IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

KENDRA TRIMIAR, Individually and as class representative for all others similarly situated,	)	
Plaintiff,	)	**CIVIL ACTION NO:**
v.	)	
	)	**06A-00386-9**
ALLIANCE CREDIT COUNSELING INC. and UNKNOWN PARTIES A, B, C, and D, whose real and proper identities are unknown at present,	)	
Defendants.	)	

SETTLEMENT AGREEMENT

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiff and Class Representative Kendra Trimiar and Defendant Alliance Credit Counseling, Inc., *et al.* ("Alliance"), through their duly-authorized counsel, to settle all matters asserted in this Action on the terms and conditions set forth in this Settlement Agreement subject only to the approval of the Court and the entry of the orders contemplated by this Agreement.

INTRODUCTION

I. Procedural History

1.

Plaintiff filed her Complaint in Class Action in the above-styled litigation on January 12, 2006 against Defendant Alliance Credit Counseling, Inc. (hereinafter "Alliance") and Unknown defendants (hereinafter "Unknown Defendants") who are individuals, general partnerships, limited partnerships, corporations or other legal entities who:

a. are third party beneficiaries of the agreement made subject of this claim;

b. and/or, are conspirators, partners or otherwise related through business association with the named defendant and/or other unknown defendants,

for alleged violations of the Georgia Debt Adjustment Act. Alliance and Unknown Defendants, and any Known Potential Defendants shall also collectively be referred to herein as "Alliance" or "Defendants."

Plaintiff alleged that Alliance, a North Carolina corporation, entered into agreements with Georgia resident debtors to engage in the business of debt adjusting on behalf of said Georgia resident debtors in violation of the Georgia Debt Adjustment Act, OCGA §§ 18-5-1 *et seq.* both under the Act's original version and the amended version that went into effect July 1, 2003.

2.

The classes proposed by Plaintiff in her Amended Complaint in Class Action filed on February 14, 2006 were:

> Class I Plaintiffs: All Georgia Residents who conducted business with Alliance prior to July 1, 2003 and in which Alliance, directly or indirectly, received a fee for engaging in the business of debt adjusting as defined by OCGA §§ 18-5-1 *et seq.* as it existed prior to July 1, 2003.
>
> Class II Plaintiffs: All Georgia residents from whom Alliance accepted charges, fees and contributions directly or indirectly, on or after July 1, 2003 in an amount in excess of 7.5 percent of the amount paid monthly by the individual Class II Plaintiffs to Alliance for distribution to Plaintiffs' individual creditors.

[Page 12 of Plaintiff's Amended Complaint in Class Action].

On January 12, 2007 Plaintiff filed her Second Amended Motion for Class Certification and withdrew Plaintiff's Class I claims in their entirety. Also on January 12, 2007 Plaintiff filed her Second Amended Complaint in Class Action and proposed the following class:

> All Georgia resident debtors from whom Alliance accepted charges, fees and contributions directly or indirectly, on or after

> July 1, 2003 in an amount in excess of 7.5 percent of the amount paid monthly by the individual Class Plaintiffs to Alliance for distribution to Plaintiffs' individual creditors.

3.

A hearing was held on January 12, 2007, on Plaintiff's Motion for Class Certification as pled in Plaintiff's Second Amended Motion for Class Certification and Plaintiff's Second Amended Complaint in Class Action.

4.

On July 20, 2009 Plaintiffs' Motion for Class Certification was granted by Order of this Court. Defendant appealed said Order, which was reversed on July 8, 2010 by the Georgia Court of Appeals and the Remittitur transmitted to this Court on July 27, 2010. The Court of Appeals based its reversal on the following:

> While the trial court's order recites that specific factors for class certification exist, it does not specify "the findings of fact and conclusions of law on which the court has based its decision with regard to whether each such factor has been established." Id. "Because the trial court did not make the necessary findings of fact and conclusions of law, we have no basis to evaluate whether the trial court properly exercised its discretion in granting class certification." (Citations and footnote omitted.) Griffin Indus. v. Green, 280 Ga.App. 858, 860 (1) (635 SE2d 231) (2006). We therefore vacate the trial court's order certifying the class and remand this case to the trial court to make the required findings of fact and conclusions of law. Id.
>
> 2. Based on our holding in Div. I, we need not address Alliance's seven remaining enumerations of error. Id. at 859 (2)."

5.

On January 3, 2011, this Court held another hearing on Plaintiff's Motion for Class Certification. Prior to the Court ruling on said Motion, the Parties announced that the case has been fully and finally settled subject to approval of the Class Settlement by this Court.

II. Plaintiff's Allegations

6.

Plaintiff alleged in her Second Amended Complaint that after July 1, 2003, Alliance accepted funds from Plaintiff in the form of charges, fees, and contributions in an amount in excess of 7.5% of the total paid monthly by Plaintiff to Alliance for distribution to Plaintiff's creditors and continued to receive "charges, fees, and contributions" directly and indirectly from Plaintiff monthly from July 2003 through at least September 2003.

7.

Plaintiff alleged that Alliance received "like funds from other Georgia residents similarly situated." She alleged that such acceptance of "charges, fees, and contributions" was in direct violation of the Debt Adjustment Act. She sought to recover "the total of all fees, charges, or contributions paid by the Plaintiff… and all other sums as allowed under OCGA § 18-5-1 *et seq*."

8.

Plaintiff further alleged that Alliance received collection fees from various creditors for Alliance's collection efforts on behalf of the various creditors, referred to as "fair share contributions" and that Alliance unjustly enriched itself by unlawfully receiving these so-called "fair share contributions" from Plaintiffs' creditors. Plaintiff further alleged that Alliance used Plaintiff's payments to receive debt-collection payments from Plaintiff's creditors for Alliance's profit and gain.

9.

Plaintiff, individually and as class representative for the Class members, sought disgorgement from Alliance the amounts Plaintiff alleged were unjustly gained by Alliance through these so-called "fair share contributions."

III. Alliance's Response to Allegations

10.

Alliance timely filed its Answer denying Plaintiff's allegations and stated that it is a charitable non-profit, 501(c)(3) organization and that at no time as alleged by Plaintiff did Alliance engage in debt adjusting in violation of the Georgia Debt Adjustment Act; that Alliance accepted a monthly donation from Plaintiff but did not accept any charge or fee, either directly or indirectly, from the Plaintiff. Alliance further stated that after July 1, 2003 it did not accept any contribution or donation from Plaintiff in an amount in excess of 7.5% of the amount paid in any one month by Plaintiff to Alliance pursuant to the Debt Management Program in which Plaintiff participated.

11.

Alliance further stated that any contribution or donation allegedly received by Alliance on or after July 1, 2003 from Plaintiff, which exceeded 7.5% of the amount paid for the benefit of creditors under her Debt Management Program, was promptly remitted to her creditor or creditors by Alliance upon Alliance having received notice from the Governor's Office of the State of Georgia of the change in the Debt Adjustment Act effective July 1, 2003. By forwarding the sums which exceeded 7.5% directly to Plaintiff's creditors as directed by Plaintiff and as required by the Debt Management Program, Alliance effectively made a refund to Plaintiff.

12.

Alliance further stated in its Answer that it is a consumer credit counseling service qualified as a tax-exempt (education and charitable) organization for federal income tax purposes pursuant to Section 501(c)(3) of the Internal Revenue Code. Its Debt Management Program and educational activities contribute to the betterment and social welfare of the community as a

whole. As such it is entitled to receive donations in order to further its mission to assist with vital operating costs. Such donations are not "fees" as such term is now or was before July 1, 2003, used in the Georgia Debt Adjustment Act.

IV. Class Counsel's Representation

13.

The Parties agree that since the Court has not yet ruled on the Class Certification subsequent to the Remittitur, the Court should appoint as Class Counsel for the purpose of this Class Settlement James W. Hurt, Jr., Irwin W. Stolz, Jr. and George Richard DiGiorgio, Esq. Class Counsel have demonstrated a willingness and ability to identify and investigate the potential claims in the Action. Class Counsel are involved in other class action lawsuits in this State involving the Debt Adjustment Act, and have demonstrated an ability to acquire the knowledge of the applicable law and the commitment to devote the resources necessary to represent the class.

14.

Class Counsel have reviewed substantial evidence relating to the claims alleged in the Action, have conducted a thorough investigation and examination of the relevant facts to assess the merits of Plaintiff's claims and Alliance's defenses, and have conducted further investigation to determine how to best serve the interests of the Plaintiff and the putative Class.

15.

Thus, for purposes of this settlement, Class Counsel has met the requirements of OCGA § 9-11-23.

V. No Resolution of the Substantive Contentions of the Parties

16.

The Court has not ruled on any of the substantive contentions of the Parties regarding liability, damages or defenses, nor expressed any opinion with respect thereto. This Settlement Agreement shall in no event be construed or deemed to be a concession by, or evidence of any admission or concession by, either (1) Plaintiff, of any infirmity in the causes of action asserted in the lawsuit, or (2) by Alliance, with respect to any allegation or cause of action, or of any wrongdoing or liability whatsoever, or of any infirmity in any of the defenses that Alliance has asserted, or may assert, in the lawsuit.

VI. Class Counsel's and Plaintiff's Settlement Recommendation

17.

Based upon their discovery, investigation and evaluation of the facts and law relating to the matters alleged in the pleadings, Class Counsel has agreed to settle the Action pursuant to the provisions of this Agreement after considering, among other things: (1) the substantial benefits to the putative Class under the terms of this Agreement; (2) the risks, costs and uncertainty of protracted litigation; (3) the likelihood and unlikelihood of success; (4) the complexity of actions such as this Action; (5) the difficulties and delays inherent in such litigation; and (6) the desirability of consummating this Agreement promptly, in order to provide relief to the Plaintiff and the putative Class. Given that relief, and in consideration of all the above-referenced circumstances, the proposed settlement set forth in this Agreement is fair, reasonable, adequate, and in the best interests of the purported Class as required by OCGA § 9-11-23.

VII. CLASS DEFINITION

18.

The Class shall consist of the following:

> All Georgia resident debtors from whom Alliance is alleged to have accepted charges, fees and contributions directly or indirectly, on or after July 1, 2003 in an amount in excess of 7.5 percent of the amount paid monthly by the individual Class Plaintiffs to Alliance for distribution to Plaintiffs' individual creditors.

VIII. PRELIMINARY APPROVAL

19.

Within fifteen (15) days of the execution of this Agreement by the Parties or such other dates as may be acceptable to the Court, the Parties shall submit this Agreement, including all attached exhibits, to the Court and seek to obtain from the Court a Preliminary Approval Order in substantially the same form as Exhibit "A" to this Agreement.

20.

The Parties shall jointly request that an injunction be granted by the Court in its Order attached as Exhibit "A", pending consideration of the proposed settlement by the Settlement Class. The injunction shall stay all proceedings in this Action and enjoin any Class Member and/or any person acting in his, her, or their behalf from commencing or prosecuting any action or proceeding in any court or tribunal against Alliance which asserts any claim under the Georgia Debt Adjustment Act, either on behalf of an individual or a putative class, except that any Class Member may timely exclude themselves from this settlement in accordance with the opt out provisions of the Settlement Agreement. The parties agree that the stay and injunction is necessary to protect and effectuate the Settlement and preserve the Court's jurisdiction over the Settlement Class pursuant to OCGA § 9-11-23 and that each regards it as a material term of this Settlement Agreement.

IX. SETTLEMENT ADMINISTRATOR

21.

The actions required of Alliance by this Agreement are to: 1) tender the sum of ONE HUNDRED THIRTY THOUSAND-FIVE HUNDRED AND 00/100 DOLLARS ($130,500.00) (hereinafter "Settlement Fund") to the Settlement Administrator for distribution to each respective Class Member, less attorneys' fees, costs and class administrative costs as further outlined *infra*; and 2) provide the Settlement Administrator the data and information required below in Paragraph 31 so that the Settlement Administrator can determine from that information who is a proper class member and who is entitled to receive their respective portion of the class settlement. Once Alliance has fulfilled these two requirements, Alliance shall have no further involvement or obligation in the distribution of the class settlement.

22.

Upon tender of the Settlement Fund to the Settlement Administrator, Defendants shall be discharged of further liability with respect to the funds and dismissed from this case by Final Judgment resolving all claims of the class.

23.

Given that Alliance shall have no further involvement once it has met the two requirements noted in paragraph 21 and given the total amount of the settlement, the Parties have agreed to minimize the cost to the Class and recommend to the Court that although James W. Hurt, Jr. is also Class Counsel, that the Court appoint James W. Hurt, Jr. as the Settlement Administrator.

24.

James W. Hurt, Jr., as the Settlement Administrator shall be charged with the performance of all duties of a Settlement Administrator under the Settlement Agreement and

other specific duties as set forth in the Settlement Agreement and shall be subject to oversight by the Court in performance of his duties throughout his administration. All reasonable fees and expenses incurred by the Settlement Administrator shall come from the settlement proceeds. The Settlement Administrator's duties shall include, but not be limited to, assuring performance of the actions required of Alliance by this Agreement, which Alliance is required to: 1) tender the Settlement Fund to the Settlement Administrator for distribution to each respective Class Member, less attorneys' fees, costs and class administrative costs as further outlined *infra*, and 2) provide to the Settlement Administrator the data and information required below in Paragraph 31 so that the Settlement Administrator can determine from that information who is a proper class member and who is entitled to receive their respective portion of the class settlement.

25.

Once Alliance has fulfilled its requirements of 1) and 2) of Paragraph 21 above, Alliance shall have no further involvement or obligation in the distribution of the class settlement, which shall be the sole obligation of the Settlement Administrator subject to oversight and final approval by the Court. The Settlement Administrator shall promptly report and make known to the Court any inability to comply with or any delay in effectuating this Agreement.

A. SETTLEMENT ADMINISTRATOR'S AUDIT RESPONSIBILITY

26.

The Settlement Administrator shall review and audit the process by which Alliance creates the *List of Class Members* from the *List of Prospective Class Members*, and promptly notify Alliance of any problem or dissatisfaction with Alliance's performance and attempt to resolve the same.

B. SETTLEMENT ADMINISTRATOR'S ADJUDICATION RESPONSIBILITY

27.

Alliance and Class Counsel shall attempt to mutually agree upon which of Alliance's clients qualify as Class Members. If the parties cannot agree as to whether any particular client should be a Member of the Class, the Parties shall select a Special Master to resolve the issue. The Special Master shall, in his/her sole discretion, determine what evidence shall be required from Alliance with respect to any dispute. The determination by the Special Master shall be final and binding.

C. SETTLEMENT ADMINISTRATOR'S RESPONSIBILITY OF PROVIDING NOTICE TO THE CLASS MEMBERS

28.

No less than sixty (60) days prior to a Fairness Hearing, the Settlement Administrator shall provide written notice *via* first class mail, postage pre-paid, to the Class Members of their rights to object or opt out of the Settlement Agreement pursuant to OCGA § 9-11-23, in the form attached hereto as Exhibit **"**B**"**.

29.

The Settlement Administrator will conduct a search using a competent information broker on the Internet and/or a recognized credit bureau to ensure that any mailed notice which is returned for the reason that the address is incorrect will be corrected and a second notice sent. The Settlement Administrator shall have no obligation to engage in additional efforts to locate a Class Member if a second notice is returned.

30.

The Notice to the Class Members shall not disparage, demean or criticize the Settlement, the Release, any of the Parties or any representative, attorney or agent of the Parties.

31.

Under the terms of this Settlement, Alliance is required only to provide to the Settlement Administrator the name, telephone number, and last known address that the Class Member provided Alliance. Alliance is not required to seek current addresses for its past Clients or to update its past Client address list. The responsibility for updating and obtaining current addresses for the Class Members rests with the Settlement Administrator.

32.

The alleged transactions involved in this Action occurred more than seven years ago from July 1, 2003 through September 30, 2003. The Parties acknowledge that whether a Class Member's last known address contained in Alliance's data bank is current is uncertain and may not be reliable today. As such, it is the duty of Alliance to provide the last known address of the Class Member to the Settlement Administrator and it is the duty and obligation of the Settlement Administrator to update and obtain the Class Members' current addresses from sources other than Alliance's Client list containing the Class Member's last known address.

33.

The parties hereto agree to request jointly that the Court grant either party the right to depose any objector and/or any objector's proposed witnesses upon request made by either party.

X. DATABASE OF PROSPECTIVE CLASS MEMBERS

A. CREATION OF A DATABASE OF PROSPECTIVE CLASS MEMBERS

34.

Within 30 days after the entry of the Order preliminarily approving this settlement, Alliance shall create a *List of Prospective Class Members* which shall consist of all persons in the State of Georgia who were clients of Alliance on July 1, 2003 through September 30, 2003, and made payments to Alliance to be paid to the client's respective creditors in that time period.

Alliance shall create this list in the form of an electronic database and shall enter the information required to complete each field in such database, to the extent such information is within the possession, custody, and control of Alliance.

a. Name, telephone number, and Last Known Address of Client making payments to Creditor through Alliance on or after July 1, 2003 until September 30, 2003,

b. Date of Each Payment,

c. Amount of Each Payment, and

d. Whether the amount received by Alliance as a charge, fee or contributions from the Debtor was in excess of 7.5%, and if so, by what amount.

e. Date and Amount of Refund of excess to Debtor paid to Debtor's Creditors and Credited to Debtor's Account by payment to Creditor, as required by each Debtor's Debt Management Plan.

XI. COMMENCING DATABASE OF PROSPECTIVE CLASS MEMBERS

35.

Alliance and Class Counsel shall jointly draft and submit an Agreed Court Order (in the form attached as Exhibit "A") directing Alliance to comply with the Court Order and to provide the information referenced in the Database of Prospective Class Members and to keep all information provided or received strictly confidential and private.

XII. EXTRAORDINARY INTERVENTION

36.

The parties to this Agreement are aware that matters outside the control of the parties (e.g. war, terrorism, hurricanes) could affect the ability of the parties to comply with the terms of this Agreement in a timely manner and agree to present such matters to the Court for appropriate adjustment of the timetable contemplated herein, if necessary.

XIII. LIST OF CLASS MEMBERS

37.

Within thirty (30) days after the entry of the Preliminary Approval Order, Alliance shall provide to the Settlement Administrator the *List of Prospective Class Members.*

XIV. CLASS RELIEF

A. Deposit of Settlement Fund in Escrow

38.

No later than thirty (30) days after Final Approval[1], Alliance will distribute the Settlement Fund to the Settlement Administrator, who will promptly deposit the Settlement Fund in escrow in an interest bearing account at First American Bank & Trust in Athens, Georgia. All interest accrued on the funds deposited shall be used to offset the cost of administration of the Settlement.

B. Adjustments to Settlement Fund

39.

The following adjustments shall be made to and subtracted from the Settlement Fund with payments to be made within thirty (30) days after Final Approval:

a. Class Counsel's attorneys' fees in such amount as may be allowed and approved by the Court. Class Counsel agree not to seek an award of attorneys' fees in excess of one-third (33-1/3%) of the Settlement Fund. Alliance agrees not to oppose a motion for attorneys' fee of up to one-third (33-1/3%) of the Settlement Fund.

[1] For purposes of this Agreement, Final Approval shall mean a Judgment of the Court to which no objections are filed which can result in appeal, or to which no notice of appeal is filed, or to a judgment that is affirmed on appeal.

b. Class Counsel's expenses associated in pursuit of this action in such amount as may be allowed and approved by the Court.

c. An incentive award to Kendra Trimiar in the amount of $2,500.00 for her time, expense and effort as the Class Representative in this case.

d. Class Administration costs of $4,000.00.

C. Distribution Formula

40.

Each Class Member shall receive payment from the Settlement Fund in accordance with the following formula:

$130,500.00 less the adjustments set forth in paragraphs 39(a) – (c) divided by the number of Class Members who do not opt-out of the Settlement.

D. Method of Distribution

41.

Payment to each Class Member shall be in the form of a check drawn on the Settlement Fund, and issued by the Settlement Administrator within forty (40) business days after Final Approval. Checks shall be made payable to "[Name of Class Member]."

42.

The Settlement Administrator shall not be required to make multiple payments from the Settlement Fund to co-clients who are entitled to relief under the Agreement on account of the same debt management agreement or debt management plan, but in such cases, shall make only one payment jointly to all such co-clients.

43.

Each check issued pursuant to this Agreement shall be void if not negotiated within one hundred and eighty (180) days after its date of issue, and shall contain a legend to such effect.

Checks that are not negotiated within one hundred and eighty (180) days after their date of issue shall not be reissued.

44.

All payments that are unclaimed by Class Members, including returned checks and all checks not negotiated within one hundred and eighty (180) days after the date of issue, shall revert to the Settlement Fund and be deposited into the registry of the Court in an interest bearing account (or accounts), and that deposit will generally be treated as funds that have been interpleaded pursuant to Rule 22 (or statutory interpleader provisions). Within 60 days after the funds are placed in the registry of the Court, all parties with notice of this Settlement may assert any claim that each believes that it has to any portion of the funds. Class Counsel will advise the Court of any opposition to any such claim that is filed with the Court. The Court will decide whether any such claim is valid. Any amount remaining after the resolution of any claims will be distributed as follows: A *cy pres* fund, to be administered by the Court, shall be established for any unclaimed award to Class Members who cannot be found after reasonable effort. Alliance understands that Plaintiff intends to propose a plan for administration of these remaining funds and Alliance agrees to take no position in opposition to such a motion.

XV. RELEASE OF ALLIANCE AND ALL OTHER KNOWN AND UNKNOWN PARTIES OR DEFENDANTS FROM FURTHER CLAIMS

45.

In return for the consideration provided in the Agreement, the Plaintiffs and all other Class Members, individually and on behalf of anyone acting on behalf or for the benefit of a Class Member, including, but not limited to agents, representatives, attorneys, predecessors, successors, insurers, administrators, heirs, executors and assigns ("Releasing Parties"), shall release and discharge Alliance, its subsidiaries, affiliates, predecessors, successors, and assigns,

and each of its past, present and future officers, directors, employees, dealers, agents, representatives, attorneys, heirs, administrators, executors, and insurers, Kevin Porter individually, Macnifisense, Inc., and all Known and Unknown Defendants (collectively, the "Released Parties") as follows:

a. Releasing Parties shall release, acquit and forever discharge the Released Parties from any and all past, present and future causes of action, claims, damages, awards, equitable, legal and administrative relief, interest, demands or rights that are based upon, related to, or connected with, directly or indirectly, in whole or in part, the allegations, facts, subjects or issues that have been, could have been, may be or could be set forth or raised in this Action with respect to The Debt Adjustment Act;

b. Releasing Parties agree, covenant and acknowledge that they shall not now or hereafter initiate, participate in, maintain, or otherwise bring any claim or cause of action, either directly or indirectly, derivatively, or on their own behalf, or on behalf of the Class or the general public, or any other person or entity, against the Released Parties based on allegations that are based upon or related to, directly or indirectly, in whole or in part, the allegations, facts, subjects or issues that have been, could have been, may be or could be set forth or raised in this Action with respect to the Debt Adjustment Act;

c. Releasing Parties, without limitation, are precluded and estopped from bringing any claim or cause of action in the future, related in any way, directly or indirectly, in whole or in part upon, the allegations, facts, subjects or issues that

have been, could have been, may be or could be set forth or raised in this Action with respect to the Debt Adjustment Act;

d. Releasing Parties acknowledge that they are releasing both known and unknown and suspected and unsuspected claims and causes of action, and are aware that they may hereafter discover legal or equitable claims or remedies presently known or unsuspected, or facts in addition to or different from those which they now know or believe to be true with respect to the allegations and subject matters in the Action with respect to the Debt Adjustment Act or with respect to the released claims. Nevertheless, it is the intention of Releasing Parties to fully, finally and forever settle and release all such matters, and all claims and causes of action relating thereto, which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in this Action);

e. Releasing Parties further agree that no third party shall bring any claims released herein on behalf of any Releasing Party;

f. Nothing in this Release shall be deemed to release a Class Member's right to assert any claims or causes of action that arise from acts, facts, or circumstances arising exclusively after the entry of the Final Non-appealable Judgment, or preclude any action to enforce the terms of this Settlement Agreement;

g. This Release may be raised as a complete defense to and will preclude any action or proceeding that is encompassed by this Release;

h. The provisions of this Release together constitute an essential and material term of the Settlement Agreement to be included in the Final Order and Judgment entered by the Court.

XVI. FAIRNESS HEARING

46.

The Court shall hold a Fairness Hearing pursuant to OCGA § 9-11-23, no earlier than one hundred and twenty (120) days after the entry of an Order preliminarily approving the class action settlement. If the Court does not find that the Proposed Settlement is fair, reasonable and adequate, the Settlement Agreement shall be of no force or effect, including any agreement by Alliance for certification of the Class, which was agreed to by Alliance solely for settlement purposes.

XVII. ATTORNEYS' FEES

47.

Alliance understands that proposed Class Counsel intend to seek a contingent fee payment out of the Settlement Fund created by this settlement. Class Counsel will submit an application for this contingent fee to the Court for its consideration and approval pursuant to OCGA § 9-11-23. Alliance will not oppose any motion for a contingent fee of one-third (33.33%) or less of the Settlement Fund, plus reimbursement of those expenses contemplated by this Settlement Agreement, including reasonable charges and fees of the Settlement Administrator. Any approved contingent fee will be proportionately deducted from payments to be made to members of the Settlement Class. Within 30 days after Final Approval, Class Counsel shall be entitled to collect its contingent fee, if awarded by the Court, from the Settlement Fund.

XVIII. TERMINATION OF AGREEMENT

48.

At the sole election of any party at any time prior to the entry of Final Approval, the Settlement Agreement shall be terminable by any party if any Court revises, modifies or

disapproves of any of the material terms thereof. Alliance or Class Counsel may terminate this agreement if any attorney general, regulatory or administrative authority: (a) objects either to any aspect or term of the Agreement or to the intended financial results of the proposed relief; or (b) asks the Court to require any modification to the Agreement, including, without limitation, a construction or expansion of the scope of the contemplated relief that either party in its sole discretion, deems material; ***but only if*** (c) any such objection is sustained by the Court or the Court grants any such request to modify the Agreement.

XIX. EFFECT OF TERMINATION

49.

If this Agreement is terminated then: (a) it shall be null and void and shall have no force or effect, and no Party to this Agreement shall be bound by any of its terms; (b) this Agreement, all of its provisions, and all negotiations, statements and proceedings relating to it shall be without prejudice to the rights of Alliance, Plaintiffs or any other Class Member, all of whom shall be restored to their respective positions existing immediately before the execution of this Agreement; (c) Alliance and its current and former directors, officers, dealers, employees, agents, attorneys and representatives expressly and affirmatively reserve all defenses, arguments and motions as to all claims and causes of action that have been or might later be asserted in this Action, including (without limitation) any applicable statutes of limitation and the argument that the Action may not be litigated as a class action or that the class should not be certified; (d) Plaintiffs and their current and former predecessors, successors, heirs, agents or assigns expressly and affirmatively reserve all motions as to, and arguments in support of, all claims or causes of action that have been or might later be asserted in this Action; (e) neither this Settlement Agreement, nor the fact of its having been made, shall be admissible or entered into evidence for any purpose whatsoever; (f) Class Counsel shall, within ten (10) days of termination

by any Party, return to Alliance's counsel the *List of Class Members* and any and all data, information, communications and reports received either from Alliance or from the Settlement Administrator; and, (g) any order or judgment entered in this case after the date of this Settlement Agreement will be deemed vacated and will be without any force or effect.

XX. COMMUNICATIONS ABOUT THE SETTLEMENT AND CONFIDENTIALITY OF ITS TERMS

50.

Other than as specifically ordered by the Court, neither the Parties nor any Class Member (including any attorney or other representative or agent of any Party or Class Member) shall issue any public, mass, or generalized communications about the Settlement (other than disclosures required by law) prior to the entry of Final Approval, whether by press release or any other means, without the prior written consent of the other Parties. The Parties further agree not to make any disclosures of this Agreement or its terms and shall keep it confidential, except as otherwise provided herein. In no event shall any public, mass, or generalized communications about the Settlement disparage, demean or criticize the Settlement, the Agreement, any of the Parties or any representative, attorney or agent of the Parties. Furthermore, in no event shall any public, mass, or generalized communications discuss or suggest the aggregate value of the Settlement or Agreement, including fees paid to Plaintiff's Counsel. However, Alliance reserves the right to disclose the existence, terms and conditions of the Settlement Agreement to its insurers, and to any federal or state agencies, regulators, rating agencies, financial analysts or dealers in the ordinary course of business or as required by any applicable law or regulation.

XXI. TOTAL RELIEF

51.

Plaintiff, Class Counsel and Defendants further expressly agree that under no circumstances whatsoever shall Defendants be responsible for paying any monies, benefits, costs, expenses or attorneys' fees in settlement of this Action other than as expressly provided for by this Settlement Agreement; nor will Defendants be required to take any action heretofore or incur any liability or pay any expense or be required to do any other thing, except as expressly provided herein.

XXII. PLAINTIFF'S REPRESENTATIVE CAPACITY

52.

Plaintiff, individually and as Class Representative (which has been agreed to by Alliance for settlement purposes only), represents and certifies that: (1) she has agreed to serve as the representative of the Class proposed to be certified herein; (2) she is willing, able and ready to perform all of the duties and obligations of a representative of the Class, including, but not limited to being involved in discovery and fact-finding; (3) she has read the pleadings in this Action, including the Complaint, or has had the contents of such pleadings described to her; (4) she is familiar with the results of the fact-finding undertaken by Class Counsel; (5) she has been kept apprised of settlement negotiations among the Parties, and has either read this Agreement, including the exhibits annexed hereto, or has received a detailed description of it from Class Counsel and has agreed to its terms; (6) has consulted with Class Counsel about the Action, this Settlement Agreement and the obligations imposed upon the representative of the Class; (7) has authorized Class Counsel to execute this Agreement on her behalf; and, (8) shall remain and serve as representative of the Class until the terms of this Settlement Agreement are effectuated, this Agreement is terminated in accordance with its terms, or the Court at any time determines

that she cannot represent the Class any longer. Upon approval of the Court, Alliance agrees for settlement purposes only not to oppose an incentive award to Kendra Trimiar as Class Representative in an amount not to exceed $2,500.00 to be paid out of the Settlement Fund within 30 days after the entry of Final Approval. If a Class Member or Class Representative is deceased on the date when financial relief would otherwise be awarded to him or her, his or her estate shall be eligible to nominate another person to receive in the deceased Class Member's stead, any relief to which the Class Member would have been entitled.

XXIII. NON-DISCLOSURE OF CLASS MEMBERS

53.

Plaintiff and their counsel agree that the information made available to them through the discovery process or the listing of debtors by Alliance for Class identification shall not be disclosed or be the subject of public comment.

XXIV. NOTICES TO/FROM PARTIES

54.

Whenever this Settlement Agreement requires or contemplates that one party shall or may give notice to another, notice shall be provided by Adobe PDF attachment to email and/or by next-day express delivery as follows:

If to Alliance: William B. Hardegree
Jorge Vega
HATCHER, STUBBS, LAND, HOLLIS & ROTHSCHILD, LLP
P. O. Box 2707
Columbus, Georgia 31902-2707

If to Plaintiff and/or the Class:

James W. Hurt, Jr.
HURT, STOLZ & CROMWELL, LLC
650 Oglethorpe Avenue, Suite 6
Athens, Georgia 30601
jhurt@hurtstolz.com

XXV. CALCULATION OF TIME PERIODS

55.

All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Agreement or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the Clerk of the Court inaccessible, in which event the period shall run until the end of the next day that is not one of the aforementioned days.

XXVI. EVIDENTIARY EFFECT OF AGREEMENT

56.

Neither this Settlement Agreement nor any related negotiations, statements or court proceedings shall be construed as, offered as, received as, used as or deemed to be evidence or an admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including but not limited to Alliance, Kevin Porter individually, Macnifisense, Inc., and any Known or Unknown Defendants.

57.

Nor shall this Settlement Agreement or any related negotiations, statements or court proceedings be construed as a waiver by Alliance, Kevin Porter individually, Macnifisense, Inc., or any Known or Unknown Defendants, of any applicable defense, including without limitation any applicable statute of limitations or statute of frauds or failure to establish a class action or certify a class, etc., or as a waiver by Plaintiff or the Class of any claims, causes of action or remedies.

XXVII. DEFENDANT'S DENIAL

58.

Alliance expressly denies any wrongdoing alleged in the pleadings and does not admit or concede any actual or potential fault, wrongdoing or liability in connection with any facts or claims that have been or could have been alleged against it in this Action, but consider it desirable for the Action to be settled and dismissed because this Settlement will: (i) avoid substantial expense and the further disruption of the management and operation of Alliance's business due to the pendency and defense of the Action; (ii) finally put Plaintiffs' claims and the underlying matters to rest; and (iii) avoid future considerable expenses, including attorney's fees, in defending this Action.

59.

Plaintiff agrees and understands that by entering into this Agreement, Alliance does not in any way admit, but specifically denies, all allegations made by Plaintiffs related to the above-mentioned incident and Alliance denies committing any act or failure to act in violation of any law, statute or regulation. The consideration made by each Party and the promises and release recited and referred to herein are given and accepted to resolve doubtful and disputed claims, to buy and provide peace and closure, and to avoid the expense of litigation and shall not be construed as an admission of liability on the part of Alliance or an admission of the validity of any disputed factual contention, and Alliance denies such liability.

XXVIII. PLAINTIFFS' AFFIRMATION

60.

Plaintiff expressly affirms that the allegations contained in the Complaint were made in good faith and have a substantial basis in fact, but considers it desirable for the Action to be

settled and dismissed because of the substantial immediate benefits that the proposed Settlement will provide to the Class Members, and the uncertainty of the legal issues.

XXIX. VOLUNTARY RELEASE

61.

The Release provided herein is given voluntarily and is not based upon any representations or statements of any kind by any Party or representative of any Party as to the merit, legal liability or value of any claim or claims released herein or any other matter relating thereto. This release is in compromise of disputed claims and indicates no admission of liability.

62.

The Parties covenant and warrant that no promise or inducement has been offered or made except as set forth herein; that all Parties have read this Agreement, understand all of its terms and understand that this Agreement constitutes the entire agreement between the Parties; and that the undersigned are executing this Agreement voluntarily and with full knowledge of its significance.

63.

Each Party to this Agreement represents and acknowledges that its respective attorneys have conducted whatever investigation that was deemed necessary by them; that it has consulted with and received advice from legal counsel of its own choice concerning this Agreement; and that each Party's attorneys are not relying in any way on any statement or representation made by any other party or their attorneys, other than as stated herein, in reaching the decision to enter into this Agreement.

XXX. TAX CONSEQUENCES

64.

No opinion concerning the tax consequences of the Settlement to Plaintiff, the Class, or individual Class Members is being given or will be given by Alliance, Alliance's counsel or Plaintiffs' counsel, nor is any representation or warranty in this regard made by virtue of this Agreement. Each Class Member's tax obligations, including Plaintiff, and the determination thereof, are the sole responsibility of the Class Member, and it is understood that the tax consequences may vary depending upon the particular circumstances of each individual Class Member.

65.

In the event that any federal, state or local taxing authority should rule that taxes are due on this payment, each Class Member shall be responsible for all such taxes. If any federal, state, or local authority, or lienholder makes a claim or institutes a proceeding against Alliance in connection with any amount paid to the Plaintiff, the Class, and/or the Class Members pursuant to this Agreement, Plaintiff, the Class, and/or the Class Member agree to fully and completely indemnify Alliance for all such taxes and for any costs and attorney's fees reasonably associated with defending against the claim or proceeding. Plaintiff, the Class, and/or the Class Member agree to indemnify and hold Alliance harmless from any and all tax consequences, including interest and/or penalties, arising out of the payment made to Plaintiff, the Class, and/or the Class Member as described above.

XXXI. ALLIANCE'S RESERVATION OF RIGHTS

66.

Alliance's execution of this Agreement shall not be construed to release—and Alliance expressly does not intend to release—any claim or cause of action Alliance may make against

any insurer, reinsurer, dealer and/or agent for any cost or expense incurred in connection with this Settlement, including, without limitation, commissions, attorneys' fees and costs.

[SIGNATURES ON THE FOLLOWING PAGE]

SIGNED THIS 22nd DAY OF JUNE, 2011.

By: _____
William B. Hardegree, Counsel for Alliance

By: _____
James W. Hurt, Jr., Counsel for Kendra Trimiar and the Class