	

Class Action Settlement Agreement

This class action settlement agreement (“Agreement”) is entered between Carlos Acuna (“Plaintiff” or “Class Representative”), individually and on behalf of the “Class Members” (as defined below), and Medical-Commercial Audit, Inc. d/b/a MCA Management Company (“Defendant”). Plaintiff and Defendant, on behalf of themselves and the Class Members (as defined below) (collectively, the “Parties”), intend this Agreement 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 July 16, 2021, Plaintiff filed a class action complaint (the “Lawsuit”) against Defendant in the United States District Court, Southern District of Florida, Case No. 9:21-cv-81256-WPD, 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 certain of its debt collection efforts with respect to Plaintiff and the Class Members.

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 interests of the Class Members and is a fair, reasonable, and adequate resolution of the Lawsuit.

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.

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 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 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 a Florida address, (b) to whom Medical-Commercial Audit, Inc. d/b/a MCA Management Company mailed a debt collection communication not returned as undeliverable, (c) in connection with the collection of a consumer debt, (d) between July 17, 2020 and July 16, 2021.

D. “Participating Class Member” means a Class Member who submits a timely and valid claim form.

E. “Released Claims” means all claims under 15 U.S.C. § 1692e, 15 U.S.C. § 1692e(5) and 15 U.S.C. § 1692f arising out of the mailing of a written communication sent by Defendant to Class Members between July 17, 2020 and July 16, 2021. Nothing herein prevents Plaintiff or Class Members from asserting any defenses they have to any of the alleged debts Defendant attempted to collect from them.

F. “Released Parties” means Medical-Commercial Audit, Inc. d/b/a MCA Management Company, and each of its past, present, and future directors, officers, employees, agents, representatives, 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 – Class Counsel 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, Class Counsel 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 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 Defendant separate and apart

from the Settlement Fund (defined below). The Class Administrator will be responsible for mailing the approved class action notice to the Class Members and settlement checks to the Participating 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. 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** with a long-form notice to be posted on Class Counsel's website in substantially the form attached as **Exhibit D**, subject to Court approval. 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 the class action settlement.

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 the class action settlement.

8. CLAIMS, REQUESTS FOR EXCLUSION AND OBJECTIONS

A. Any Class Member who desires to receive his or her pro-rata portion of the Settlement Fund (defined below) must submit, pursuant to and in the form attached as Exhibit C, a timely and valid claim 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. Such Participating Class Members must confirm that they received a debt collection communication from Defendant between July 17, 2020 and July 16, 2021, and that such communication concerned a debt incurred primarily for personal, family, or household (rather than commercial or business) purposes.

B. 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.

C. In the written request for exclusion, the Class Member—subject to the Court’s approval—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, and must sign said request for exclusion. No Class Member, or any person acting on behalf of or in concert or participation

with any Class Member, may exclude any other Class Member from the class. A Class Member may opt out on an individual basis only. “Mass” or “class” opt-outs, whether submitted by third parties on behalf of a “mass” or “class” of Class Members or multiple Class Members, where no personal statement has been signed by each individual Class Member, are not allowed.

D. 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. The Class Administrator will administer the receipt of any and all requests for exclusion.

E. 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.

F. In the written objection, the Class Member—subject to the Court’s approval—must: 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 the objecting Class Member’s counsel, if represented by an attorney; include a statement of the specific basis for each objection; identify all documents which the objector desires the Court to consider, including a list of any legal authority the objector will present at the settlement approval hearing; 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.

G. 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.

H. 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.

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

J. Subject to approval by the Court, a fairness hearing will be conducted regarding the settlement within 90 to 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.

9. RELEASES – 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 cause to be established a non-reversionary settlement fund of \$7,600.00 (“Settlement Fund”) within 7 days of Final Order Day. Each Participating Class Member will receive a pro-rata portion of the Settlement Fund. The amount of the Settlement fund is contingent on there being no more than 800 Class Members, including Plaintiff. If Defendant determines there to be more than 800 Class Members, Defendant will add \$9.50 to the Settlement Fund for each additional Class Member above 800.

Within 21 days of the Final Order Day, the Class Administrator will send via U.S. mail a settlement check for a pro rata portion 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 the Legal Aid Service of Palm Beach County, Inc. as a *cy pres* recipient.

B. Payment to Plaintiff – Separate and apart from the Settlement Fund, Defendant will pay \$1,000.00 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) (“Payment to Plaintiff”).

C. Stipulated Equitable Relief – Defendant will, within 30 days of execution of this Agreement, cease collecting debts from consumers in Florida and will no longer do so going forward. If Defendant does elect to collect debts from consumers in Florida in the future, it will first register with the Office of Financial Regulation of the Florida Financial Services Commission as a consumer collection agency before doing so.

D. 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). The parties have agreed to a high-low range of attorneys' fees and expenses of \$40,000 to \$22,000. Prior to the date that Plaintiff's fee petition is due, the parties will work in good faith to reach a fee and expense agreement within that range. If the parties are unable to reach an agreement, then Plaintiff may seek a fee and expense

award of no more than \$40,000, while Defendant may oppose any amount above \$22,000. 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, and Payment to Plaintiff.

Defendant will forward to Class Counsel payment for the attorneys' fees, costs and expenses approved by the Court in three equal monthly payments with the initial payment being made no later than 7 days after the date that the order approving such fees, costs, and expenses becomes final, and with each subsequent payment being made thirty days thereafter. The order awarding Class Counsel its reasonable attorneys' fees, costs, and expenses becomes final upon the expiration of any available appeal period following entry of said order. Upon payment of the Attorneys' Fees, Expenses, and Costs of 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 Participating Class Member.

E. 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 notice and administration of the settlement ("Costs of Settlement Administration").

11. COVENANT NOT TO SUE – Plaintiff agrees and covenants, and each Class Member 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.

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.

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 Florida 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 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:
James L. Davidson

Greenwald Davidson Radbil PLLC
7601 N. Federal Highway, Suite A-230
Boca Raton, FL 33487
j davidson@gdr law firm.com

If to Defendant:

Jeremy F. Goldstein
Cole, Scott & Kissane P.A.
222 Lakeview Avenue, Suite 120
West Palm Beach, Florida 33401
jeremy.goldstein@csklegal.com

[SIGNATURES ON FOLLOWING PAGE]

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

Carlos Acuna

Carlos Acuna (Feb 7, 2022 13:03 EST)

Carlos Acuna

Dated: February 7, 2022

James L. Davidson

James L. Davidson (Feb 7, 2022 13:04 EST)

James L. Davidson

Greenwald Davidson Radbil PLLC

7601 N. Federal Highway, Suite A-230

Boca Raton, FL 33487

Dated: February 7, 2022

Proposed Class Counsel

Julie Reza

Medical-Commercial Audit, Inc.

Dated: February 2, 2022

Jeremy F. Goldstein

Jeremy F. Goldstein

Cole, Scott & Kissane, P.A.

222 Lakeview Avenue, Suite 120

West Palm Beach, Florida 33401

Dated: February 2, 2022

Counsel for Medical-Commercial Audit, Inc.