

CHRISTINE M. NICHOLAS, an individual; on behalf of herself and all others similarly situated,	<b>SUPERIOR COURT OF NEW JERSEY LAW DIVISION BERGEN COUNTY</b>
Plaintiff,	Civil Action
vs.	Docket No. BER-L-4336-11
CMRE FINANCIAL SERVICES, INC., a California Corporation,	
Defendant.	

**NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT**

**TO: ALL INDIVIDUALS IN THE UNITED STATES AND PUERTO RICO WHO RECEIVED TELEPHONIC MESSAGES OR AUTOMATED TELEPHONE CALLS FROM CMRE FINANCIAL SERVICES, INC., BETWEEN SEPTEMBER 30, 2011 AND AUGUST 19, 2011**

**NOTICE IS HEREBY GIVEN THAT**, pursuant to the Order of the Superior Court of New Jersey, Bergen County (the “Court”), dated August 19, 2011, it was determined that the above-captioned Fair Debt Collections Practices Act (“FDCPA”) lawsuit may be settled on behalf of a Class of natural persons (the “Class”) pursuant to N.J. Court Rule 4:32-1(b)(1) and defined as follows:

All natural persons in the United States whom, during the “Class Period”, received from Defendant, CMRE Financial Services, Inc., at least one voice message on the person’s telephone answering device, or automated telephone call, which message or call either failed to identify the Defendant as the caller, state the purpose or nature of the call, or disclose that the call was from a debt collector, excluding those persons who:

- A. filed for bankruptcy protection since the start of the Class Period;
- B. entered into any general release with Defendant;
- C. are deceased; or
- D. filed a claim arising under the FDCPA against Defendant in any action commenced prior to the last day of the Class Period.

“Class Period” means the continuous period beginning on September 30, 2007 and continuing through and including August 30, 2011.

**A. Summary of the Litigation**

Plaintiff, Christine M. Nicholas (“Plaintiff”) alleges that she, along with other consumers, received telephonic voice messages left on answering devices or voice mail or automated telephone calls by the Defendant, CMRE Financial Services, Inc., (“Defendant”) that failed to provide meaningful disclosure of Defendant’s identity, which failed to disclose that the message or call was from a debt collector and/or failed to disclose the purpose or nature of the message or

call was an attempt to collect a debt, in violation of the FDCPA, 15 U.S.C. § 1692 *et seq.*, including but not limited to §§ 1692d(6) and 1692e(11). It is not alleged that such alleged failure caused or was capable of causing any actual damages to the Plaintiffs or any other person.

Defendant denies that it has any liability to Plaintiff or to the Class, but has agreed to settle this case based on the likely high cost of protracted litigation. The FDCPA provides for the recovery of actual damages, if any, statutory damages, costs and reasonable attorneys' fees to a successful plaintiff. This lawsuit seeks only statutory damages for both the individual Plaintiff and the class members ("Class"). The maximum amount recoverable for this Class under the FDCPA is the lesser of one percent of the Defendant's net worth or \$500,000. Here, one percent of Defendant's net worth, as established through confirmatory discovery, is \$66,773.00 and, as a practical matter, that amount is incapable of being distributed to the Class, given that it would, at most, be less than two cents per Class Member. As such, the settlement provides for a *cy pres* distribution as explained more fully below.

For a complete statement of all for the contentions and proceedings in this case, you should consult the Court file relating to this lawsuit, a copy of which is available for inspection on the website of Class Counsel:

<http://www.philipstern.com/ClassActions.html>

or in the Superior Court of New Jersey, Deputy Clerk of the Superior Court, Civil Division, Room 115, Justice Center, 10 Main St., Hackensack, NJ 07601. This case was originally filed in the United States District Court for the District of New Jersey, under Civil Action No. 2:08-cv-04857-JLL-CCC, but the parties agreed to dismiss that federal action, without prejudice, for the purpose of re-filing the action in state court in the above-captioned action. A copy of the prior federal court proceedings is available for inspection the website of Class Counsel

<http://www.philipstern.com/ClassActions.html>

or at the Clerk of the United States District Court for the District of New Jersey, M.L. King, Jr. Federal Bldg. & US Courthouse, 50 Walnut St., Newark, NJ 07102 or through the internet: [pacer.njd.uscourts.gov](http://pacer.njd.uscourts.gov).

## **B. Certification of the Class**

On August 19, 2011, the Class was conditionally certified pursuant to Rule 4:32-1(b)(1) of the New Jersey Court Rules as a class action. The Court appointed the Plaintiff, Christine M. Nicholas as the representative of the Class, and her attorney, Philip D. Stern, of the Philip D. Stern & Associates, LLC, as Class Counsel. The Court certified the Class Claims as any and all claims and causes of action arising from Defendant's voice message left on a person's telephone answering device or Defendant's automated telephone calls which failed to identify Defendant as the caller, state the purpose or nature of the call, or disclose that it was from a debt collector and was left during the Class Period.

## **C. Settlement of the Litigation**

A proposed settlement has been preliminarily approved by the Court. Under the terms of the proposed settlement, Defendant has agreed to provide the following relief to the Plaintiff and the Class:

- A. Defendant shall pay \$66,773.00 to one or more charitable organizations to be later appointed by the Court that is not affiliated with any religious, political organization, Party or Counsel, as a *cy pres* distribution on behalf of the Class, which sum represents one percent of Defendant's net worth and is the maximum amount of statutory damages available to the Class under the Fair Debt Collection Practices Act ("FDCPA").
- B. Defendant will also pay to the Plaintiff for her individual statutory damage claims the total amount of \$1,000, as provided for in 15 U.S.C. § 1692k, and in consideration of her service to the Class, Defendant will pay to the Plaintiff an additional \$500.
- C. Defendant shall bear the costs of class administration, with the exception of publication of this notice on Class Counsel's website and class counsel's toll free number, and (subject to Court approval) pay the reasonable attorneys' fees and expenses of Plaintiffs' attorneys in an amount not to exceed \$76,727.00.

The Court will hold a Final Hearing as describe in Section F., below, which will include consideration of final approval of the settlement. Upon final approval of the settlement, the Court will enter a judgment which will include releasing Defendant of all liability to Plaintiff for all claims and of all liability to the Class for the Class Claims, and enjoining prosecution of the released claims.

Class Counsel believes that the proposed settlement is fair, reasonable, adequate, and in the best interests of the Class. This settlement represents the maximum recoverable for a Class under the FDCPA. Because the potential Class is conservatively estimated to be over 1,140,000 persons for just a one-year period from September 30, 2007 through September 30, 2008, any Class member would receive less than three cents and it has been determined that distribution to the Class would not be economical or practical to administer. Accordingly, the settlement provides only for a *cy pres* payment to one or more non-profit charities to be approved by the Court at the Final Hearing. It has been agreed that the *cy pres* recipient must be a non-profit, charitable organization that is not affiliated with any religious or political organization or any Party or their Counsel. There is no distribution to any Class members, other than to the Plaintiff as Class Representative as set forth above. While a person could possibly recover more if he or she filed an individual lawsuit and were successful, individual suits under the FDCPA are sometimes not economical. In addition, Defendant has denied that it violated the FDCPA. An individual who elects to opt out of the Class might recover nothing.

If the settlement is not approved, the case will proceed as if no settlement has been attempted. Defendant retains its rights to contest whether this case should be maintained as a class action and the merits of the suit.

This notice contains only a general description of the terms of the settlement. You may inspect the entire settlement agreement, a copy of which is available on the website of Class Counsel, <http://www.philipstern.com/ClassActions.html>, in the Court's file, or by contacting Class Counsel and requesting a copy of it at your own expense.

A member of the Class may elect to opt out of the Class or file objections to the settlement as set forth below or a member may do nothing and accept the terms of the settlement.

#### **D. Opting Out**

A member of the Class may opt out of the Class at any time prior to the expiration of the Opt-Out Period, which will expire Seven Calendar Days before the Final Hearing scheduled for November 10, 2011, or by November 3, 2011.

To opt out of the Class, a class member must notify Class Counsel and Defendant's counsel in writing requesting exclusion from the Class and must be received by Class Counsel and Defendant's counsel Seven Calendar Days before the Final Hearing scheduled for November 10, 2011, or by November 3, 2011. The written request may be sent to Class Counsel by mail or hand-delivery (including a commercial courier such as Federal Express). To insure timely delivery of a written request sent by regular mail, it should be postmarked no later than ten calendar days prior to the Final Hearing.

Except for those persons who have properly and timely opted out, each member of the Class will be deemed a Class Member for purposes of the settlement Agreement. Any person who opts out of the Class shall not be entitled to relief under nor be affected by the settlement Agreement, nor shall such person be entitled to object to the settlement.

#### **E. Objections**

You have the right to object to the proposed settlement by filing and serving a written objection. Your objection must state your name, address, the case name and number, and the information described below. You or your attorney must sign your objection personally. You must FILE and SERVE your objection on or before November 3, 2011. You file your objection with the Court, at the following address:

Deputy Clerk of the Superior Court  
Civil Division, Room 115  
Justice Center, 10 Main St.  
Hackensack, NJ 07601

You serve (service is complete on receipt) a copy of your objection on Class Counsel and Counsel for Defendant at the following addresses:

Philip D. Stern, Esq.  
Philip D. Stern & Associates, LLC  
697 Valley Street, Suite 2-D  
Maplewood, New Jersey 07040  
(973)379-7500  
Class Counsel

and:

Virginia A. Pallotto, Esq.  
BUDD LARNER, P.C.  
150 John F. Kennedy Parkway, CN 1000  
Short Hills, NJ 07078-2703  
(973) 379-4800, Ext. 4450  
Attorney for Defendant

Service shall be made in one of the following manners authorized under New Jersey Court Rule 1:5-2: “mailing a copy to the attorney at his or her office by ordinary mail, by handing it to the attorney, or by leaving it at the office with a person in the attorney’s employ.”

No member of the Class, or any other person, will be heard at the Final Hearing in opposition to class certification, the Class Settlement, Class Counsel’s proposed attorneys’ fees and expenses, or the proposed payments to Class Representative unless his or her objection contains the following: (i) a statement of each objection being made; (ii) a detailed description of the facts underlying each objection; (iii) a detailed description of the legal authorities underlying each objection; (iv) a statement of whether the objector intends to appear at the Final Hearing; (v) a list of witnesses whom the objector may call by live testimony, oral deposition testimony or affidavit during the Final Hearing, together with a summary of each witness’ anticipated testimony; and (vi) a list of exhibits which the objector may offer during the Final Hearing, together with true copies of all of the exhibits.

Class Members and any other persons who fail to file or serve their objections properly or timely will not be heard during the Final Hearing and the Court will not consider their objections.

If you do not want to exclude yourself from the Class and you do not object to the settlement, it is not necessary for you to take any action.

#### **F. Final Hearing**

NOTICE IS HEREBY GIVEN THAT a hearing will be held before the Honorable John J. Langan, Jr., Superior Court Judge for the Superior Court of New Jersey, on November 3, 2011, at 3:00 p.m., at the Bergen County Courthouse, 10 Main Street, Hackensack, NJ 07601. This hearing will be held to determine if the proposed settlement is fair, reasonable, and adequate and should be approved, and to determine Class Counsel’s petition for fees and costs in the amount of \$76,727.00. If the proposed settlement is approved, it will be binding and will release Defendant from the Class Claims.

Questions concerning this class action litigation should be directed to Class Counsel at the address above.

**PLEASE DO NOT CALL THE JUDGE OR THE COURT CLERK.**

**THIS NOTICE WAS APPROVED BY THE COURT.**