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Eugene J. McCaffrey, Jr., J.S.C.

PHILIP D. STERN & ASSOCIATES, LLC
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Attorney of Record: Philip D. Stern
Attorneys for Plaintiffs, Dolores M. Krug,
Mark A. Castellano, Diane L. Hortsman, James
J. Hortsman, Dane T. Wood, Lisa A. Wood,
and all others similarly situated

DOLORES M. KRUG, an individual; MARK
A. CASTELLANO, an individual; DIANE L.
HORSTMAN, an individual; JAMES J.
HORSTMAN, an individual; DANE T.
WOOD an individual; and LISA A. WOOD,
an individual; on behalf of themselves and all
others similarly situated,

Plaintiffs,

vs.

ERICA L. BRACHFELD, A
PROFESSIONAL CORPORATION doing
business as LAW OFFICES OF BRACHFELD
& ASSOCIATES, a California Corporation;
ERICA L. BRACHFELD also known as
ERICA L. SHUBIN, individually and in her
official capacity,

Defendants.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
GLOUCESTER COUNTY**

Civil Action

Docket No. GLO-L-000419-11

**ORDER GRANTING MOTION FOR
CLASS CERTIFICATION
AND
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT AGREEMENT**

THIS MATTER having come before the Court on the Motion for Class Certification and Preliminary Approval of the Class Settlement Agreement ("Motion") by Philip D. Stern & Associates, LLC (Philip D. Stern, Esq., appearing), attorneys for Plaintiffs, Dolores M. Krug, Mark A. Castellano, Diane L. Hortsman, James J. Hortsman, Dane T. Wood, Lisa A. Wood, and all others similarly situated, and it appearing that Tompkins, McGuire, Wachenfeld & Barry, LLP (Matthew P. O'Malley, Esq., appearing), attorneys for Defendants, Erica L. Brachfeld, a professional corporation doing business as Law Offices of Brachfeld & Associates, and Erica L.

Brachfeld also known as Ercia L. Shubin, was properly served with the Motion and having consented to the form and entry of this Order, and the Court having reviewed the papers submitted, and having heard the arguments of counsel on December 17, 2010; and, with respect to certifying this action as a class action for settlement purposes, the Court finds:

- A. The Class consists of as many as 1,000,000 members and is so numerous that joinder of all members is impracticable;
- B. There are questions of law and fact common to the proposed Class, namely, whether Defendants left messages on consumers' telephone answering devices that failed to provide meaningful disclosure of BRACHFELD & ASSOCIATES's identity as the caller, disclose the purpose or nature of the communication (i.e., an attempt to collect a debt), and conveyed a false implication that the subject communication was from an attorney;
- C. The individual claims of Plaintiffs are typical of the claims of the Class;
- D. Plaintiffs are appropriate and adequate representatives for the Class;
- E. Plaintiffs and Defendants have entered into a Stipulation of Settlement ("Stipulation"), a copy of which was filed, in accordance with R. 4:32-2(e)(2), as *Exhibit A* to the Memorandum filed in support of this Motion.
- F. The Stipulation includes, among other things, Defendants' consent to an injunction and final injunctive relief is appropriate respecting the class as a whole;
- G. The prosecution of separate actions by or against individual members of the Class would create a risk either of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for the party opposing the class;

- H. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole;
- I. With respect to the appointment of Class Counsel, the Court finds, after consideration of the factors set forth in under R. 4:32-2(g), Plaintiffs' counsel, Philip D. Stern, will fairly and adequately represent the interests of the Settlement Class; and
- J. With respect to the proposed Stipulation of Settlement which has been filed with the Motion, the Court preliminarily finds, subject to a final hearing pursuant to R. 4:32-2(e)(1)(C), that the proposed settlement is fair, reasonable, and adequate;

and for good cause shown;

IT IS ON THIS ^{2ND}~~1ST~~ DAY OF ^{June}~~APRIL~~, 2011, ORDERED:

1. The Court certifies this action as a class action under R. 4:32-1(b)(1) and (2), and, in accordance with R. 4:32-2(a):

- (a) defines the "Class" as

All persons with addresses in the United States of America who received from BRACHFELD & ASSOCIATES a telephonic voice message left during the class period, which message failed to meaningfully identify BRACHFELD & ASSOCIATES as the caller, disclose that the communication was from a debt collector, or state the purpose or nature of the communication, or which falsely implied that the communication was from an attorney. Excluded from the class are:

- (i) all consumers who have filed for bankruptcy protection since the start of the class period;
- (ii) all consumers who are deceased; and
- (iii) all consumers who have entered into any general release of claims against Defendants.

- (b) defines the "Class Claims" as any and all claims arising from Defendants' telephonic messages left in substantially the same form as those in Plaintiffs' Complaint which were received by members of the Class during the Class Period

- (c) defines the “Class Period” as beginning on February 21, 2008 and continuing uninterrupted up through and including the date of this Order; and
- (d) appoints Plaintiff’s counsel, Philip D. Stern, as Class Counsel.
2. The Fairness Hearing pursuant to R. 4:32-2(e)(1)(C) as to whether the proposed Settlement Agreement is fair, reasonable, and adequate, together with Class Counsel’s request for fees and expenses will be held before this Court on August 25, 2011 (“Fairness Hearing Date”) at 1:30p.m.
3. Inasmuch as this action is certified under R. 4:32-1(b)(1) and (2), and it appears that the settlement involves injunctive relief with corresponding incidental damages in an amount greater than class members could receive if this matter were contested, the Court concludes that no notice is required. Nevertheless, the Stipulation of Settlement provides for publishing a notice in *U.S.A. Today*.
4. Class Members will be permitted to opt out of the Stipulation of Settlement. Class Members who choose to opt-out of the Stipulation of Settlement must submit their opt-out request in writing to the Clerk of this Court and serve a copy of the request on counsel for Plaintiffs and counsel for Defendant so that the request is received no later than two business days immediately prior to the Fairness Hearing Date. Any opt-out request must include the name and number of this case and a statement that the Class Member desires to opt-out of the Stipulation of Settlement.
5. Class Members who do not choose to opt of the Stipulation of Settlement will be permitted to object to the fairness of the Stipulation of Settlement. Class Members who choose to object to the Stipulation of Settlement must submit an objection in writing to the Clerk of this Court and serve a copy of the objection on counsel for Plaintiffs and

counsel for Defendant at least two business days immediately prior to the Fairness Hearing. Any objection must include the name and number of this case and a statement of the reasons why the objector believes that the Court should find that the proposed Stipulation of Settlement is not in the best interests of the Class. Objectors may also appear at the Fairness Hearing.

6. Notice to the Settlement Class, in form appearing as *Exhibits C* and *D* to the Memorandum filed in support of the Motion, is approved. At least 14 calendar days prior to the Fairness Hearing Date, defense counsel will cause the notice substantially in the form of *Exhibit C* to be published in one edition of *U.S.A. Today*, a newspaper with national distribution.* The Court finds that such notice satisfies the requirements of due process and *R. 4:32-2(b)*. Defendant will pay all costs of publication associated with notice to the Class. Plaintiffs' counsel is directed to set up and maintain the methods described in *Exhibit C* prior to the publication of that notice and maintain those methods through the last day for Class Members to opt out or file objections pursuant to this Order. At or before the Fairness Hearing, defense counsel will file proof of publication. The Court may adjourn the Fairness Hearing to a date after the Fairness Hearing Date without additional notice to the Class however Class Counsel will give notice of the adjourned date by regular mail to all class members who timely filed a written objection.
7. Class Counsel will file a motion for fees and costs, on notice to Defendant, returnable on and to be heard at the time of the Fairness Hearing. The motion will be filed at least 7 days prior to the Fairness Hearing.
8. If, after the Fairness Hearing, the Court does not approve the Settlement Agreement, then this Order will be vacated.

* Courtroom should be changed to
70 Hunter St., Ctroom 304, Woodbury NJ 08096

9. A copy of this Order will be served on all parties or their respective counsel within 7 days.



Opposed: ___ Yes X No

~~HONORABLE EUGENE J. McCAFFREY, JR., J.S.C.~~

Eugene J. McCaffrey, Jr., P.J.Cv.