

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION

THEODORA BRYANT, MARY L.  
WALKER, EARNEST JACK WELCH,  
and BARBARA JEAN SLOCUM,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

CASE NO. 4:99CV317-RH  
CLASS REPRESENTATION

vs.

LAW OFFICES OF DAVID J.  
STERN, P.A., and DAVID J. STERN,  
individually

Defendants.

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**STIPULATION OF SETTLEMENT**

This stipulation and agreement of compromise and settlement is made and entered into as of the 30<sup>th</sup> day of March, 2000, in Tallahassee, Florida, between THEODORA BRYANT, MARY L. WALKER, EARNEST JACK WELCH, and BARBARA JEAN SLOCUM, as the named Plaintiffs ("Plaintiffs"), in this action, acting individually and on behalf of the Settlement Class (as defined herein)

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on the one hand, and the Defendants, Law Offices of David J. Stern, P.A. and David J. Stern, Individually (“Settling Defendants”).

**RECITALS:**

WHEREAS, on October 20, 1998 a proposed class action was filed in the Circuit Court in and for the Second Judicial Circuit, Leon County, Florida, styled Theodora Bryant, Mary L. Walker and Earnest Jack Welch, individually and on behalf of all others similarly situated, Plaintiffs, vs. Law Offices of David J. Stern, P.A., Defendant, Case No. 98-CV-5938, which case was removed to this Court on August 16, 1999, and is presently styled Theodora Bryant, Mary L. Walker, Earnest Jack Welch, and Barbara Jean Slocum, individually and on behalf of all others similarly situated, Plaintiffs, vs. Law Offices of David J. Stern, P.A., and David J. Stern, individually, Defendants, Case No. 4:99CV317-RH; and

WHEREAS, the Plaintiffs contend that the Settling Defendants have violated the Federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., and the Florida Consumer Collection Practices Act, § 559 et seq., Fla. Stat. (1999); and

WHEREAS, the class action is brought on behalf of all persons in the state of Florida from whom the Settling Defendants have attempted to collect obligations allegedly owed in connection with residential mortgage foreclosure proceedings

pending from October, 1994 through the date of the entry of the Order of Conditional Approval of this Settlement; and

WHEREAS, Plaintiffs' Counsel represents that prior to and following the filing of the afore-mentioned complaint, counsel for the Plaintiffs have conducted extensive discovery and a thorough investigation into, and evaluation of, the law and facts, including facts made available through discovery, relating to matters set forth in this action, in order to determine how best to confer substantial benefit upon Plaintiffs and the potential Class, in light of the obstacles to and risks of establishing liability and damages; and

WHEREAS, based upon their discovery, investigation, and evaluation of the facts and law relating to the matters set forth in the complaint, Plaintiffs' Counsel has been able to assess and evaluate the strengths and weaknesses of Plaintiffs' claims in light of the potential for liability and damages with the aid of a certified mediator, and have engaged in arms length negotiations with Settling Defendants' counsel in an effort to achieve a fair, reasonable, and adequate settlement of these claims; and

WHEREAS, Plaintiffs' Counsel has concluded that this Stipulation confers a substantial benefit upon Plaintiffs and the potential Class and it is in their best interests that this litigation be settled in accordance with the terms and conditions of this Stipulation; and

WHEREAS, Settling Defendants have denied and continue to deny any liability alleged in the complaint and the amendments thereto, and have raised defenses which they contend would bar prosecution of this action, and maintain that they at all times acted in good faith and without knowledge of or participation in any alleged wrongdoing, but wish to enter into this Settlement Agreement solely for business reasons, and to avoid the burdens, time and expenses of continued litigation;

NOW, THEREFORE, without admission of any liability or wrongdoing whatsoever by the Settling Defendants and with their express denial of same, it is hereby stipulated and agreed by and among the Plaintiffs and the Settlement Class in this action, and the Settling Defendants, by their respective, duly authorized counsel, subject to the approval of the United States District Court for the Northern District of Florida (the "Court"), pursuant to Rule 23 of the Federal Rules of Civil Procedure, that the above-captioned action, and all claims, demands, causes of action or rights which have been or could have been asserted in this action shall be and hereby are settled, compromised, and dismissed with prejudice, with respect to each Defendant, each party to bear its own costs and attorneys' fees, upon and subject to the following terms and conditions.

**A. DEFINITIONS**

As used in this Stipulation of Settlement and the related documents annexed hereto as Exhibits (the terms, conditions, and benefits of which are incorporated herein by reference and are to be construed in *pari materia* with this Stipulation as one document), the following terms shall have the meanings set forth below:

1. **“Attorneys’ Fees and Expenses”** means the Court-approved portion of the Settlement Fund to be paid to Plaintiffs’ Counsel for fees and expenses, which sum shall be paid from the Settlement Fund.

2. **“Authorized Claimant”** means a Claimant whose claim has been allowed as provided by the terms of this Stipulation, the Order and Final Judgment, and in accordance with the Plan of Allocation.

3. **“Claimant”** means any Plaintiff or Class Member who files a Proof of Claim in such manner and within such time as the Court shall prescribe.

4. **“Claims for Injunctive Relief”** means the claims of the Plaintiffs and the Class for injunctive relief as to the appropriateness of the Settling Defendants’ charges for attorneys’ fees and costs under the agreements with their clients and/or applicable law in connection with the Underlying Foreclosures, but the term shall specifically exclude all claims by the Plaintiffs and the Class Members for money damages arising out of the Underlying Foreclosures.

5. The **“Class”** and **“Class Members”** mean those persons in the state of Florida, other than the named Plaintiffs, from whom the law firm and Stern have sought to collect obligations allegedly owed in connection with the Underlying Foreclosures.

6. **“Court”** means the United States District Court for the Northern District of Florida.

7. **“Date of Distribution”** means the date on which the Settlement Administrator shall mail to Authorized Claimants checks representing their proportionate shares of the Net Settlement Fund. The Date of Distribution shall be as soon as practicable after the Settlement Effective Date, but not more than sixty (60) days after the Settlement Effective Date.

8. **“Exclusion Date”** means that date established by the Court in the Notice, by which Plaintiffs and Members of the Class must file a Request for Exclusion.

9. **“Net Settlement Fund”** means the Settlement Fund, less costs and reimbursement for expenses and expert fees, costs of Notice and Administration Expenses, Attorneys’ Fees and Expenses awarded by the Court, and any other related fees and expenses as may be authorized by this Stipulation or the Court.

10. **“Notice”** means the Notice of Pendency of Class Action, Proposed Settlement of Class Action, Settlement Hearing and Right to Appear, in the form of Exhibit “C” attached hereto.

11. **“Notice and Administration Expenses”** shall include all costs associated with the administration of the Settlement, including the costs associated with the printing and

mailing of the Notice, the publication of any Summary Notice, reviewing and processing Proofs of Claim, and fees and expenses payable to the Settlement Administrator but excluding any fees, expenses or disbursements of Plaintiffs' Counsel or experts or other persons retained by Plaintiffs.

12. **“Order of Conditional Approval”** means the entry of an order by the Court, substantially in the form attached hereto as Exhibit “B,” (i) approving certification under Rule 23, Fed. R. Civ. P., of a class for settlement purposes only in respect of all claims asserted or which could have been asserted on behalf of Plaintiffs and the Class arising out of the collection of obligations by the Settling Defendants in connection with the Underlying Foreclosures at any time up to and including the date of conditional approval of this Settlement, (ii) preliminarily approving all terms and conditions of this Stipulation, subject to notice and final hearing, (iii) authorizing notices of such class certification, class definition, and the terms and conditions of the Settlement to be given to Plaintiffs and Class Members, (iv) determining that the proposed Notice and Summary Notice, attached hereto as Exhibits “C” and “F,” constitute the best practical notice under the circumstances, and (v) setting a hearing for final approval of the foregoing and this Stipulation and for the hearing of objections thereto.

13. **“Payable Claim”** means the amount allocated to each Authorized Claimant pursuant to the terms of this Stipulation and the Order and Final Judgment.

14. **“Plaintiffs’ Counsel”** means the law firms of Huey, Guilday & Tucker, P.A., 106 E. College Avenue, Suite 900, P.O. Box 1794, Tallahassee, Florida 32302, and Broad & Cassel, 215 S. Monroe Street, Suite 400, P.O. Drawer 11300, Tallahassee, Florida 32302.

15. **“Plan of Allocation”** shall mean the plan of allocation of the net settlement proceeds set forth in Exhibit “D” hereto.

16. **“Proof of Claim”** means the Proof of Claim form in the form annexed hereto as Exhibit “E” and approved by the Court.

17. **“Released Claims”** means any and all claims, demands, actions or causes of action which the Plaintiffs and/or the Class have, or formerly had, or may have in the future, whether known or unknown, against the Released Parties, based upon or arising out of any violation of any and all state and federal statutes and common law or breach of duty or act or omissions or other transaction or occurrence, whether for actual or statutory damages or other relief, and which relates in any way to the Settling Defendants’ actions, omissions or other involvement in the Underlying Foreclosures, but which specifically excludes the Claims for Injunctive Relief.

18. **“Released Parties”** means the Settling Defendants and their respective heirs, executors, administrators, successors, attorneys, insurers, and assigns, as well as all former and current partners, principals, employees, attorneys, insurers, and agents of the Settling Defendants.

19. **“Request for Exclusion”** means a written statement from any Plaintiff or Class Member directed to the Settlement Administrator, setting forth his or her name,

address, telephone number, social security number and signature, stating he or she wishes to be excluded from the Settlement Class.

20. **“Settling Defendants”** means the Law Offices of David J. Stern, P.A., and David J. Stern, individually, all attorneys, paralegals and other persons, whether employees, independent contractors, agents, or who were otherwise affiliated with the Law Offices of David J. Stern at any time during the pendency of the Underlying Foreclosures to and including the date of conditional approval.

21. **“Settling Defendants’ Counsel”** means the law firms of Ruden, McClosky, Smith, Schuster & Russell, P.A., Post Office Box 1900, Fort Lauderdale, Florida 33302, Hinshaw & Culbertson, 222 North La Salle Street, Suite 300, Chicago, Illinois 60601-1081, and Hinshaw & Culbertson, First Union Center, Suite 830, 100 South Ashley Drive, Suite 830, Tampa, Florida 33602.

22. **“Settlement Administrator”** means the entity designated jointly by the Settling Defendants’ Counsel and Plaintiffs’ Counsel, and approved by the Court, to process Proofs of Claim and to otherwise administer the Settlement as appropriate in accordance with the parties’ Settlement Agreement and orders of Court.

23. **“Settlement Class”** means a class certified by the Court for settlement purposes pursuant to Rule 23(b)(3), Fed. R. Civ. P., such Class to include all persons in the state of Florida from whom the Settling Defendants sought to collect obligations in connection with the Underlying Foreclosures.

24. **“Settlement Effective Date”** means the date the Settlement shall become effective and shall be calculated based on the latest of the occurrence of the following events:

- A. final approval by the Court of the Settlement;
- B. entry of the Order and Final Judgment thereon, and dismissal of the Settling Defendants with prejudice;
- C. the expiration of thirty-one (31) days after the Order and Final Judgment are entered, if no appeal is taken; and
- D. if an appeal has been sought from the liability portion of this case (excluding any appeal taken regarding the determination of the Claims for Injunctive Relief) the expiration of thirty-one (31) days after the docketing of the opinion disposing of any such appeal. Any appeal involving the Claims for Injunctive Relief shall not affect or delay the Settlement Effective Date.

25. **“Settlement Fund”** means the sum of Two Million One Hundred Thousand Dollars (\$2,100,000.00), in cash.

26. **“Settlement Hearing”** means the hearing to be held by the Court to consider final approval of the Settlement pursuant to Rule 23, Fed. R. Civ. P.

27. **“Stipulation”** means this Stipulation of Settlement and the exhibits attached hereto and incorporated herein by reference.

28. **“Summary Notice”** means the printed summary of the Notice to be published substantially in the form of Exhibit “F” attached hereto in accordance with this Stipulation.

29. **“Underlying Foreclosures”** means all residential mortgage foreclosures filed and/or prosecuted by the Settling Defendants against Plaintiffs and the Class which were pending at any time from October, 1994 through the date of entry of the Order of Conditional Approval. As used, the term shall encompass:

- a. All actions taken by Settling Defendants;
- b. All communications between the Settling Defendants, on the one hand, and Plaintiffs, the Class and/or their attorneys and agents on the other hand;
- c. All requests by the Settling Defendants for any amounts from Plaintiffs and the Class, including but not limited to amounts claimed to be due under any note and/or mortgage; attorneys’ fees; costs relating to title, including but not limited to costs of title evidence, title abstracts, title examination, and updates of title; postage charges; copying charges; delivery charges; and all other amounts requested by the Settling Defendants;

relating in any way to said foreclosures, including any and all alleged acts or omissions of the Settling Defendants occurring before, during and after the pendency of said foreclosures and any judicial sales, whether undertaken for the direct or incidental benefit of the Settling Defendants or their clients, and specifically including but not limited to any efforts by Plaintiffs or the Class to reinstate, pay off, or otherwise compromise said foreclosures.

**B. THE SETTLEMENT**

30. The obligations incurred pursuant to this Stipulation shall be in full and final disposition and settlement of all Released Claims against the Released Parties by Plaintiffs and the Class.

31. The parties agree that this Stipulation shall be promptly submitted to the Court for the Order of Conditional Approval. If the Court fails to enter the Order of Conditional Approval, then this Stipulation shall be null and void at the option of any party, to be exercised by written notice served on all counsel for the parties to this Stipulation within twenty (20) days after the Court has entered any ruling or order denying such conditional approval.

32. The parties further agree that if one hundred fifty (150) or more Class Members request exclusion prior to the hearing on final approval of this Settlement, the Settling Defendants shall have the option to declare this Settlement null and void by delivering written notice to Plaintiffs' Counsel, provided that such notice must be delivered five (5) business days prior to the hearing on final approval of the Settlement.

33. In the event of final approval of this Stipulation by the Court, it is agreed that the parties shall jointly request that the Court enter an Order and Final Judgment to be agreed upon by the parties (i) finally establishing a Settlement Class under Rule 23, Fed. R. Civ. P., as to all Released Claims as to all Released Parties, (ii) dismissing with prejudice all claims, except the Claims for Injunctive Relief, asserted against any of the Settling Defendants (or which could be asserted against any of them), by the Plaintiffs and the Settlement Class or by their respective heirs, executors, representatives, agents, successors, attorneys, and

assigns, or such other order as may be appropriate to effectuate the terms and conditions of this Stipulation for the purpose of giving each of the Settling Defendants a full and final dismissal with prejudice on all claims which Plaintiffs and the Class have or may have against any of them, whether based on facts now known or subsequently discovered, in connection with the Underlying Foreclosures pending at any time from October, 1994 up to and including the date of the entry of the Order of Conditional Approval of this Stipulation of Settlement.

34. Settlement of Claims Other than Claims for Injunctive Relief. In full and complete settlement of all claims by the Settlement Class, except the Claims for Injunctive Relief, the Settling Defendants agree that, within five (5) days after the Settlement Effective Date, or as otherwise ordered by the Court, the Settling Defendants shall:

- A. Identify one or more accounts at any banks or other financial institutions containing cash in the total amount of Two Million One Hundred Thousand Dollars (\$2,100,000.00), as and for the Settlement Fund. The Court shall determine whether Defendants agreed to advance the costs of publishing and the administrative expenses prior to the Settlement Effective Date; and
- B. Deliver to the bank(s), financial institution(s) or other custodian(s) in possession of the Settlement Fund written directions that the Settlement Fund shall not be withdrawn, liquidated or otherwise dealt with in any manner whatsoever, except upon written direction of the Settling Defendants, the Settling Defendants' Counsel, Plaintiffs' Counsel, and the Court;

- C. Plaintiffs reserve the right to seek an order from the Court to require the Settling Defendants to deposit the Settlement Fund, in whole or in part, prior to the Settlement Effective Date.

The Settlement Fund shall be held for the benefit of Plaintiffs and the Class, except that the Court shall decide whether the Settling Defendants agreed that the interest relative to the Settlement Fund should be distributed to the Plaintiffs and the Class, rather than reverting to the Settling Defendants. The Settlement Fund shall be held in escrow in accordance with the terms of this Stipulation, the Order of Conditional Approval, the Order and Final Judgment and the written directions from the parties. On and after the Settlement Effective Date, or as otherwise ordered by the Court, the Settlement Fund shall be held in an account or accounts, pending the distribution of the Settlement Fund as provided by the Court under the terms of the Stipulation. Said consideration paid by the Settling Defendants is deemed to be inclusive of all costs, interest, and Attorneys' Fees and Expenses which might be recoverable by Plaintiffs and the Class as respects all claims which have been brought or could have been brought against any of the Released parties, and is paid or will be paid in full and final settlement in the above-captioned case of all claims (whether asserted or not) which Plaintiffs and the Class have or may have had in any way arising out of or related to the Underlying Foreclosures and the transactions or events made the bases of the complaint in this action, excluding the claims for injunctive relief. Such settlement consideration shall be deemed to have been received by Plaintiffs and the Class in full satisfaction of all such

claims against any of the Settling Defendants and the Released Parties on the Settlement Effective Date.

35. Adjudication of Claims for Injunctive Relief. The parties agree to continue litigating the Claims for Injunctive Relief, which claims are not compromised or released by this Settlement. However, should the Plaintiffs prevail on the Claims for Injunctive Relief the parties agree that:

- A. The Settling Defendants will contribute an additional \$100,000 in cash (“the Additional Consideration”);
- B. The Additional Consideration shall be in full satisfaction of all claims by the Plaintiffs and the Class Members as respects all Claims for Injunctive Relief which have been brought or could have been brought against any of the Released parties, including all costs, interest, and Attorneys’ Fees and Expenses which might be recoverable by Plaintiffs and the Class concerning the Claims for Injunctive Relief, including any appeal of the District Court’s disposition thereof;
- C. The Settling Defendants shall deliver a check for \$100,000 to Plaintiffs’ Counsel within five (5) days of the latest to occur of the following:
  1. The expiration of thirty-one (31) days after entry of a final order by the District Court disposing of the claims for injunctive relief, if no appeal has been taken;

2. If an appeal has been sought from the final order by the District Court disposing of the claims for injunctive relief, the expiration of thirty-one (31) days after the docketing of the opinion disposing of any such appeal.

- D. The Additional Consideration shall be deemed to have been received by Plaintiffs and the Class in full satisfaction of all Claims for Injunctive Relief against any of the Settling Defendants and the Released Parties when paid in accordance with the deadlines contained in this Paragraph.
- E. Upon payment of the Additional Consideration, Plaintiffs' Counsel shall apply to the District Court for payment of attorneys' fees and costs incurred by Plaintiffs' Counsel after the District Court's determination of the Claims for Injunctive Relief, including any appeal therefrom by any party. Plaintiffs' Counsel shall not seek any amounts greater than the Additional Consideration. Plaintiffs, Plaintiffs' Counsel and the Settling Defendants waive all rights to appeal from the amounts awarded by the District Court for Counsel's attorneys fees under this Sub-Paragraph.
- F. Following the District Court's determination of Plaintiffs' Counsel's attorneys fees, Plaintiffs' Counsel and the Settling Defendants' Counsel shall consult and attempt to agree whether sufficient Additional Consideration exists such that a meaningful distribution to the Authorized Claimants is possible or whether an alternative distribution is preferable in view of the

amount remaining for pro rata distribution available to the Authorized Claimants. If the remaining Additional Consideration is insufficient to justify an additional distribution to the class, Plaintiffs, the Class Members and the Settling Defendants agree to distribute the remaining Additional Consideration to appropriate legal aid or other organizations jointly designated by Plaintiffs' Counsel and Settling Defendants' counsel. The parties shall apply to the District Court for an order approving the distribution of the remaining Additional Consideration in accordance with the foregoing, and dismissing all claims with prejudice and without costs.

G Any of the parties hereto may appeal the District Court's determination of the Claim for Injunctive Relief; provided, however, that the Settlement Effective Date shall not be affected or delayed by the filing or prosecution of any such appeals.

36. In the event any of the foregoing payments to the Settlement Fund are not made by the dates specified herein, Plaintiffs' Counsel shall have the unilateral option to terminate the Settlement, by delivering written notice thereof to Settling Defendants' Counsel, within five (5) business days after such payments are due but not made, or shall have the right to petition the Court to enforce the terms of this Stipulation.

37. Settling Defendants also agree, as a condition to this Settlement, that upon final approval of the Stipulation by the Court, the Settling Defendants shall not characterize as costs, in connection with their attempt to collect obligations owed in connection with

residential mortgage foreclosure proceedings, any sums which are not sums for actual costs paid to third parties, and will not seek to charge attorneys' fees or costs which are not authorized by their agreements with their clients and/or allowable by applicable law.

38. The amount of Plaintiffs' Attorneys' Fees and Expenses shall be determined by the Court at the Settlement Hearing or thereafter and shall be paid by wire transfer in the amount determined by the Court from the Settlement Fund within three (3) business days after the Settlement Effective Date. Settling Defendants reserve the right to oppose claims for Plaintiffs' Attorneys' Fees and Expenses before the District Court, without affecting the validity of this Settlement. The Settling Defendants agree to abide by the District Court's determination with respect to the amount of Attorneys' Fees and Expenses to be awarded to Plaintiff's Counsel, and waive all rights to appeal from the same. No payment of Attorneys' Fees and Expenses may be made before the Settlement Effective Date. The Net Settlement Fund shall enure to the benefit of the Authorized Claimants in accordance with the Plan of Allocation.

39. Prior to the distribution of the Net Settlement Fund to Authorized Claimants, Plaintiffs' Counsel shall seek and obtain authorization from the Court for the payment of all remaining expenses chargeable, if any, against the Settlement Fund.

40. Plaintiffs and the Settling Defendants waive the right to appeal the orders entered in connection with this Settlement, except that Plaintiffs and/or the Settling Defendants may appeal the District Court's determination of the Claims for Injunctive Relief.

**C. NOTICE TO CLASS MEMBERS**

41. Within 60 days after the entry of the Order of Conditional Approval of the Settlement, the Settlement Administrator shall send the Notice and Proof of Claim by regular first-class mail, postage prepaid, with forwarding service requested, to the Class Members at their last-known addresses. Other than requesting forwarding service, no skip-tracing or other efforts to locate the Class Members shall be required.

42. The Settlement Administrator shall have reasonable discretion to modify the typographical form of the Notice and Summary Notice, including but not limited to margins, page size, typeface, font and other typographical attributes of the Notice and Summary Notice, provided that the content of the Notice and Summary Notice shall not be changed.

43. Beginning not more than ten days after entry of this Order and continuing one day per week for a total of two consecutive weeks, the Summary Notice shall be published in the Sunday or reasonably equivalent edition of the following newspapers:

- a. Miami Herald;
- b. Orlando Sentinel;
- c. St. Petersburg Times;
- d. Jacksonville Times Union;
- e. Tallahassee Democrat;
- f. Pensacola News Journal;
- g. Ft. Lauderdale Sun Sentinel; and
- h. Palm Beach Post.

The Summary Notice shall be not be required to be larger than one-eighth of one page, or of such other size as the parties may reasonably agree upon.

**D. PROCESSING AND DETERMINATION OF CLAIMS**

Following the Settlement Effective Date, for purposes of determining the extent, if any, to which a member of the Settlement Class shall be an Authorized Claimant, the following conditions shall apply:

44. Each member of the Settlement Class shall be required, as a condition of receiving any share of the proceeds of the Net Settlement Fund, to execute and file with the Settlement Administrator a Proof of Claim form, a mutually acceptable form of which is attached hereto as Exhibit "E."

45. Each Class Member shall be given the right to request exclusion from this Settlement by serving on the Settlement Administrator, by mail and within the deadline set forth below, a written Request for Exclusion indicating the Class Member's name, present address, telephone number, social security number, signature, and a statement requesting exclusion from the Settlement. No explanation or other grounds shall be required of any Class Member as a precondition to requesting exclusion.

46. Each Class Member shall be given the right to object to all or any portion of this Settlement by serving on the Settlement Administrator, by mail, and by filing with the Court, within the deadline set forth below, a written Objection containing the class member's

name, address and grounds for any Objection. The filing of an Objection shall not operate as a Request for Exclusion, and no Class Member shall be excluded from the Settlement by virtue of filing an Objection.

47. All Proof of Claim forms, Objections, and Requests for Exclusion must be submitted to the Settlement Administrator by the date specified in the Notice unless such period is extended by Order of the Court. Additionally, all Objections must be filed with the Court by the date specified in the Notice unless such period is extended by Order of the Court.

48. Any Plaintiff or Class Member, except a Class Member who has been properly excluded from the Class, shall be forever barred from receiving any payment pursuant to this Stipulation or the Order and Final Judgment (unless by Order of Court on motion of any party, a later filed Proof of Claim by such Class Member is approved prior to the Date of Distribution), but shall in all other respects be bound by the terms of the Stipulation and by the releases contained herein and the Order and Final Judgment entered in this case. Proofs of Claim, Objections and Requests for Exclusion must be received or postmarked on or before the date specified in the Notice in order to be deemed timely. All Proof of Claim forms must be received prior to the Date of Distribution in order for any Plaintiff or Class Member to receive a distribution from the Settlement Fund.

49. Each Proof of Claim and Request for Exclusion shall be submitted to and reviewed by the Settlement Administrator who shall determine, in accordance with the

Stipulation, the extent, if any, to which the Proof of Claim or Request for Exclusion is timely.

50. Except as otherwise provided herein, the Settlement Administrator shall reject Proofs of Claim and Requests for Exclusion that are not timely submitted. The Settlement Administrator shall notify in writing and by regular first-class mail, with forwarding requested, all Claimants whose Proofs of Claim and Requests for Exclusion have been rejected in whole or in part, setting forth the reasons therefore and shall indicate in such notice that the Claimant whose Proof of Claim or Request for Exclusion is rejected has a right of review by the Court provided the Claimant or Requestor complies with the requirements set forth herein or in any Court orders relating thereto.

51. Any person whose Proof of Claim or Request for Exclusion has been finally rejected in whole or in part by the Settlement Administrator, and who desires to contest such final rejection, must, within thirty (30) days after the date of mailing of the notice of final rejection, serve upon Plaintiffs' Counsel and counsel for the Settling Defendants, by certified mail, a Notice and Statement of Reasons indicating the grounds for contesting the final rejection along with any supporting documentation. Plaintiffs' Counsel shall present at the hearing on final approval of this Settlement all Objections and Requests for Exclusion (whether determined by the Settlement Administrator to be timely or untimely), all untimely Proofs of Claim, and any response thereto by Plaintiffs' Counsel or the Settling Defendants, to the Court for the final determination as to whether such Proofs of Claim, Objections and Requests or Exclusion shall be allowed.

52. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the Claimant's claim, and the Claimant will be subject to discovery limited to the Claimant's status as a Class Member, the amount and circumstances of the Claimant's claim, and the contents of the Proof of Claim submitted.

53. All proceedings with respect to the Settlement described by the Stipulation and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

54. The Settlement Administrator, acting on behalf of Plaintiffs and the Class, and subject to the supervision, direction, and final approval of the Court, shall review the Proofs of Claim, administer and calculate the claims submitted by Claimants, and otherwise oversee distribution of that portion of the Settlement Fund as finally awarded by the Court to Authorized Claimants.

#### **E. CALCULATION AND PAYMENT OF CLAIMS**

55. On and after the Settlement Effective Date, or as otherwise ordered by the Court as to sub-paragraph A, the Settlement Fund shall be applied as follows:

A. To pay all Notice and Administration Expenses, and any taxes that may become due, if any, on the Settlement Fund;

B. Subject to the approval and further Order of the Court, to pay Plaintiffs' Attorneys' Fees and Expenses from the Settlement Fund. Such Attorneys'

Fees and Expenses shall be delivered to Plaintiffs' Counsel by wire transfer within three (3) business days after the Settlement Effective Date;

C. After payments of the foregoing amounts, to pay in accordance with the Plan of Allocation attached hereto as Exhibit "D" and the Order and Final Judgment, the amount of each Payable Claim.

56. Payment in the manner set forth above shall be deemed conclusive as to the claims of all Plaintiffs and Class Members. Unless the Court orders otherwise, Plaintiffs and Class Members who do not timely submit Proofs of Claim or whose Proofs of Claim are not approved shall be barred from participating in the distribution of the Settlement Fund, but otherwise shall be bound by the terms and conditions of this Stipulation including the terms of the Releases contained herein and the Order and Final Judgment entered in this action unless they have been properly excluded from the Class.

57. Within sixty (60) days after the Settlement Effective Date, the Settling Defendants and/or the Settlement Administrator shall send checks to the Authorized Claimants in payment of their claims. Said checks shall be sent by regular first-class mail, forwarding service requested, to the last-known addresses of the Authorized Claimants, and the face of each check shall indicate that each check is void if not cashed within 120 days following issuance.

58. The proceeds of any payments to the Class Members which are returned as undeliverable or with no forwarding address, or which remain uncashed one hundred twenty

(120) days after issuance shall be awarded to the legal aid organizations as agreed upon jointly by Plaintiffs' Counsel and counsel for the Defendants in the name of David J. Stern.

**F. ORDER AND FINAL JUDGMENT**

59. At or prior to the Settlement Hearing, the parties shall submit to the Court a proposed Order and Final Judgment in a form to be agreed upon. The entry of such Order and Final Judgment approving this Stipulation of Settlement shall be a condition precedent to effectiveness of this Stipulation.

**G. CONTINGENCIES, EFFECT OF DISAPPROVAL OR TERMINATION OF SETTLEMENT**

60. If the Settlement is terminated for any reason whatsoever, this Stipulation shall have no further force and effect with respect to any party in this action, and shall not be used in any manner in this action, or any other proceeding for any purpose. All negotiations, proceedings, and statements made in connection herewith shall be without prejudice to any person or party hereto, shall not be deemed or construed an admission by any party of any fact, and may not be used in any manner or for any purpose in this action or in any other action or proceeding.

**H. PLAINTIFFS' ATTORNEYS' FEES AND EXPENSES**

61. Plaintiffs' Counsel will apply to the Court for an award of Attorneys' Fees and Expenses from the Settlement Fund for services rendered in connection with the claims in this case. Any payment of Attorneys' Fees and Expenses shall be paid to Plaintiffs' Counsel from the Settlement Fund on the conditions and within the time specified in Paragraph 55.B, above. No Released Party shall have any responsibility or liability for said Attorneys' Fees or Expenses. Additionally, and solely as respects the Claims for Injunctive Relief, Plaintiffs' Counsel may apply for a supplemental award of attorneys' fees and expenses, as provided in Paragraph 35.E, above.

**I. STIPULATION NOT AN ADMISSION**

62. Settling Defendants deny any liability alleged in this action, and have raised defenses and maintained that they at all times acted in good faith and without knowledge of or participation in any alleged wrongdoing, but wish to enter into this Stipulation of Settlement solely for business reasons, and to avoid the burdens, time, and expenses of continued litigation. Settling Defendants do not concede any infirmity in any defense or motion previously made or which could be asserted, nor are such defenses or motions waived.

**J. RELEASES**

63. Upon the Settlement Effective Date described in this Stipulation, and subject to the contingencies set forth herein, Plaintiffs, all members of the Class who are not

excluded from the Class, and their respective heirs, executors, administrators, successors, predecessors, and assigns, shall release, remise and forever discharge the Released Parties of and from all causes of action, suits, claims, demands, liabilities, judgments, debts, costs, charges and damages, including any and all claims for indemnity and attorneys' fees and costs, whatsoever, in law or in equity, arising under all federal and state statutes and common law theories of relief or recovery, known or unknown at this time, arising out of the Underlying Foreclosures and all matters, occurrences or transactions related thereto in any way, which were made or which could have been made on behalf of Plaintiffs and the Class Members, as defined above, in this case.

64. Upon the Settlement Effective Date, the Settling Defendants release, through the date of this Stipulation, all claims or causes of action against the Plaintiffs, the Class (excluding those who timely request exclusion), their agents, attorneys, and legal representatives which could have been brought arising out of the claims in this case.

**K. MISCELLANEOUS PROVISIONS**

65. All parties to this Stipulation and all of their attorneys agree to cooperate fully in seeking Court approval of the Stipulation and to use their best efforts to effect consummation of this Stipulation of Settlement provided for herein.

66. With further Order of the Court, the parties may agree in writing to reasonable extensions of time to carry out any of the provisions of this Stipulation pertaining to Notice, Summary Notice, and Administration or Proofs of Claim.

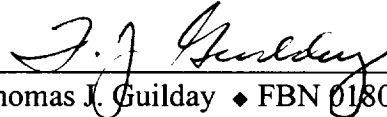
67. The Stipulation shall be binding upon and enure to the benefit of the Plaintiffs, the Class, and the Released Parties, their respective heirs, successors, and assigns, any corporation or partnership or other entity to which any party to this Stipulation may merge, consolidate or reorganize. The foregoing, including all exhibits appended hereto, which are a part hereof, constitute the entire agreement of the parties with respect to the subject matter hereof, and may not be modified or amended except by a writing signed by all parties hereto.

68. The waiver by one party of any breach of this Stipulation by any other party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation or a waiver by any other party. Any such waiver may be enforceable only if in a writing delivered to all parties to this Stipulation.

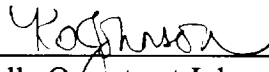
69. This Stipulation and the exhibits hereto shall be governed and interpreted in accordance with the substantive laws of the state of Florida, without regard to any choice of law rules or provisions.

IN WITNESS HEREOF, the Stipulation has been executed by the undersigned parties and counsel of record as of the dates set forth below.

Dated this 30<sup>th</sup> day of March, 2000.



Thomas J. Guilday ♦ FBN 0180872  
Claude R. Walker ♦ FBN 0384641  
Mary K. Simpson ♦ FBN 0516848  
HUEY, GUILDAY & TUCKER, P.A.  
106 E. College Avenue, Suite 900  
Post Office Box 1794  
Tallahassee, Florida 32302  
(850) 224-7091  
(850) 222-2593 fax



Kelly Overstreet Johnson ♦ FBN 0354163  
BROAD AND CASSEL  
215 S. Monroe Street, Suite 400  
Post Office Drawer 11300  
Tallahassee, FL 32302  
(850) 681-6810  
(850) 681-9792 fax

Attorneys for Plaintiffs

Dated this \_\_\_\_ day of \_\_\_\_\_, 2000.

---

THEODORIS BRYANT

---

MARY L. WALKER

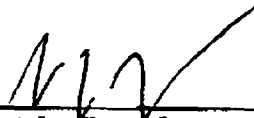
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EARNEST JACK WELCH

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BARBARA JEAN SLOCUM

Approved as to form this 29<sup>th</sup> day of March, 2000.



W. Wyndham Geyer, Jr. ♦ FBN 330418  
Steven R. Braten ♦ FBN 018074  
Ruden, McClosky, Smith, Schuster  
& Russell, P.A.  
Post Office Box 1900  
Fort Lauderdale, Florida 33302

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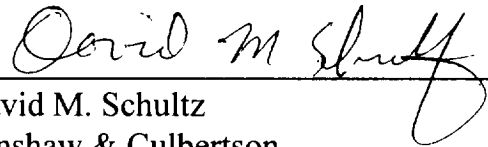
David M. Schultz  
Hinshaw & Culbertson  
222 North La Salle Street, Suite 300  
Chicago, Illinois 60601-1081

Counsel for Defendants

Approved as to form this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

---

W. Wyndham Geyer, Jr. ♦ FBN 330418  
Steven R. Braten ♦ FBN 018074  
Ruden, McClosky, Smith, Schuster  
& Russell, P.A.  
Post Office Box 1900  
Fort Lauderdale, Florida 33302



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David M. Schultz  
Hinshaw & Culbertson  
222 North La Salle Street, Suite 300  
Chicago, Illinois 60601-1081

Counsel for Defendants

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

---

DAVID J. STERN

---

LAW OFFICES OF  
DAVID J. STERN, P.A.

**INDEX TO EXHIBITS**

**(Omitted) ..... Exhibit "A"**

**Order Of Conditional Approval with Respect to  
Certification of Settlement Class, Stipulation of Settlement,  
Notice of Settlement Hearing ..... Exhibit "B"**

**Notice of Pendency of Class Action and Proposed Settlement  
of Class Action, Settlement Hearing and Right to Appear ..... Exhibit "C"**

**Plan of Allocation ..... Exhibit "D"**

**Claim Form ..... Exhibit "E"**

**Summary Notice of Proposed Class Action Settlement ..... Exhibit "F"**



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION

THEODORA BRYANT, MARY L.  
WALKER, EARNEST JACK WELCH,  
and BARBARA JEAN SLOCUM,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

CASE NO. 4:99CV317-RH  
CLASS REPRESENTATION

vs.

LAW OFFICES OF DAVID J.  
STERN, P.A., and DAVID J. STERN,  
individually

Defendants.

---

**ORDER OF CONDITIONAL APPROVAL WITH RESPECT TO  
CERTIFICATION OF SETTLEMENT CLASS, STIPULATION  
OF SETTLEMENT, NOTICE AND SETTLEMENT HEARING**

This cause is before the Court upon joint application by all parties hereto for entry of an order approving certification of a Settlement Class, preliminarily approving the Stipulation of Settlement, approving notice to the Class, and setting a

final hearing on approval of the Stipulation of Settlement entered into between the parties in this action (the “Stipulation”).

The Court, having heard the argument of counsel and otherwise being fully advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

1. A Settlement Class is hereby certified under Rule 23(b)(3), Fed. R. Civ. P., for all claims raised in the Second Amended Complaint, excluding the Claims for Injunctive Relief as defined in the Stipulation of Settlement, consisting of all persons in the state of Florida from whom the Defendants, Law Offices of David J. Stern, P.A., and David J. Stern (hereinafter, “Settling Defendants”), attempted to collect obligations in connection with residential mortgage collection or foreclosure proceedings filed and/or prosecuted in Florida by the Settling Defendants and which were started or pending at any time from October, 1994 up to and including the date of this Order. The Court specifically finds that: (1) the Class is so numerous that joinder of all members is impractical; (2) there are common questions of law or fact common to the Class; (3) the claims of the representative parties are typical of the claims and defenses of the Class; and (4) the representative parties will fairly and adequately protect the interests of the Class.

2. All of the terms and conditions of the Stipulation of Settlement are preliminarily approved, as fair, reasonable and adequate, and in the best interests of the Settlement Class, subject to notice and the final hearing described in paragraph 7 herein.

3. The Notice of Pendency of Class Action and Proposed Settlement of Class Action, Settlement Hearing, and Right to Appear (the "Notice"), and the Summary Notice of Pendency of Class Action, Proposed Settlement of Class Action, Settlement Hearing, and Right to Appear (the "Summary Notice"), attached to the Stipulation, are approved as to form and content. The Notice fairly and adequately describes the terms and conditions of the proposed settlement of this action. The mailing of the Notice, in the manner described in paragraph 5 herein, and the publication of the Summary Notice, is determined to be adequate, and constitutes the best notice practicable under the circumstances. Such notice shall constitute due and sufficient notice of the proposed settlement to all persons entitled thereto.

4. \_\_\_\_\_, having been jointly designated by Plaintiffs' Counsel and the Settling Defendants' Counsel, is appointed Settlement Administrator. The Settlement Administrator, acting on behalf of Plaintiffs and the Class, and subject to the supervision, direction, and final approval of the Court, shall effectuate and supervise the mailing of notice to the Class Members; receive and review the Proofs of Claim, Requests for Exclusion and Objections; administer and calculate the claims submitted by Claimants; oversee distribution of that portion of the Settlement Fund as finally awarded by the Court to Authorized Claimants; and otherwise oversee the administration of the Parties' settlement in accordance with the Stipulation of Settlement and Orders of Court.

5. Within sixty (60) days after entry of this Order, the Settlement Administrator shall provide notice of this Stipulation and of the Settlement Hearing

to all Settlement Class Members whose identities and addresses can be reasonably so identified from lists provided by the Settling Defendants, by mailing a copy of the Notice, and the Proof of Claim and Release (“Proof of Claim”) by regular first-class mail, postage prepaid, with forwarding service requested, to the Class Members at their last known addresses. Other than requesting forwarding service, no skip-tracing or other efforts to locate the Class Members shall be required.

6. Beginning not more than ten days after entry of this Order and continuing one day per week for a total of two consecutive weeks, the Summary Notice shall be published in the Sunday or reasonably equivalent edition of the following newspapers:

- a. Miami Herald;
- b. Orlando Sentinel;
- c. St. Petersburg Times;
- d. Jacksonville Times Union;
- e. Tallahassee Democrat;
- f. Pensacola News Journal;
- g. Ft. Lauderdale Sun Sentinel; and
- h. Palm Beach Post.

The Summary Notice shall be not be required to be larger than one-eighth of one page, or of such other size as the parties may reasonably agree upon.

7. The reasonable costs and expenses of printing, preparing, and mailing the Notice, reviewing and processing Proofs of Claim, Requests for Exclusion and Objections,

the costs of publishing the Summary Notice, and the reasonable costs and expenses of administering the Settlement and the Settlement Fund, shall be paid from the Settlement Fund pursuant to the terms of the Stipulation of Settlement and orders of Court.

8. At least five (5) days prior to the hearing described in paragraph 18, below, the Settlement Administrator shall serve and file a sworn statement evidencing compliance with the provisions of this Order concerning the mailing of the Notice and the Proofs of Claim, and concerning the publication of the Summary Notice.

9. Each member of the Settlement Class shall be required, as a condition of receiving any share of the proceeds of the Settlement Fund, to execute and file with the Settlement Administrator a Proof of Claim substantially in the form attached hereto as Exhibit “\_\_”, within 120 days of the entry of this Order.

10. Any Class Member may request exclusion from this Settlement by serving on the Settlement Administrator, by mail and within 120 days of the entry of this Order, a written Request for Exclusion indicating the Class Member’s name, present address, telephone number, social security number, signature, and a statement requesting exclusion from the Settlement. No explanation or other grounds shall be required of any Class Member as a precondition to requesting exclusion.

11. Each Class Member shall be given the right to object to all or any portion of this Settlement by serving on the Settlement Administrator, by mail, and by filing with the Court, within the deadline set forth below, a written Objection containing the class member’s name, address and grounds for any Objection. The filing of an Objection shall not operate

as a Request for Exclusion, and no Class Member shall be excluded from the Settlement by virtue of filing an Objection.

12. All Proof of Claim forms, Objections, and Requests for Exclusion must be submitted to the Settlement Administrator by the date specified in the Notice unless such period is extended by Order of the Court. Additionally, all Objections must be filed with the Court by the date specified in the Notice unless such period is extended by Order of the Court.

13. Proofs of Claim, Objections and Requests for Exclusion must be received or postmarked on or before the date specified in the Notice in order to be deemed timely. Each Proof of Claim and Request for Exclusion shall be submitted to and reviewed by the Settlement Administrator who shall determine, in accordance with the Stipulation, the extent, if any, to which the Proof of Claim or Request for Exclusion is timely.

14. Except as otherwise provided herein, the Settlement Administrator shall reject Proofs of Claim and Requests for Exclusion that are not timely submitted. The Settlement Administrator shall notify in writing and by regular first-class mail, with forwarding service requested, all Claimants whose Proofs of Claim and Requests for Exclusion have been rejected in whole or in part, setting forth the reasons therefore and shall indicate in such notice that the Claimant whose Proof of Claim or Request for Exclusion is rejected has a right of review by the Court provided the Claimant or Requestor complies with the requirements set forth herein or in any Court orders relating thereto.

15. Any person whose Proof of Claim or Request for Exclusion has been finally rejected in whole or in part by the Settlement Administrator, and who desires to contest such final rejection, must, within thirty (30) days after the date of mailing of the notice of final rejection, serve upon Plaintiffs' Counsel and counsel for the Settling Defendants, by certified mail, a Notice and Statement of Reasons indicating the grounds for contesting the final rejection along with any supporting documentation. At the hearing on final approval of this Settlement, Plaintiffs' Counsel shall present all Objections and Requests for Exclusion (whether determined by the Settlement Administrator to be timely or untimely), all untimely Proofs of Claim, and any response thereto by Plaintiffs' Counsel or the Settling Defendants for final determination by the Court as to whether such Proofs of Claim, Objections and Requests or Exclusion shall be allowed.

16. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the Claimant's claim, and the Claimant will be subject to discovery limited to the Claimant's status as a Class Member, the amount and circumstances of the Claimant's claim, and the contents of the Proof of Claim submitted.

17. All proceedings with respect to the Settlement described by the Stipulation of Settlement and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

18. A hearing shall be held on \_\_\_\_\_, 2000, at \_\_\_\_\_, before the undersigned in Chambers at the United States District Courthouse, Tallahassee, Florida, for

purposes of determining whether the proposed settlement as described in the Stipulation is fair, reasonable and adequate, and in the best interests of the Class, and should be approved by the Court, with Final Judgment entered thereon dismissing this action with prejudice, and providing for the award of fees and expenses to Plaintiffs' counsel. The Court further shall rule on such other matters as may come before the Court.

19. At the hearing, any person who is a member of the Settlement Class and who has complied with the provisions of the Notice, may appear in person or by his/her attorney and show cause why the settlement of this action should not be approved by this Court as fair, reasonable and adequate, and in the best interests of the Settlement Class, and why judgment should not be entered dismissing this action with prejudice, on the merits, and releasing the Released Parties (as defined in the Stipulation) from all Released Claims (as defined in the Stipulation). Objections will not be considered by this Court unless all provisions in this Order and the Notice relating to appearance, service on counsel, basis for opposition to the settlement, and supporting documentation are complied with. Any person who fails to object in the manner prescribed above shall be deemed to have waived his or her objections, if any, and shall forever be barred from making any objections in this action, or any other action or proceeding pertaining to the claims in this action.

20. The Court reserves the right to adjourn the hearing from time to time without further notice; and to protect and effectuate this Order and all matters relating to the administration and execution of the settlement agreed to by the parties.

21. In the event the Stipulation of Settlement is terminated pursuant to its terms or for any other reason, the Stipulation and all Orders entered pursuant to the Stipulation shall be null and void and of no further force and effect. In such event, the Stipulation shall be without prejudice to the rights and respective positions of the parties as of the date of the Stipulation of Settlement.

DONE AND ORDERED in chambers at Tallahassee, Florida this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

---

Robert L. Hinkle  
United States District Judge

Copies furnished to:

Thomas J. Guilday/Claude R. Walker/Mary K. Simpson  
Kelly Overstreet Johnson  
W. Wyndham Geyer, Jr./Steven R. Braten  
David M. Schultz  
Scott A. Frick



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION

THEODORA BRYANT, MARY L.  
WALKER, EARNEST JACK WELCH,  
and BARBARA JEAN SLOCUM,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

CASE NO. 4:99CV317-RH  
CLASS REPRESENTATION

vs.

LAW OFFICES OF DAVID J.  
STERN, P.A., and DAVID J. STERN,  
individually

Defendants.

---

**NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED  
SETTLEMENT OF CLASS ACTION, SETTLEMENT  
HEARING AND RIGHT TO APPEAR**

**Please read this entire notice carefully. You may be entitled to receive money. This is not a lawsuit against you, and you are not being sued. You may benefit from reading this notice.**

**TO: All persons within the State of Florida who had a residential mortgage which was the subject of collection or foreclosure proceedings in which the lender was represented by the Law Offices of David J. Stern, P.A., and/or David J. Stern, individually, and which collection or foreclosure was started, filed or was pending at any time from October, 1994 to the present.**

**YOUR RIGHTS WILL BE AFFECTED BY LEGAL PROCEEDINGS IN THIS LITIGATION. YOU ULTIMATELY MAY BE ENTITLED TO RECEIVE BENEFITS PURSUANT TO THE PROPOSED SETTLEMENT DESCRIBED IN THIS NOTICE.**

Pursuant to Order of the United States District Court for the Northern District of Florida, Tallahassee Division (the "Court"), dated \_\_\_\_\_, 2000, it was conditionally determined that this lawsuit may be settled as a class action pursuant to Fed. R. Civ. P. 23(b)(3) on behalf of the "Class", a group of persons defined as follows:

All persons within the State of Florida who had a residential mortgage which was the subject of collection or foreclosure proceedings in which the lender was represented by the Law Offices of David J. Stern, P.A., and/or David J. Stern, individually, and which collection or foreclosure which was started, filed or was pending at any time from October, 1994 to the present.

You have been tentatively identified as a person who may have been involved in a collection proceeding or lawsuit involving foreclosure of residential property at some point from October, 1994 to the present, in which the Law Offices of David J. Stern were also involved (the "Foreclosures"). If so, your rights will be affected by this lawsuit. This notice is given to inform you of the pendency of the action so that you may have an opportunity to comment on the proposed settlement.

### **NATURE OF THIS LAWSUIT**

#### **A. Summary of the Litigation**

On October 20, 1998, this case (the "Lawsuit") was filed as a proposed class action in the Circuit Court in and for the Second Judicial Circuit, Leon County, Florida. On August 16, 1998, this case was removed to the United States District Court for the Northern District of Florida, Tallahassee Division. The "Plaintiffs" are Theodora Bryant, Mary Walker, Earnest Jack Welch and Barbara Jean Slocum. The "Defendants" are the Law Offices of David J. Stern and David J. Stern, Individually.

The Defendants were attorneys who filed and prosecuted the Foreclosures in Florida courts on behalf of their clients, and against the Plaintiffs and others. The information in the Defendants' files indicates that you may be a person who was involved in one of the Foreclosures. The Lawsuit alleges that the Defendants violated the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692 *et seq.* Specifically, the Plaintiffs alleged that the Defendants collected or claimed, attempted or threatened to collect attorneys fees, costs, and

other amounts in excess of the amount allowed by Florida law in connection with the Foreclosures. The Lawsuit claims that these alleged acts violated §§ 1692(e) and (f) of the FDCPA. The Plaintiffs further alleged that the same acts by Defendants violated the Florida Consumer Collection Practices Act (“FCCPA”), § 559.72(9), Florida Statutes.

The Plaintiffs filed the Lawsuit to recover statutory damages, actual damages, costs and attorneys’ fees for themselves and the other persons who were involved in the Foreclosures (the Claims for Money Damages”). The Plaintiffs have also requested an injunction to prevent the Defendants from committing the same alleged acts in future Foreclosures (the “Claims for Injunctive Relief”).

The Defendants have denied that any violation of the FDCPA or FCCPA occurred, and the Defendants deny any liability or wrongdoing. The Defendants have asserted defenses which they contend would bar the prosecution of this action.

This description of Plaintiff’s claims and Defendants’ response is general and does not cover all of the claims and contentions of the parties. For a complete statement of all the contentions and proceedings in this case, you should consult the files relating to this lawsuit that are available for your inspection at the office of the Clerk of the United States District Court for the Northern District of Florida, Tallahassee Division, 110 E. Park Avenue, Room 122 Tallahassee, Florida.

The FDCPA and the FCCPA provide for actual and statutory damages as well as payment of costs and reasonable attorneys’ fees to a successful plaintiff. The maximum statutory damages recoverable by the entire Class under the FDCPA is the lesser of 1% of a Defendant’s net worth or \$500,000. The maximum statutory damages recoverable by an individual is \$1,000. The FCCPA provides for actual, statutory, and punitive damages, together with payment of costs and reasonable attorneys’ fees to a successful Plaintiff. The maximum statutory damages recoverable under the FCCPA is \$500. There is, however, no guarantee that the Plaintiffs or the other persons who were involved in the Foreclosures would prevail on the issue of liability under either the FDCPA or FCCPA, or that the Court would award any amount of statutory, actual or punitive damages to the Class or to any individual under the FDCPA or FCCPA.

Counsel for the Plaintiffs have conducted extensive discovery and a thorough investigation into, and evaluation of, the law and facts concerning this case, including facts made available through discovery. Based upon their discovery, investigation, and evaluation of the facts and law relating to matters set forth in the complaint filed in the above-captioned action, Plaintiffs’ counsel have concluded that: (a) there is some uncertainty as to whether the

action will be allowed to proceed due to the affirmative defenses raised by the Defendants; (b) there are obstacles to overcome in establishing liability and damages; (c) in the event liability is established against the Settling Defendants, there is a substantial risk the judgment would not be fully collectible; (d) the attendant risks of litigation, as well as the difficulties and delays inherent in this type of complex litigation, could substantially reduce or eliminate any recovery; (e) the desirability of permitting the Stipulation to be promptly consummated according to its terms is substantial; and (f) resolution of the above-styled action as set forth in the Stipulation is in the best interests of Plaintiffs and the Class.

With the aid of a certified mediator, the parties have engaged in arms length negotiations in an effort to achieve a fair, reasonable and adequate settlement of the claims of Plaintiffs and the Settlement Class. The Court has not determined the merits of the claims against, or the defenses of, the Defendants. This Notice does not imply whether there has been, or would be, any finding of violation of the law, whether a class would be certified, whether recovery could be had in any amount if the action was not settled with respect to the Settling Defendants, or whether any person could maintain a claim notwithstanding the passage of time.

**B. Certification of the Class**

In connection with the settlement of this case, on \_\_\_\_\_, 2000, the Court determined that this case could be maintained on behalf of the Class, defined above, pursuant to Federal Rule 23(b)(3). The Court has appointed the Plaintiffs, Theodora Bryant, Mary Walker, Earnest Jack Welch and Barbara Jean Slocum, as “Class Representatives.” The “Plaintiffs’ Counsel” are the law firms of Huey, Guilday & Tucker and Broad & Cassell, of Tallahassee, Florida.

**C. Settlement of the Lawsuit**

Plaintiffs, Plaintiffs’ Counsel, and Defendants and Defendants’ counsel have agreed to a proposed settlement that provides:

1. Defendants will contribute a total of \$2,100,000 (the “Settlement Fund”) in settlement of all Claims for Money Damages which were made or which could have been made in the Lawsuit by the Plaintiffs and the Class. This amount

includes all attorneys' fees, costs and other expenses associated with the Claims for Money Damages, but excludes the Claims for Injunctive Relief;

2. The Settlement Fund will be applied as follows:
  - a) First, to pay the costs of providing notice and administering this settlement;
  - b) Second, to pay for the attorneys' fees, costs and expenses of Plaintiffs' Counsel, in an amount to be approved by the Court;
  - c) Third, each Plaintiff will be paid \$2,500; and
  - d) Fourth, the amount remaining in the Settlement Fund after payment of items a), b) and c) will be divided among the Class Members who return claim forms in accordance with the deadlines and instructions contained in this notice. The exact amount payable to the Class will depend on a number of factors including the costs of notice and administration, attorneys' fees, the number of timely claims submitted, and the number of requests for exclusion.
3. Any payments to Class Members from the Settlement Fund which are returned as undeliverable or which remain uncashed 120 days after checks are issued to the Class Members shall be given to the legal aid organizations as agreed upon jointly by Plaintiffs' Counsel and counsel for the Defendants in the name of David J. Stern;
4. Plaintiffs will dismiss the lawsuit with prejudice and the Class Members will release Defendants and related parties from liability for any and all Claims for Money Damages relating to the Foreclosures, as provided in the Settlement Agreement. Plaintiffs and Defendants will not appeal any of the matters resolved concerning the Claims for Money Damages;
5. However, Plaintiffs will continue to litigate the Claims for Injunctive Relief on behalf of themselves and the Class, and both Plaintiffs and Defendants have reserved the right to appeal the Court's determination of such claims. If Plaintiffs are ultimately successful, Defendants will contribute an additional \$100,000 in full settlement of the Claims for Injunctive Relief, to be applied as follows:

- a) First, to pay the attorneys' fees, costs and expenses of Plaintiffs' Counsel associated with the Claims for Injunctive Relief;
  - b) Second, the amount of the additional \$100,000 remaining after payment of item a) will be distributed to legal aid or other organizations agreed upon jointly by Plaintiffs' Counsel and counsel for Defendants.
6. This settlement does not affect the validity of the Foreclosures, nor does it affect any actions taken or any orders entered by any Court disposing of property in connection with any of the Foreclosures.

If the Stipulation and the proposed Settlement are approved by the Court, all claims which have or could have been asserted in the action against Defendants arising out of the Defendants' conduct in connection with the Foreclosures, except the claims for injunctive relief, will be dismissed with prejudice in accordance with the terms of the Stipulation of Settlement as to all members of the Class (except those who have properly excluded themselves from the Class). Thereafter, the members of Class (except those who have been excluded) shall be forever barred from prosecuting any action against Defendants and related parties concerning the matters raised in this lawsuit.

The settlement described in this notice is subject to approval by the Court. The Court has not yet finally considered the fairness or adequacy of the proposed settlement and has not yet determined the amount of attorneys' fees and reimbursement of expenses to be awarded to counsel for the Plaintiffs. This notice is not an expression of any final opinion of the Court as to the reasonableness of the proposed settlement or any application for attorneys' fees and expenses. The Court will not rule on the proposed settlement or fee application until the hearing described below.

**D. Your Options**

**You have two basic options-** 1) you may choose to participate in the settlement, or 2) you may choose not to participate in the settlement by requesting exclusion.

**1. If you wish to be part of the settlement, you must complete and return the Claim Form at the end of this Class Notice.** If you become part of the settlement, you will receive a share of the \$2,100,000 Settlement Fund which will be divided equally among the Class Members who return Claim Forms in accordance with these instructions. The exact

amount payable to the Class will depend on a number of factors including the costs of notice and administration, attorneys' fees, the number of timely claims submitted, and the number of requests for exclusion. You may, but you are not required, to enter an appearance through counsel at your own expense. If you return a Claim Form and your Claim Form is allowed, you will receive a check in approximately \_\_\_\_ days.

You must follow these instructions in order to assure that your Claim Form is allowed:

1. Provide all information requested in the Claim Form, including your name, address, telephone number, and social security number;
2. Sign the Claim Form;
3. Mail the Claim Form to the following address on or before \_\_\_\_\_, 2000. YOUR CLAIM FORM MUST BE POSTMARKED BY \_\_\_\_\_, 2000 OR IT MAY NOT BE ACCEPTED.

If your Claim Form is accepted, you will not receive any further notification, and you will receive a check for your portion of the settlement, as described above, in approximately \_\_\_\_ days. If your Claim Form is rejected, you will be notified by mail and you will be apprised of your options.

**2. You also have the right to exclude yourself from the settlement.** If you wish to be excluded, you may ask the Court to exclude you by filing a Request for Exclusion. Your Request for Exclusion must be in writing and postmarked on or before \_\_\_\_\_, 2000. It must include your name, address, telephone number, social security number and signature, and it must also contain the words "Request for Exclusion" or some other clear statement indicating that you wish to be excluded from the Class. You are not required to explain why you wish to be excluded. All Requests for Exclusion must be mailed to:

Clerk, United States District Court  
Northern District of Florida, Tallahassee Division  
110 E. Park Avenue, Room 122  
Tallahassee, Florida 32301

Be advised that if you request exclusion, you will not receive any money, and you will not be bound by the releases and other terms of the settlement. If you are excluded, you will receive no further notices regarding this case. If you exclude yourself from the proposed class, you will be free to pursue whatever legal rights, if any, you may have against the Defendants

at your own expense, and your success may be uncertain as Defendants have contested liability and asserted defenses to this action.

**IMPORTANT: If you do nothing** in response to this notice-- that is, if you do not request exclusion and you do not file a Proof of Claim in accordance with these instructions, you will not share in the Settlement, but you will be bound by the terms of the settlement, and you will have released the Defendants from all claims you may have relating to the Foreclosures. THEREFORE, IT IS IMPORTANT THAT YOU EXERCISE ONE OF YOUR TWO OPTIONS.

**You also have the right to object to the settlement**, if you do not exclude yourself from the settlement. You may object to the proposed settlement by filing and serving a written objection. Your objection must state 1) your name and address 2) the case name and number 3) why you object to the proposed settlement, and 4) any reasons supporting your position. You must sign your objection personally. You must mail your objection, postmarked on or before \_\_\_\_\_, 2000 to the Court and the Settlement Administrator.

**NOTICE IS HEREBY GIVEN THAT** a hearing will be held before the Honorable Judge Robert L. Hinkle of the United States District Court for the Northern District of Florida, Tallahassee Division, on \_\_\_\_\_, 2000 at \_\_\_\_\_ .m. in Courtroom \_\_\_\_\_. At this hearing, the Court will determine if the proposed settlement is fair, reasonable and adequate, whether the settlement should be finally approved and whether the lawsuit should be dismissed on the merits and with prejudice. At the Settlement Hearing, any member of the Settlement Class who has not previously filed a Request for Exclusion from the Settlement Class in the manner set forth above may appear in person or by counsel and be heard to the extent allowed by the Court in support of, or in opposition to, the fairness, reasonableness, and adequacy of the settlement or any of the other matters to be considered by the Court, provided, however, that no person shall be heard in opposition to the proposed Settlement, Plaintiffs' application for counsel fees, and reimbursement of expenses unless, such person files an objection in accordance with the above instructions.

**YOU ARE NOT REQUIRED TO COME TO COURT UNLESS YOU WISH TO OBJECT. IF YOU WISH TO EXCLUDE YOURSELF FROM THE PROPOSED SETTLEMENT, YOU ARE NOT REQUIRED TO COME TO COURT. IF YOU WISH TO RECEIVE A CHECK, YOU ARE NOT REQUIRED TO COME TO COURT.**

**DO NOT CALL THE CLERK OF COURT OR THE JUDGE WITH QUESTIONS, as they are not permitted to answer any questions.**

**If you have questions you should contact the Settlement Administrator.**

**If you need further information you may contact Plaintiffs' Counsel at:**

**Kelly Overstreet Johnson, Esq.  
BROAD AND CASSEL  
215 S. Monroe Street, Suite 400  
Post Office Drawer 11300  
Tallahassee, Florida 32302  
(850) 681-6810  
(850) 681-9792 fax**

**Thomas J. Guilday, Esq.  
Claude R. Walker, Esq.  
Mark K. Simpson, Esq.  
HUEY, GUILDAY & TUCKER, P.A.  
106 E. College Avenue, Suite 900  
Post Office Box 1794  
Tallahassee, Florida 32302  
(850) 224-7091  
(850) 681-9792**

/s/ Robert L. Hinkle  
Robert L. Hinkle  
United States District Judge

Dated: \_\_\_\_\_, 2000.



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION

THEODORA BRYANT, MARY L.  
WALKER, EARNEST JACK WELCH,  
and BARBARA JEAN SLOCUM,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

CASE NO. 4:99CV317-RH  
CLASS REPRESENTATION

vs.

LAW OFFICES OF DAVID J.  
STERN, P.A., and DAVID J. STERN,  
individually

Defendants.

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**PLAN OF ALLOCATION**

On and after the Settlement Effective Date, the Settlement Fund shall be applied as follows:

1. To pay all Notice and Administration Expenses, and any taxes that may become due, if any, on the Settlement Fund;
2. Subject to the approval and further Order of the Court, to pay Plaintiffs' Counsel's fees and expenses from the Settlement Fund if and to the extent allowed by

the Court. Such fees and expenses shall be delivered to Plaintiffs' Counsel by wire transfer within three (3) business days after the Settlement Effective Date;

3. After payments of the foregoing amounts, to pay to the Plaintiffs, from the Net Settlement Fund, the following amounts: Theodora Bryant – \$2,500, Mary L. Walker – \$2,500, Earnest Jack Welch – \$2,500, and Barbara Jean Slocum – \$2,500; and

4. After payment of the foregoing amounts, to pay pro rata the remaining portion of the Net Settlement Fund to the remaining members of the Settlement Class. The amount received by each such Class Member shall be determined by dividing the amount of the Net Settlement Fund by the number of Authorized Claimants and remitting such amount to each Authorized Claimant who has timely filed a Proof of Claim in accordance with the Stipulation of Settlement.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION

THEODORA BRYANT, MARY L.  
WALKER, EARNEST JACK WELCH,  
and BARBARA JEAN SLOCUM,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

CASE NO. 4:99CV317-RH  
CLASS REPRESENTATION

vs.

LAW OFFICES OF DAVID J.  
STERN, P.A., and DAVID J. STERN,  
individually

Defendants.

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**PLAN OF ALLOCATION**

On and after the Settlement Effective Date, the Settlement Fund shall be applied as follows:

1. To pay all Notice and Administration Expenses, and any taxes that may become due, if any, on the Settlement Fund;
2. Subject to the approval and further Order of the Court, to pay Plaintiffs' Counsel's fees and expenses from the Settlement Fund if and to the extent allowed

by the Court. Such fees and expenses shall be delivered to Plaintiffs' Counsel by wire transfer within three (3) business days after the Settlement Effective Date;

3. After payments of the foregoing amounts, to pay to the Plaintiffs, from the Net Settlement Fund, the following amounts: Theodora Bryant – \$ 2500, Mary L. Walker – \$ 2500, Earnest Jack Welch – \$ 2500, and Barbara Jean Slocum – \$ 2500; and

4. After payment of the foregoing amounts, to pay pro rata the remaining portion of the Net Settlement Fund to the remaining members of the Settlement Class. The amount received by each such Class Member shall be determined by dividing the amount of the Net Settlement Fund by the number of Authorized Claimants and remitting such amount to each Authorized Claimant who has timely filed a Proof of Claim in accordance with the Stipulation of Settlement.



### CLAIM FORM

If you wish to receive benefits under the settlement, you must complete and sign this form.

1. Name \_\_\_\_\_

2. Current address \_\_\_\_\_  
\_\_\_\_\_

3. Address of property subject to foreclosure \_\_\_\_\_  
\_\_\_\_\_

4. Social Security No. \_\_\_\_\_

5. Daytime phone \_\_\_\_\_

6. Name of person(s) owning property described in No. 3 above \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Between October 1994 and the present date, did you receive or were you involved in:

a. A letter from the Law Offices of David J. Stern, P.A., or David J. Stern, individually, describing the amount you owed on your mortgage?

Yes     No

b. A foreclosure action commenced against you?

Yes     No

**CERTIFICATION**

Under penalty of perjury, I hereby certify that I have answered the questions truthfully and am entitled to receive the benefits described in the notice.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or type name

PLEASE RETURN THIS CLAIM IN THE ENCLOSED SELF-  
ADDRESSED ENVELOPE TO THE ADMINISTRATOR:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION

THEODORA BRYANT, MARY L.  
WALKER, EARNEST JACK WELCH,  
and BARBARA JEAN SLOCUM,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

CASE NO. 4:99CV317-RH  
CLASS REPRESENTATION

vs.

LAW OFFICES OF DAVID J.  
STERN, P.A., and DAVID J. STERN,  
individually

Defendants.

---

**SUMMARY NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

TO: All persons within the State of Florida who had a residential mortgage which was the subject of collection or foreclosure proceedings in which the lender was represented by the Law Offices of David J. Stern, P.A., and/or David J. Stern, individually, and which collection or foreclosure was started or was pending at any time from October 1994 to the present.

Plaintiffs brought an action against Defendants, Law Offices of David J. Stern, P.A., and David J. Stern, individually, alleging violation of federal and state debt collection acts in connection with foreclosure actions for residential mortgages brought by the Defendants.

The United States District Court for the Northern District of Florida has granted preliminary approval of a settlement between the settlement class and the Stern Defendants. The settlement provides \$2,100,000 in benefits to the Plaintiffs, class members, and provides funds for payment of costs, administrative expenses and attorneys fees and seeks further injunctive relief.

**THIS SETTLEMENT WILL PROVIDE MONETARY AND OTHER BENEFITS TO THE CLASS. IN ORDER TO PARTICIPATE IN THE SETTLEMENT YOU MUST FILE A CLAIM. YOU WILL BE BOUND BY THE TERMS OF THE SETTLEMENT AGAINST THE STERN DEFENDANTS UNLESS YOU OPT OUT OF THE SETTLEMENT. ADDITIONALLY, YOU MAY OBJECT TO THE SETTLEMENT OR OBTAIN SEPARATE LEGAL COUNSEL TO REPRESENT YOU.**

In order to obtain a full explanation of the settlement and your rights, contact the settlement administrator at:

In order to preserve your right to receive benefits, object or opt out, you must respond by \_\_\_\_\_.

A final hearing to determine if the settlement is fair, reasonable and adequate and should be finally approved will be held on \_\_\_\_\_.

Do not contact the Court or judge with questions as they are not permitted to answer questions. You should contact the settlement administrator although if you have questions, you may contact the below-described attorneys for information.

**ATTORNEYS FOR PLAINTIFFS:**

THOMAS J. GUILDAY, ESQ.,  
and CLAUDE R. WALKER, ESQ.  
Huey, Guilday & Tucker, P.A.  
Post Office Box 1794  
Tallahassee, FL 32302  
(850) 224-7091

KELLY OVERSTREET JOHNSON , ESQ.  
Broad and Cassel  
Post Office Drawer 11300  
Tallahassee, FL 32302-0300  
(850) 681-6810