



**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA  
BIRMINGHAM DIVISION**

**WASHER & REFRIGERATION SUPPLY CO., )  
INC., and DAVID L. SMITH, on behalf of )  
themselves and all others similarly )  
situated, )**

**Plaintiffs, )**

**v. )**

**PRA GOVERNMENT SERVICES, LLC, d/b/a )  
"Revenue Discovery Systems" and/or "RDS" )  
and/or "Alatax;" et al. )**

**Defendants. )**

**CIVIL ACTION NO.**

**CV-2010-903417.00**

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**ORDER CONDITIONALLY CERTIFYING A SETTLEMENT  
CLASS, PRELIMINARILY APPROVING THE CLASS ACTION  
SETTLEMENT, SETTING PROCEDURES FOR NOTICE, AND  
SCHEDULING A HEARING FOR FINAL APPROVAL**

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This case is now before the Court on Plaintiffs' motion for preliminary approval of a class action settlement agreement (the "Motion"). Having read and considered the Motion and the Class Action Settlement Agreement (and all exhibits annexed thereto) (the "Settlement Agreement"), and Plaintiffs' Motion for Class Certification and evidentiary submission in support thereof, the Court is of the opinion that the Motion should be granted. Accordingly, the Court hereby **FINDS** and **ORDERS** as follows:

1. Plaintiffs filed their motion for class certification together with a supporting brief and evidentiary materials on October 4, 2013. Before Defendants RDS filed its response in opposition to class certification, the parties began settlement discussions. After protracted negotiations, aided by Mediator Bernard Harwood, the parties have finally reached a Class Action Settlement Agreement.

2. The definitions set forth in the Settlement Agreement are hereby incorporated by reference into this Order.

3. Pending the Settlement Fairness Hearing, as defined in Paragraph 7 below, this Court temporarily certifies, pursuant to Ala. R. Civ. P. 23(b)(2) and for settlement purposes only, a Settlement Class as described in Paragraph 3 of the Settlement Agreement.

4. Pending the Settlement Fairness Hearing, as defined in Paragraph 7 below, this Court preliminarily approves the parties' settlement as embodied in the Settlement Agreement as fair, reasonable, and adequate.

5. Rule 23(a) provides that an action may be maintained as a class action if the following four prerequisites are satisfied: (1) the class is so numerous that joinder of all members is impracticable, (2) there are question of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class. Furthermore, one of the three conditions of Rule 23(b) must be met. Here, the Plaintiffs seek certification pursuant to Rule 23(b)(2), which provides that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." In accordance with Rule 23, the Court makes the following preliminary findings:

**Numerosity:** The Settlement Class is so numerous that joinder of all members would be impracticable. While there is no rule as to when the number of plaintiffs is too large to make joinder impracticable, the oft-cited benchmark is that a

class action is presumptively appropriate when the members of the class exceed forty (40) persons. See Korn v. Franchard Corp., 456 F.2d 1206, 1209 (2d Cir. 1972).

The evidence reflects that the Settlement Class consists of thousands of Alabama taxpayers located throughout the State. The Court finds that this amount exceeds the presumptively appropriate threshold for class treatment. Moreover, the Court preliminarily finds that joinder in this case, even if possible, would be impracticable based on consideration of expediency and the inconvenience of trying individual suits.

**Commonality:** With respect to the requirements of Rule 23(a)(2), the Court preliminarily finds that there are questions of law and fact common to the Settlement Class in this case. Recently, the Supreme Court explained that commonality exists when the class members have suffered the "same injury" as the class representatives. Wal-Mart v. Dukes, 131 S. Ct. 2541 (2011). Thus, there is sufficient commonality when the Court can "resolve an issue that is central to the validity of each one of the claims in one stroke." Id.

Here, the named Plaintiffs allege, and the Court preliminarily finds, that the Named Plaintiffs share common questions of law with the Settlement Class. All members of the class were subject to local tax administration and other activities undertaken by RDS pursuant to its contractual relationships with Alabama Taxing Jurisdictions. Some Taxing Jurisdictions enter into contracts known as Tax Revenue Enhancement Agreement Revenue Administration ("RAD"), while other Taxing Jurisdictions do business with RDS under contracts known as Tax Revenue Enhancement Agreements Discovery/Recovery ("DRE"). RADs and DREs contain

certain standard provisions, which are initially drafted by RDS before presentation to the Taxing Jurisdictions.

Under the RAD contract, RDS performs three (3) basic functions: (a) remittance services, which include processing tax returns, receiving remittances, and disbursing proceeds; (b) following up and collecting delinquent remittances; and (c) tax compliance auditing, which involves examining taxpayer records, making tax determinations, entering assessments and collecting the assessments. The DRE contract authorizes RDS to discover/recover business license fees from taxpayers that are not currently being reported to the Taxing Jurisdictions. RDS identifies taxpayers without business licenses, sends letters with business license applications, provides limited assistance to taxpayers to complete the license applications, and receives and disburses monies collected. Essentially, upon entering either contract with RDS, a Taxing Jurisdiction delegates certain of its administrative tax functions to RDS.

The evidence presented by Plaintiffs shows that the class they seek to represent consists of Alabama taxpayers. Furthermore, the complaint alleges only violations of Alabama law based on RDS's contractual relationship with Alabama Taxing Jurisdictions and RDS's business practices within the State. Given that all class members allegedly suffered harm under the RAD or DRE contracts, the Court preliminarily finds that the resolution of key issues of law is applicable to all class members. For example, classwide declaratory and injunctive relief may well be appropriate for common issues such as (1) whether a private entity can be delegated the authority to enter assessments on behalf of a local taxing jurisdiction under Alabama law and, if so, whether employees of RDS are properly appointed; (2) whether a private entity can be delegated the authority to perform administrative reviews and

appeals on behalf of a local taxing jurisdiction under Alabama law and, if so, whether employees of RDS are properly appointed hearing officers; and (3) whether RDS may receive contingency fees when it allegedly determines the amount of taxes owed. The Court preliminarily determines that these issues, to name a few, are common to the Class because (1) each member of the Settlement Class is subject to the foregoing actions taken by RDS; (2) RDS obtained the authority to conduct such activities pursuant to RAD or DRE contracts; (3) aspects of both RAD/DRE contracts and RDS's business activities are alleged by Plaintiffs to violate Alabama law; and (4) Plaintiffs alleged that RDS conducts business uniformly throughout the State pursuant to the separate contracts.

The Court preliminarily finds that it does not appear that individualized factual inquiries would prevent a finding of commonality. While conducting its business practices, RDS was subject to provisions of Alabama law governing private tax collecting and auditing firms that is applicable to all Alabama taxpayers. Therefore, with respect to each RDS contract, members of the Settlement Class are subject to the same activities and seek the same equitable redress under the same Alabama laws. Accordingly, this Court preliminarily finds that it may resolve issues of law common to all members of the Settlement Class by simply applying Alabama law to each challenged business practice.

**Typicality:** Plaintiffs allege, and the Court preliminarily finds, that the claims of the Named Plaintiffs are typical of the claims of the Settlement Class Members they seek to represent. Rule 23(a)(3) requires that claims or defenses of the representative parties be typical of the class as a whole. "The essence of the typicality requirement is that the relationship between the injury to the class representatives

and the conduct affecting the entire class of plaintiffs must be sufficient for the court to properly attribute a collective nature to the challenged conduct." Atlanta Cas. Co. v. Russell, 798 So. 2d 664, 668 (Ala.2001) (quoting Warehouse Home Furnishing Distribs., Inc. v. Whitson, 709 So. 2d 1144, 1149 (Ala. 1997)). The typicality requirement "serve[s] as [a] guidepost for determining whether under the particular circumstances the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." Atlanta Cas. Co., 798 So. 2d at 666-67 (internal quotations omitted).

Here, Plaintiffs assert, and the Court preliminarily finds, that the claims of the Named Representatives do not appear to be dissimilar to those of the Settlement Class. As addressed above in the commonality analysis, all members of the Class are Alabama taxpayers that are challenging business practices and RDS's contracts with the Taxing Jurisdictions. Only Alabama law will apply to each issue. The issues that must be determined for adjudication of each class member's claim must likewise be determined for the Named Plaintiffs. Thus, the claims, and therefore the interests, of the Named Plaintiffs are sufficiently "interrelated" with the claims and interests of the Class members such that the typicality requirement is met.

**Adequacy:** The Plaintiffs assert, and the Court preliminarily finds, that the Named Plaintiffs and Class Counsel will fairly and adequately represent and protect the interests of the Settlement Class members. Rule 23(a)(4) requires that named class plaintiffs will adequately and fairly represent the interest of the class. In order to serve as class representative, the plaintiffs must have a nexus with the class, must have the same interests, and have suffered the same injury as the purported class members. Helms v. First Alabama Bank, N.A., 386 So. 2d 450 (Ala. 1980).

As previously addressed in respect to typicality, the record shows that all Named Plaintiffs are taxpayers that have been and continue to be subject to RDS's actions under the RAD and DRE contracts. Plaintiffs assert, and the Court preliminarily finds, that the Class representatives have been advised of and understand their duties and obligations to the Class, and the Court has not been presented with any evidence of any conflicts of interests between Plaintiffs, Class Members, or Class Counsel. Plaintiffs have retained counsel that the Court finds qualified, experienced, and competent to conduct the litigation at hand. For these reasons, the Court finds that the requirements of Rule 23(a)(4) are met.

**Satisfaction of Rule 23(b)(2):** Plaintiffs assert, and the Court preliminarily finds, that the Defendant has acted or refused to act on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate with respect to the class as a whole. There is evidence before the Court at this stage of the proceedings to determine that RDS conducts business in Alabama based on the RAD and DRE contracts and that RDS's business activities pursuant to those contracts are conducted throughout the state. The enforceability of the contracts and the challenged business practices are issues applicable to the entire Settlement Class. In light of this evidence, final injunctive relief redressing any alleged legal violations or purported improper conduct by RDS is appropriate for the Class as a whole. For these reasons, the requirements of Rule 23(b)(2) are satisfied.

6. For the purpose of this preliminary approval and all matters relating to the Settlement and the Action, and until further order of the Court, Named Plaintiffs Washer & Refrigeration Supply Co., Inc., David L. Smith, Fun Source, Inc. and Hollywood Pool & Spa, Inc. shall be the Class Representatives, and the Named

Plaintiffs' counsel of record are appointed as counsel for the Class. The attorneys and the law firm representing the Class are Charles A. McCallum and R. Brent Irby of McCallum, Hoaglund, Cook & Irby, LLP, 905 Montgomery Highway, Suite 201, Vestavia Hills, Alabama 35216. For purposes of facilitating more efficient communication, R. Brent Irby is hereby appointed as Coordinating Counsel for the Class. He shall distribute such papers as are served on him in this capacity to other Plaintiffs' Counsel as he believes appropriate.

7. A hearing (the "Settlement Fairness Hearing") shall be held on **Friday, April 10, 2015 at 10:00 AM** in Courtroom 330 [Hon. Robert S. Vance] of the Jefferson County Circuit Court, 716 North Richard Arrington Jr. Boulevard, Birmingham, Alabama 35203, to determine whether:

- (a) The Settlement Class shall be finally certified pursuant to Ala. R. Civ. P. 23(b)(2);
- (b) The proposed settlement, as embodied in the Settlement Agreement, is fair, reasonable, and adequate and should be approved by the Court;
- (c) The Class Representatives and Class Counsel have adequately represented and protected the interests of the Settlement Class Members;
- (d) The Class Representatives and Class Counsel should receive compensation for their services (and, if so, in what amount); and
- (e) A Final Judgment in the form annexed to the Settlement Agreement should be entered.

8. Pursuant to the terms of Paragraph 5 of the Settlement Agreement, RDS is hereby directed to prepare and provide to the Settlement Administrator the Class Member List within forty-five (45) calendar days of the entry of this Order. Within thirty (30) calendar days of the receipt of the Class Member List, pursuant to the



procedures detailed in the Agreement, RDS shall cause the Settlement Administrator to provide notice of the Settlement Fairness Hearing to all Class Members, as follows:

- (a) By e-mailing and/or mailing a copy of the Notice of Pendency of Class Action, Proposed Settlement and Hearing (the "Notice"), substantially in the form attached to the Settlement Agreement as Exhibits "C" and "D";
- (b) By causing a Publication Notice to be published on one occasion, after the initial mailing of the Notices, substantially in the form attached to the Settlement Agreement as Exhibit "E", in newspapers with circulations in Huntsville, Birmingham, Montgomery and Mobile, Alabama in the size and manner described in the Settlement Agreement.
- (c) By undertaking such further efforts at notice as are required by the Settlement Agreement.

9. The reasonable costs and expenses of printing, preparing and mailing the Notice, the costs of publishing the Publication Notice, the reasonable costs and expenses of the Settlement Administrator, and other related administration expenses shall be borne by RDS as set forth in Paragraph 5 of the Settlement Agreement.

10. Prior to the hearing described in Paragraph 7 above, RDS's Counsel shall serve and file a sworn statement of the Settlement Administrator evidencing compliance with the provisions of this Order concerning the mailing of the Notice and concerning the publication of the Publication Notice.

11. The Court approves, in form and content as well as the methods of dissemination, the form of notices attached as Exhibits "C", "D", and "E" to the Settlement Agreement. The Court finds that the mailing and publication of such notices meets the requirements of Ala. R. Civ. P. 23 and due process. Notice in compliance with the provisions set forth in Paragraph 7 above and in the Settlement Agreement is also found to be the best notice practicable under the circumstances.

12. To effectuate the Settlement and the Notices provided for herein, the Settlement Administrator shall lease and maintain a post office box of adequate size. All notices sent to the Class shall designate that post office box as the return address for all purposes of communicating with the Settlement Administrator. The Settlement Administrator shall be responsible to keep and maintain all written communications from Class Members or any other person in response to Class Notice or Publication Notice until administration is complete or pursuant to further order of the Court. All written communications received from Class Members and all written responses to inquiries by Class Members relating to the Settlement Agreement shall be available at all reasonable times for inspection and copying by RDS's Counsel and Class Counsel, subject to further order of the Court if issues of privilege or confidentiality arise.

13. All other events contemplated under the Settlement Agreement to occur after this Order and before the Hearing described in Paragraph 7 shall be governed by the Settlement Agreement, to the extent not inconsistent herewith.

14. All memoranda in support of the Settlement, as well as all petitions for attorneys' fees and reimbursement of expenses by Plaintiffs' counsel, shall be filed with the Clerk of the Court on or before March 31, 2015.

15. Any Class Member may file an objection, if they have any, why this case should not be certified as a class action and/or why the proposed settlement should not be approved by the Court. A Class Member may also object to the amount of attorneys' fees requested or to the payment of any incentive awards to the Named Plaintiffs. This right to object, however, shall be deemed waived (and the objection will not be heard) unless the Class Member (a) filed a written statement of the objection, and (b) delivers by hand or mails copies of the objection to the Settlement

Administrator, Counsel for RDS, and Class Counsel. The procedures and timing for filing objections are set forth in Paragraph 10 of the Settlement Agreement. This information must be set forth in the various forms of Class Notice that will be disseminated to the Settlement Class Members.

16. Any Class Member may also appear at the Settlement Fairness Hearing, in person or by counsel, if a Notice of Intent to Appear is filed and served as hereinafter provided in the Notices, and will be heard to the extent allowed by the Court in support of, or in opposition to, the fairness, reasonableness, and adequacy of the proposed Settlement, the requested award of attorneys' fees, any incentive awards, and reimbursement of expenses. However, no person shall be permitted to intervene or otherwise appear and be heard in opposition to the proposed settlement and, if approved, the judgment entered thereon, or to the requested award of attorneys' fees and reimbursement of expenses, and no papers or briefs submitted by any person shall be accepted or considered by the Court unless that person complies with the procedures set forth in Paragraph 10 of the Settlement Agreement. The procedures in Paragraph 10 must be set forth in the mail notice and must be generally described in the publication notice.

17. Pending the Settlement Fairness Hearing, all proceedings in connection with prosecution of this Action are hereby stayed, except those proceedings necessary or appropriate in connection with effectuating this Order and the Settlement, and all Settlement Class members are barred and enjoined from commencing or prosecuting, either directly, representatively, or in any capacity, any of the "Released Claims" against the Defendants or the Released Persons as those terms are defined in the Settlement Agreement.

18. This Order, the Settlement Agreement, and all negotiations, papers, writings, statements and/or proceedings in connection with the Settlement set forth therein, whether or not the Settlement is consummated or approved or becomes final, shall not be construed or invoked by anyone as an admission or evidence of liability, wrongdoing, or damages on the part of any person or entity, including, without limitation, Defendants or any Released Persons, or as an admission or evidence as to the truth or validity of any facts or claims asserted in this Action or in any similar complaints or other pleadings filed against Defendants or Released Persons. Neither the Settlement Agreement nor any orders or documents contemplated therein or related thereto (including this Order), nor any of the terms thereof, shall be offered or received in evidence in this Action as an admission of damages, liability, or wrongdoing on the part of Defendants or Released Persons, or in any other proceeding, except by a party seeking to enforce the terms hereof (including by any Released Persons seeking to enforce the Release) or to assert any argument or claim of collateral estoppel, res judicata, or like contention of fact, claim, or issue preclusion.

19. In the event the Settlement Agreement is not approved by the Court or the Final Approval Order and Judgment approving the settlement provided for therein is not entered or does not become final pursuant to the terms of the Agreement, or if for any reason the Settlement is terminated before the Final Approval, then such Settlement shall become null and void and of no further force and effect (except as otherwise expressly provided therein), and shall not be used or referred to for any purpose whatsoever in any action or proceeding except as otherwise set forth in the Agreement. In such event, the Settlement and all negotiations, orders and proceedings relating thereto shall be withdrawn without prejudice as to the rights,

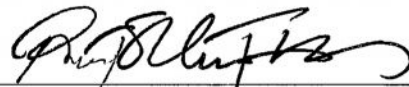
claims or defenses of any and all parties thereto, all of whom shall be restored to their respective positions as of the date immediately preceding the date of the Settlement Agreement. And, this Order Conditionally Certifying the Settlement Class and Preliminarily Approving the Class Action Settlement shall automatically be vacated, and Defendant RDS may thereafter fully contest certification of any class as if no Settlement Class had ever been certified. This Order will be of no further force and effect.

20. The Court hereby reserves the right to:

- (a) To approve the Settlement with such modifications as may be agreed to by counsel for the parties thereto consistent with the terms thereof, without further notice to the Settlement Class; and
- (b) To adjourn and to reschedule the Settlement Fairness Hearing, without further notice to the Settlement Class other than by oral announcement thereof at the time and place for which such Hearing is hereby being scheduled or any adjourned date thereof.

21. RDS is hereby AUTHORIZED to retain Dahl Administration of Minneapolis, Minnesota as the Settlement Administrator.

DATED: November 5, 2014.



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ROBERT S. VANCE, JR.  
JEFFERSON COUNTY CIRCUIT COURT