

IN THE MATTER OF: LVNV FUNDING LLC; and RESURGENT CAPITAL SERVICES LIMITED PARTNERSHIP, Respondents	* * * * * * * *	BEFORE THE MARYLAND STATE COLLECTION AGENCY LICENSING BOARD IN THE OFFICE OF THE COMMISSIONER OF FINANCIAL REGULATION CFR-FY2012-012
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SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this 28th day of June, 2012, by and between the Maryland State Collection Agency Licensing Board in the Office of the Commissioner of Financial Regulation (hereinafter the "Agency") and LVNV Funding LLC ("LVNV"), and Resurgent Capital Services Limited Partnership a/k/a Resurgent Capital Services L.P. ("Resurgent"), (collectively, the "Respondents"). The Respondents are part of a family of companies under Sherman Financial Group LLC. The Agency and Respondents (the "Parties") consent to the entry of this Settlement Agreement (the "Agreement") as a final resolution of this matter. All paragraphs below are intended to be part of the contractual obligations of the Parties hereto, so far as they may be so construed, and are not mere recitals to this Agreement.

1. Pursuant to the Maryland Collection Agency Licensing Act ("MCALA"), at Md. Code Ann., Bus. Reg. ("BR") § 7-101 *et seq.*, the Agency is responsible for licensing and regulating persons engaged in collection agency activities in the State of Maryland (the "State").

2. The definition of "collection agency" under BR § 7-101(c) includes, among other things, "a person who engages directly or indirectly in the business of: (1) (i) collecting for, or

soliciting from another, a consumer claim; or (ii) collecting a consumer claim the person owns, if the claim was in default when the person acquired it."

3. BR § 7-401(a) provides that, "except as otherwise provided in this title, a person may not knowingly and willfully do business as a collection agency in the State unless the person has a license."

4. A non-exempt person who acquires consumer claims in default at the time of acquisition (a "consumer debt purchaser"), who then attempts to collect on those debts through litigation in Maryland State courts, is conducting business as a "collection agency" in the State under BR § 7-101(c). This applies regardless of whether the consumer debt purchaser is represented in litigation by attorneys who are also licensed as collection agencies. As such, a consumer debt purchaser collecting debts through litigation in Maryland State courts is required to be licensed as a collection agency under MCALA, and is subject to the regulatory authority of the Agency in the conduct of that litigation.

5. A consumer debt purchaser collecting debts through litigation in Maryland State courts also meets the definitions of "collector" under Md. Code Ann., Com. Law ("CL") § 14-201(b) of the Maryland Consumer Debt Collection Act ("MCDCA"), at CL § 14-201 *et seq.*, and of "debt collector" under 15 U.S.C. § 1692(a) of the Fair Debt Collection Practices Act ("FDCPA"), at 15 U.S.C. § 1692 *et seq.*

6. Pursuant to BR § 7-308(a), the Agency can bring an action to suspend or revoke the license of a collection agency "if the licensee or any owner, director, officer, member, partner, or agent of the licensee" engages in various prohibited activities, including, among other things, the following: "(3) in connection with the collection of any consumer claim: ... (ii)

engages in any illegal or dishonest activities; or (4) knowingly or negligently violates the Maryland Consumer Debt Collection Act."

7. Pursuant to CL § 14-202(8) of the MCDCA, "[i]n collecting or attempting to collect an alleged debt," a debt collector (or "collector") may not "[c]laim, attempt, or threaten to enforce a right with knowledge that the right does not exist."

8. The FDCPA provides, in relevant part, as follows:

§ 1692e. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (2) The false representation of—
 - (A) the character, amount, or legal status of any debt; or

- (5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

- (10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

§ 1692f. Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

9. Thus, the Agency has the authority to bring actions under MCALEA against persons engaged in various prohibited activities in connection with the collection of any

consumer claim, including for violations of the FDCPA pursuant to BR § 7-308(a)(3)(ii) (engaging in illegal activities), and for violations of the MCDCA pursuant to BR §§ 7-308(a)(3)(ii) and 7-308(a)(4). Such authority extends to both litigation-related collection activities, as well as to non-litigation (*i.e.*, "traditional") collection activities. Further, pursuant to BR § 7-205 and Md. Code Ann., Fin. Inst. ("FI") § 2-115(b), such enforcement actions could result in an order to cease and desist, suspension or revocation of Maryland State collection agency licenses, civil money penalties for each violation of MCALA, the MCDCA, and FDCPA (as violations of MCALA), an order to provide restitution to affected Maryland consumers or to take other affirmative action to correct the violations, or any combination of the aforementioned sanctions.

10. LVNV is a consumer debt purchaser that, on February 18, 2010, became duly licensed as a Maryland collection agency, as that term is defined in BR § 7-101(c), receiving collection agency license number 04-5594 for its business location at 625 Pilot Road, Suite 3, Las Vegas, Nevada 89119. Resurgent is a collection agency that services the consumer claims owned by LVNV and other business entities. At all times relevant to the facts set forth herein, Resurgent has been duly licensed under MCALA as a Maryland collection agency, currently holding collection agency license number 04-2955 for its business location at 15 S. Main Street, Suite 600, Greenville, South Carolina 29601.

11. On October 25, 2011, the Agency issued a Summary Order to Cease and Desist and Summary Suspension of Collection Agency Licenses against Respondents and certain affiliated parties of the Respondents (the "Summary Order") after finding, in the Agency's opinion, reasonable grounds to believe that the Respondents and their affiliated parties had engaged in unlicensed collection agency activities and other violations of MCALA, and were

violating the provisions of the MCDCA and the FDCPA referenced above, (collectively the "Alleged Violations"), and upon determining that action under FI § 2-115 and Md. Code Ann., State Gov't ("SG") § 10-226(c)(2), was appropriate.

12. The parties subsequently entered into an Interim Settlement Agreement and Modification to Summary Order to Cease and Desist and Summary Suspension of Collection Agency Licenses on November 17, 2011 (the "Interim Agreement"), pursuant to which Respondents were permitted to resume certain collection activities.

13. This Agreement is intended to resolve all administrative, judicial, or other legal actions between the Parties, as well as any such action which the Agency brought, or could have brought, against Respondents or Respondents' predecessors, successors, subsidiaries, affiliates, parents, shareholders, current or former directors, officers, employees, or assigns prior to the execution of this Agreement, relating to those issues and pending collection matters which formed the basis for the Summary Order, and is intended to fully supersede and replace the Summary Order and the Interim Agreement.

14. Respondents do not admit to the Alleged Violations set forth herein but nonetheless wish to resolve the Alleged Violations without the need for an administrative hearing, thereby avoiding the costs associated with such hearing and any potential appeals, and therefore agree to resolve this matter fully, finally, and completely without an administrative hearing as set forth in this Agreement, and further accept without condition, and fully agree to abide by, each and every term set forth in this Agreement.

15. The Agency desires to ensure that Respondents will comply with all applicable statutes, regulations, and others laws governing collection agency activities in the State of

Maryland, including complying with MCALA, the MCDCA, and the FDCPA, and further wishes to avoid the costs to the taxpayers of an administrative hearing and any potential appeals.

16. Neither this Agreement nor the agreement of the Respondents to make payments to the Agency or to provide restitution as set forth below shall be construed as an admission of liability by the Respondents, but is in compromise and settlement of the Alleged Violations. The Respondents expressly deny any such liability or wrongdoing.

17. Respondents represent that, to the best of their knowledge, information, and belief, as of the date of this Agreement they are in compliance with the MCDCA, the FDCPA, and MCALA.

18. Respondents have agreed to take each and every one of the following actions in exchange for a final resolution of this matter:

a. Respondents will pay a total voluntary penalty to the Agency of \$1,000,000 (ONE MILLION DOLLARS) in the form of a single check made payable to the “Commissioner of Financial Regulation” immediately upon this Agreement being fully executed.

b. With regard to pending debt collection cases filed in Maryland district courts on behalf of any of the Respondents named in the Summary Order, Respondents will dismiss without prejudice all cases filed prior to the date of this Agreement. To effectuate these dismissals, Respondents will submit a proposed order, in a form agreed to by the Agency, to the Chief Judge of the District Court of Maryland within 15 days of the date this Agreement is fully executed, and will notify the Agency once this has been completed. Attachment 1 is a spreadsheet listing the names of the affected Maryland consumers, the case numbers to be dismissed, the specific district court in which each case was filed, the name of the plaintiff, and

the amount claimed in each complaint. Pursuant to this paragraph, 3,564 cases are being dismissed without prejudice, and the amount claimed in these cases totals \$7,770,564.98.

c. With regard to all debt collection cases filed in Maryland district courts on behalf of any of the Respondents named in the Summary Order, pursuant to which a judgment was obtained prior to the date of this Agreement, with the exception of accounts that were sold by Respondents prior to the date of the Summary Order to a party not affiliated with any of the Respondents named in the Summary Order and of consumer claims that are subject to a pending bankruptcy proceeding or were discharged in bankruptcy, Respondents will provide restitution to the consumer defendants by crediting their accounts in an amount equal to the sum of all prejudgment interest and attorney's fees awarded by the court, with the credits being applied to the account balance as of March 12, 2012. If the amount of the credit exceeds the balance remaining on the account as of March 12, 2012, the account shall be considered satisfied in full as of that date. To effectuate these credits, within 15 days of the date this Agreement is fully executed Respondents will both update their internal account records to reflect these credits, and will also submit proposed orders, in a form agreed to by the Agency, to the Chief Judge of the District Court of Maryland as follows: for consumer claims where the total credit exceeds the balance remaining on the consumer's account as of March 12, 2012, Respondents shall submit appropriate orders indicating that the judgments have been satisfied in full; and for cases where the total credit is less than the balance remaining on the consumer's account as of March 12, 2012, Respondents shall submit appropriate orders indicating that the judgments against the Maryland consumers have been satisfied with regard to all prejudgment interest and attorney's fees awarded by the courts. Attachment 2 is a spreadsheet providing the name of each affected Maryland consumer, the applicable court and case number, the name of the plaintiff, the amount

of prejudgment interest awarded by the court, the amount of attorney's fees awarded by the court, and the total amount of the credit (consisting of the sum of the prejudgment interest and attorney's fees). There are 5,793 consumers entitled to credits pursuant to this paragraph, and the amount of all such credits totals \$3,609,367.74.

d. With regard to all debt collection cases filed in Maryland district courts on behalf of any of the Respondents named in the Summary Order, in which a settlement upon stipulated terms was reached with the Maryland consumer prior to a judgment being entered by the court, Respondents will provide restitution to the consumer defendants by crediting their accounts the total amount of the settlement that exceeds the amount claimed by the plaintiffs, which is the amount sued for in the case excluding any interest, attorney's fees and court costs, with the credits being applied to the account balance as of March 12, 2012. If the amount of the credit exceeds the balance remaining on the account as of March 12, 2012, the account shall be considered satisfied in full as of that date. Respondents will update their internal account records to reflect these credits within 15 days of the date this Agreement is fully executed. Attachment 3 is a spreadsheet providing the name of each affected Maryland consumer, the applicable court and case number, the name of the plaintiff, and the total amount of the credit. There are 453 consumers entitled to credits pursuant to this paragraph, and the amount of all such credits totals \$235,824.72.

e. The credits referenced in Paragraphs 18.c and 18.d, above, shall be applied as of March 12, 2012, and any payments received after that date shall be applied to reduce the balance on the consumer's account only after the associated credit has been applied.

f. Respondents will pay administrative expenses incurred by various governmental units totaling \$23,567 (TWENTY-THREE THOUSAND FIVE HUNDRED AND

SIXTY-SEVEN DOLLARS) by way of separate checks as designated by the Agency immediately upon this Agreement being fully executed.

g. Respondents will appropriately update the credit reports of the applicable consumers affected by this Agreement as required by the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 *et seq.*

h. The Respondents shall not seek, and are not entitled to obtain, releases from consumers in conjunction with the restitution discussed herein or otherwise related to this Agreement.

i. Respondents agree that they are subject to the regulatory authority of the Agency with regard to their consumer collection activities involving Maryland residents.

j. Respondents will make good faith efforts to ensure that their collection activities in the State of Maryland, including both their traditional and their litigation-related collection activities, fully comply with all applicable statutes, regulations, and other laws governing collection agency activities in the State, including but not limited to MCALA, the MCDCA, and the FDCPA.

k. Respondents will provide the Agency with an acceleration contact for resolution of Maryland consumer complaints filed with the Agency against Respondents.

19. Respondents acknowledge that they have voluntarily entered into this Agreement with full knowledge of their right to a hearing pursuant to FI § 11-518 and the Maryland Administrative Procedure Act – Contested Cases (SG § 10-201 *et seq.*), arising from the Summary Order issued by the Agency based on the Alleged Violations, and that Respondents hereby waive their right to a hearing. Respondents further acknowledge that they have had an opportunity to consult with independent legal counsel in connection with the waiver of this right

and with the negotiation and execution of this Agreement, and that they have in fact consulted with independent legal counsel.

20. The Parties hereto agree that this Agreement shall be binding upon all Parties and enforceable in a court of competent jurisdiction by the Agency and by Respondents, shall be admissible in court, if relevant, and shall be binding upon and inure to any of the Respondents' present and future owners, principals, directors, officers, members, partners, managers, successors, and assigns.

21. The Parties hereto acknowledge that this Agreement does not in any way relate to, impact, or otherwise affect the legal rights of, or preclude the Agency from bringing actions against, persons not Parties to this Agreement, except as set forth in Paragraph 22, below.

22. The Agency fully and finally releases, acquits, and forever discharges Respondents, as well as Respondents' predecessors, successors, subsidiaries, affiliates, parents, shareholders, current or former directors, officers, employees, and assigns, from any claim, action, suit, or proceeding, whether civil or administrative, the Agency has for conduct occurring prior to the date that this Agreement is fully executed which relates to the subject matter of the Alleged Violations set forth in the Summary Order.

23. The Parties hereto agree that they shall not disparage or otherwise undermine this Agreement in any way.

24. The Parties hereto agree that any notices hereunder shall be effectively delivered when sent via overnight delivery or certified mail as follows:

a. To the Agency:

Commissioner of Financial Regulation
500 North Calvert Street, Suite 402
Baltimore, Maryland 21202-3651
Attention: Anne Balcer Norton, Deputy Commissioner

Copy to:

W. Thomas Lawrie, Assistant Attorney General
Department of Labor, Licensing, and Regulation
500 North Calvert Street, Suite 406
Baltimore, Maryland 21202-3651

b. To the Respondents:

Scott E. Silver, General Counsel
200 Meeting Street, Suite 206
Charleston, South Carolina 21202-3651

Copy to:

Ronald S. Canter, Esquire
Law Offices of Ronald S. Canter, LLC
200-A Monroe Street, Suite 104
Rockville, Maryland 20850

NOW, THEREFORE, it is, by the Commissioner of Financial Regulation on behalf of the Agency, HEREBY

ORDERED that the Respondents shall adhere to all terms of this Settlement Agreement; it is further

ORDERED that this Agreement fully supersedes and replaces both the Summary Order to Cease and Desist and Summary Suspension of Collection Agency Licenses issued by the Agency on October 25, 2011 (“Summary Order”), as well as the Interim Settlement Agreement and Modification to Summary Order to Cease and Desist and Summary Suspension of Collection Agency Licenses which the Parties entered into on November 17, 2011 (“Interim Agreement”); and it is further

ORDERED that, except for LVNV and Resurgent, all of the Respondent business entities and individuals named in the Summary Order are dismissed from this action; and it is further

ORDERED that, those restrictions placed on the collection-related litigation activities of LVNV and Resurgent pursuant to the Summary Order, and which were subsequently modified pursuant to the Interim Agreement, are lifted; and that the collection agency licenses of LVNV and Resurgent are fully reinstated without restriction; and it is further

ORDERED that, Respondents shall make good faith efforts to ensure that their litigation related collections activities in the State of Maryland comply with all applicable federal and Maryland State laws, including but not limited to MCALA, the MCDCA, and the FDCPA; and it is further

ORDERED that, in the event Respondents, or any of the owners, parents, directors, officers, members, partners, managers, employees, agents, or successors of Respondents, violate any provision of this Settlement Agreement, or otherwise engage in activities similar to those which formed the basis for the Alleged Violations set forth in the Summary Order, the Agency may, at the Agency's discretion, take any enforcement actions available under FI § 2-115, BR § 7-205, BR § 7-308(a), and/or SG § 10-226(c)(2), as well as take any other enforcement actions as permitted by, and in accordance with, applicable State law; and it is further


ORDERED, that this matter shall be resolved in accordance with the terms of this Settlement Agreement and the same shall be reflected among the records of the Office of the Commissioner of Financial Regulation; and it is further

ORDERED that this document shall constitute a Final Order of the Maryland State Collection Agency Licensing Board in the Office of the Commissioner of Financial Regulation, and that the Agency may consider this Settlement Agreement in connection with, and in deciding, any action or proceeding before the Agency; and that this Settlement Agreement may, if relevant, be admitted into evidence in any matter before the Agency.


It is so ORDERED.

IN WITNESS WHEREOF, this Settlement Agreement is executed on the day and year first above written.


MARYLAND STATE COLLECTION
AGENCY LICENSING BOARD IN THE
OFFICE OF THE COMMISSIONER OF
FINANCIAL REGULATION

By: 
Mark Kaufman
Commissioner of Financial Regulation
Chairperson, State Collection Agency
Licensing Board

LVNV FUNDING LLC

By: 
Kevin Branigan
President
Authorized Representative

RESURGENT CAPITAL SERVICES
LIMITED PARTNERSHIP

By: 
John Shinovich
Vice President
Authorized Representative

Attachments 1 – 3

Redacted in Full