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CIRCUIT COURT OF  
JEFFERSON COUNTY, ALABAMA  
ANNE-MARIE ADAMS, CLERK

# Exhibit 1

## **CLASS ACTION SETTLEMENT AGREEMENT**

This Agreement is between Washer & Refrigeration Supply Co., Inc., David L. Smith, Fun Source, Inc., and Hollywood Pool & Spa, Inc. (collectively, the "Named Plaintiffs"), on their own behalf and on behalf of a putative class of taxpayers as described below, on the one hand, and PRA Government Services, LLC ("RDS" or the "Defendant"), on the other hand.

### **RECITALS**

**WHEREAS**, Named Plaintiff Washer & Refrigeration Supply Co., Inc. and David L. Smith (collectively referred to as "Washer") commenced this class action lawsuit (the "Action") on behalf of certain taxpayers against RDS and certain other defendants on September 17, 2010;

**WHEREAS**, all original defendants other than RDS were voluntarily dismissed as parties on December 17, 2010 and June 22, 2011;

**WHEREAS**, Named Plaintiffs Fun Source, Inc. ("Fun Source") and Hollywood Pool & Spa, Inc. ("Hollywood") were added as additional plaintiffs on August 11, 2011;

**WHEREAS**, the City of Warrior was added as an additional defendant on January 31, 2011;

**WHEREAS**, extensive motion practice and discovery was conducted by the parties on issues pertaining to class certification and the merits;

**WHEREAS**, counsel for the Named Plaintiffs also conducted extensive discovery about RDS's practices in connection with a separate lawsuit previously filed in Montgomery County Circuit Court;

**WHEREAS**, contested issues of both law and fact exist concerning the allegations, claims and defenses of the parties in this Action;

**WHEREAS**, the parties engaged in three sessions of extensive mediation with retired Alabama Supreme Court Justice Bernard Harwood;

**WHEREAS**, the parties through counsel have engaged in additional negotiations on their own over several months concerning the terms and conditions of a proposed classwide settlement;

**WHEREAS**, counsel for the Named Plaintiffs and the proposed Settlement Class (i) have over the past six years of litigation with RDS conducted a thorough investigation into the facts and law with respect to the Action; (ii) have fully analyzed and evaluated the merits of each party's contentions as it affects all parties, including all members of the Settlement Class, as defined below; and (iii) after taking into account the foregoing along with the risks of litigation, and the likelihood that the Action, if not settled now, will continue to be protracted and expensive, have concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate and that a settlement is in the best interest of the Settlement Class;

**WHEREAS**, RDS expressly denies liability, but nevertheless desires to settle the Action finally on the terms and conditions set forth herein for the purposes of avoiding the burden, expense, and uncertainty of litigation, with the goal of putting to rest the controversies caused by the Action;

**WHEREAS**, the parties have engaged in extensive arms-length settlement negotiations relating to the Action, free of any collusion;

**NOW THEREFORE**, in consideration of the covenants and agreements set forth herein, the Named Plaintiffs, on behalf of themselves and the Settlement Class, and RDS jointly agree to the settlement of the Action, subject to preliminary and final Court approval, under the following terms and conditions:

**I.**

**DEFINITIONS**

1.01 "Action" means Washer & Refrigeration Supply Co., Inc. and David L. Smith, et al. v. PRA Government Services, LLC, et al., Civil Action No. 2010-903417.00 presently pending in the Jefferson County Circuit Court.

1.02 "Agreement" or "Settlement Agreement" means this Class Action Settlement Agreement.

1.03 "Alabama Taxing Jurisdictions" or "Taxing Jurisdictions" shall mean all counties, municipalities, or towns that had contracts with RDS at any time during the period between January 1, 2007 and the date of the Court's preliminary approval order.

1.04 "Class Members" means the members of the Settlement Class.

1.05 "Class Member List" means the list identifying the Class Members established in accordance with Paragraphs 3 and 5 herein.

1.06 "Class Notice" means the notices attached hereto as Exhibits "C" and "D" to be e-mailed or mailed to each Class Member, informing them of this Agreement and proposed Settlement, their right to object to the proposed Settlement as well as the date of the Fairness Hearing.

1.07 "Class Notice Period" means the period of July 1, 2007 through the date of the Court's preliminary approval order.

1.08 "Class Representative" means Washer & Refrigeration Supply Company, Inc., David L. Smith, Fun Source, Inc., and Hollywood Pool & Spa, Inc., or such other entity or person that the Court may hereafter determine to be the proper representative of the Settlement class.

1.09 "Court" means the Jefferson County Circuit Court, the Hon. Robert S. Vance, Jr. presiding.

1.10 "Defendant" or "RDS" means PRA Government Services, LLC, as well as any of its successors, assigns, parents, affiliates, subsidiaries, and divisions.

1.11 "Fairness Hearing" means the hearing to be held to determine whether the Final Approval Order should be entered.

1.12 "Final Approval" means the last date on which all of the following conditions have occurred: (a) entry of the Final Approval Order and Judgment by the circuit court; and (b) expiration of the time for seeking appellate review from such Final Approval Order and Judgment, or, if appellate review is sought, after the Final Approval Order and Judgment has been affirmed in its entirety by the Court of last resort in which appellate review is sought and such affirmance is no longer subject to further appeal, rehearing, petition for certiorari, or other review. It is agreed that in determining the time for appeal, further appeal, or review, the provisions of Rule 60, Ala. R. Civ. P., shall not be taken into account.

1.13 "Final Approval Date" or "Effective Date" means the next business day after the conditions of Final Approval occur.

1.14 "Final Approval Order" or "Final Order and Judgment Approving Class Action Settlement" means the order entered by the Court finally approving the terms and conditions of this Agreement in substantially the same form as the proposed order attached hereto as Exhibit "F."

1.15 "Local Taxes" shall mean sales, use, rental, business license, occupational, and lodging taxes levied by Alabama Taxing Jurisdictions and administered by RDS.

1.16 "Parties" means Washer & Refrigeration Supply Co., Inc., David L. Smith, Fun Source, Inc., Hollywood Pool & Spa, Inc., the Settlement Class, and RDS.

1.17 "Plaintiffs' Counsel" or "Class Counsel" means Charles A. McCallum, III and R. Brent Irby of the firm of McCallum, Hoaglund, Cook & Irby L.L.P.

1.18 "Preliminary Approval Order" means the order or orders of the Court preliminarily approving the terms and conditions of this Agreement in substantially the same form as the proposed order attached hereto as Exhibit "B."

1.19 "Preliminary Approval Date" means the date on which the order or orders constituting Preliminary Approval are entered by the Court.

1.20 "Publication Notice" means the notice, substantially in the form attached hereto as Exhibit "E," published by the Settlement Administrator in

newspapers having a circulation in Huntsville, Birmingham, Montgomery, and Mobile.

1.21 "Settlement" means the resolution of the disputes between Washer & Refrigeration Supply Co., Inc., David L. Smith, Fun Source, Inc., and Hollywood Pool & Spa, Inc., the Settlement Class, and RDS in accordance with the terms and conditions contained herein.

1.22 "Settlement Administrator" means Dahl Administration, or other experienced Class Action Administration firm retained by RDS and approved by Class Counsel.

1.23 "Settlement Class" means all persons who are within the class definition contained in the class notice, entered by the Court on \_\_\_\_\_, or have not been dismissed from the case by Court order. The class definition appears in Paragraph 3 of this Settlement Agreement.

1.24 As used herein, all reference to persons, entities, or Class Members shall include, and be construed to include, that Class Member's bankruptcy estate, or any receivers, transferees, successors or assigns of such Class Members and their claims.

1.25 As used herein, the plural of any defined term includes the singular thereof and vice versa, except where the context requires otherwise.

## II.

### **STIPULATION FOR CERTIFICATION OF A SETTLEMENT CLASS**

2.01. The parties hereby stipulate to the certification of a Settlement Class under ALA. R. CIV. P. 23(b)(2): Non opt-out Class.

2.02 RDS's consent to certification is for settlement purposes only.

2.03 If a Final Order approving the class settlement is not obtained, or if the Final Order is reversed on appeal, or if appealed it is not affirmed in all respects, then the Settlement Agreement will be null and void for all purposes, and the case will return to the position it was in immediately prior to the filing of the Plaintiffs' Motion. No inference can be raised that a contested class certification is appropriate due to the Plaintiffs' filing of a motion for Certification of a Settlement Class.

### **III.**

#### **DEFINITION OF THE SETTLEMENT CLASS**

3.01 The Settlement Class shall consist of all taxpayers who are shown in RDS's computer records or in the records of the Alabama Taxing Jurisdictions as either residing in or doing business in Alabama from the time period between January 1, 2007 through the date of the Preliminary Approval order. To further qualify as a Settlement Class Member, such taxpayers (a) must be subject to Local Taxes that are administered or collected by or through RDS or its agents on behalf of local Alabama Taxing Jurisdictions that have contracted with RDS; or (b) must have received from RDS a notice that the taxpayer may owe business license taxes to one or more of the Alabama Taxing Jurisdictions represented by RDS; or (c) must have received notice from RDS that they were selected for an audit (or who were actually audited by RDS through an examination of those taxpayers' books and records). Additionally, the Settlement Class will include any person who has had a "responsible person" lien placed on their real property by RDS, even if



outside the class period. These "persons" and "taxpayers" will be referred to as the Settlement Class Members.

3.02 Excluded from the Settlement Class are those persons or entities (a) who had judicial claims against RDS pending before either a federal or state court (or were involved in an administrative appeal of a final assessment of taxes) as of the date of Preliminary Approval; (b) who previously released all claims against RDS; (c) who had previously settled their claims independent of any Settlement Agreement reached in this case; or (d) who are agents, employees, members, officers, or directors of RDS.

#### IV.

#### **PRELIMINARY APPROVAL AND CERTIFICATION OF SETTLEMENT CLASS**

4.01 Promptly after execution of this Agreement, but in no event later than seven (7) business days after the execution of this Agreement, one or more of the Parties shall submit this Agreement to the Court, together with a motion requesting that the Court enter an Order (the "Preliminary Approval Order") granting preliminary approval of the Settlement. A true and correct copy of Plaintiffs' Motion seeking conditional certification and preliminary approval of a Settlement Class is attached hereto as Exhibit "A." The Preliminary Approval Order should:

(a) Incorporate the terms of an Order maintaining that this Action may continue to proceed as a class action pursuant to Rule 23(b)(2), Ala. R. Civ. P., with the Settlement Class as defined in Paragraph 3 of this Settlement Agreement;

(b) Find that Plaintiffs, Washer & Refrigeration Supply Co., Inc., David L. Smith, Fun Source, Inc., and Hollywood Pool & Spa, Inc., as Class Representatives, and, the McCallum, Hoaglund, Cook and Irby firm as Class Counsel, have thus far fairly and adequately represented and protected the interests of the Class Members;

(c) Find on a preliminary basis that the Settlement set forth in this Settlement Agreement is fair, adequate, and reasonable to the Class Members;

(d) Stay all proceedings in this Action, except as may be necessary to implement this Agreement;

(f) Provide for a fairness hearing, on a date no earlier than one hundred and thirty-five (135) days from the date of entry of the Preliminary Approval Order, to determine the fairness, adequacy, and reasonableness of the Settlement set forth in this Agreement;

(g) Find that the method of identifying Class Members, as well as the timing, form, content, and method of disseminating the proposed Individual Notices and Publication Notice to the Class Members, as provided for herein, satisfy the requirements of due process and Rule 23, Ala. R. Civ. P.;

(h) Set a deadline, not less than thirty (30) days prior to the date for the Fairness Hearing, for submission of any objections to this Settlement as provided in Paragraph 10.

(i) Pending a final determination of whether the Settlement Agreement should be approved, enjoin and prohibit the Named Plaintiffs and all Class Members from commencing or prosecuting any action, either directly or

indirectly, or in any capacity asserting any claims against RDS, which are proposed to be released pursuant to this Agreement;

(j) Provide that, in the event the proposed Settlement set forth in this Agreement is not approved by the Court, or for any reason does not become final, or in the event that this Agreement becomes null and void pursuant to its terms, then this Agreement and all orders entered in connection therewith shall become null and void, shall be of no further force and effect, and shall not be used or referred to for any purposes whatsoever in this Action or in any other case or controversy; and that in such an event, this Agreement and all negotiations and proceedings related thereto shall be deemed to be without prejudice to the rights of any and all Parties hereto, who shall be restored to their respective litigation positions as of the date immediately preceding the Settlement Agreement.

4.02. A proposed Preliminary Approval Order, which the Parties acknowledge satisfies the requirements of this Paragraph 4.01, is attached to this Settlement Agreement as Exhibit "B." In the event that the Court does not enter the Preliminary Approval Order described herein, or decides to do so only with modifications, then this entire Agreement shall become null and void, unless the Parties hereto agree in writing, within seven (7) days of the Court's modification(s), to proceed with this Agreement as modified.

## V.

### **NOTICE TO CLASS MEMBERS AND DUTIES OF SETTLEMENT ADMINISTRATOR**

5.01 The parties will provide to the Court a Settlement Notice to the Settlement Class within forty-five (45) days from entry of the Preliminary Approval Order. The RDS intends to employ Dahl Administration as an independent, third-

party Settlement Administrator to provide certain administrative services on the parties' behalf regarding this Settlement. Except as specifically provided herein, the Named Plaintiffs and Class Counsel shall have no duties or responsibilities for the administration of the Settlement. As a part of its obligations, the Settlement Administrator shall provide the following services on behalf of the Settlement Class:

(a) The Settlement Administrator shall obtain from RDS a list Class Members as defined in Paragraph 3, as well as every customer who is excluded from the Settlement Class. Prior to submitting these lists to the Settlement Administrator, RDS will take appropriate measures to ensure that the e-mail and regular mail address provided for each Settlement Class Member is the up-to-date e-mail and mailing address in RDS's records. RDS shall submit an affidavit(s) (i) identifying the efforts it performed to compile the list of Class Members and to update their addresses, and (ii) stating that, to the best of RDS's knowledge, the list of Class Members is accurate and complete, all for the purpose of ultimately obtaining the Court's approval of such efforts as being reasonable, consistent with the requirements of Rule 23, Ala. R. Civ. P., and in compliance with due process. Class Counsel and the Settlement Administrator shall bear no responsibility in verifying the accuracy or completeness of the information in the Class Member List and may rely exclusively on the information contained in the list in sending the Class Notice; provided, however, that prior to mailing the Class Notices, the Settlement Administrator will further update the addresses by sending the Class Member List to a National Change of Address vendor ("NCOA");

(b) Within forty-five (45) days after entry of a preliminary approval order, RDS shall provide to the Settlement Administrator the list of all Class Members;

(c) The Settlement Administrator, subject to court approval, shall then send Settlement Notices by e-mail to those entities or persons for whom RDS provided valid e-mail addresses. For all other Settlement Class Members, the Settlement Administrator will send a post card directing the recipient to a web-site that contains an explicit description of the settlement terms. This direct e-mail notice shall be disseminated at least sixty (60) days before the date set by the Court for the Fairness Hearing.

(d) The Settlement Administrator, subject to court approval, shall also publish a summary form of the Class Notice (not to exceed one-third of a page) in newspapers circulated in Huntsville, Birmingham, Montgomery and Mobile, Alabama. This publication notice will be published on one occasion at least sixty (60) days before the date set by the Court for the Fairness Hearing;

(e) The Settlement Administrator shall receive written objections and other correspondence from Class Members and shall provide copies of such writings to Class Counsel and Counsel for RDS on a regular and timely basis;<sup>1</sup>

(f) The Settlement Administrator shall provide to Class Counsel and Counsel for RDS an affidavit which sets forth all steps performed regarding notification to the Class Members, as well as expenses incurred, and shall provide supporting documentation, evidence, and/or testimony relating thereto to Class

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<sup>1</sup> The Settlement Administrator shall immediately notify Class Counsel and Counsel for RDS of any and all objections to the Settlement.

Counsel no later than ten (10) days prior to the date scheduled for the Fairness Hearing;

(g) For a period of ninety (90) days after the Final Approval Date, the Settlement Administrator shall maintain a post office address to receive any inquiries with respect to the Settlement; and

(h) All costs associated with, incurred by, or charged by the Settlement Administrator shall be paid by RDS. Class Counsel will pay for their own costs associated with monitoring the dissemination of the Class Notices and with administering any and all Settlement terms.

## **VI.**

### **FAIRNESS HEARING**

6.01 At the hearing on the fairness, adequacy, and reasonableness of the Settlement set forth herein, the Parties shall request the Court to enter an Order (the "Final Order and Judgment") granting final approval of this Settlement Agreement, entering a judgment thereon, and dismissing with prejudice this Action against all Defendants. In order to satisfy the requirements of this Settlement Agreement, the Final Order and Judgment must include provisions which:

(a) Certify that this Action was properly maintained as a Class Action pursuant to Rule 23(b)(2), Ala. R. Civ. P., with the Settlement Class as defined in Paragraph 3 of this Settlement Agreement;

(b) Find that Washer & Refrigeration Supply Co., Inc., David L. Smith, Fun Source, Inc., and Hollywood Pool & Spa, Inc., as Class

Representatives, and Class Counsel have fairly and adequately represented and protected the interests of the Settlement Class Members;

(c) Find that the method of identifying Class Members, as well as the timing, form, content, and method of disseminating the proposed Individual Notice and Publication Notice to the Class Members, satisfied the requirements of both Rule 23, Ala. R. Civ. P., and due process, and that the Court has jurisdiction over the Class;

(d) Find that the Settlement Agreement is fair, adequate, and reasonable to the Class Members and conclude that the Agreement should be approved;

(e) Order that Plaintiffs Washer & Refrigeration Supply Co. Inc., David L. Smith, Fun Source, Inc. and Hollywood Pool & Spa, Inc., individually and as Class Representatives, as well as all Settlement Class Members, have released Defendants in accordance with the terms and conditions set forth in Paragraph 9 of this Agreement;

(f) Dismiss on the merits and with prejudice all claims in this Action against Defendants, and permanently enjoin the Named Plaintiffs and all Settlement Class Members from bringing or prosecuting any claim or action that is released in Paragraph 9 of this Settlement Agreement;

(g) Approve an award of attorneys' fees (as well as all reasonable and necessary costs and litigation expenses) to Class Counsel, payable by RDS;

(h) Determine whether an incentive award to Washer & Refrigeration Supply Co. Inc., Fun Source, Inc., and Hollywood Pool & Spa, Inc.,

for their services in the representation of the Settlement Class, should be paid and if so, the amount of such an award;

(i) Retain jurisdiction over any and all matters and issues relating to the interpretation, administration, implementation, effectuation, and enforcement of this Settlement Agreement and Final Order and Judgment, specifically including, but not limited to, the allocation, payment and distribution of Class Counsels' attorneys' fees and expenses, fees payable by Class Counsel to any referring attorneys, and the Class Representative's incentive award payments.

6.02. A copy of an agreed form of Final Judgment is attached hereto as Exhibit "F." At or before the Fairness Hearing, Class Counsel and RDS shall present sufficient evidence to support the entry of the order set forth in Exhibit "F." Class Counsel shall also present such evidence as they deem appropriate to support any award of attorneys' fees and costs, and such evidence as they deem appropriate to support any "incentive award" to the Named Plaintiffs.

## **VII.**

### **FINALITY OF THIS AGREEMENT**

7.01. This Agreement shall become final on the Effective Date of the Settlement Agreement as defined in Paragraphs 1.12 and 1.13. In the event that the Court refuses to approve this Agreement, or if the Final Order and Judgment described in Paragraphs 1.12 and 1.14 herein is not entered, or if the Court's approval of this Agreement or such Final Order and Judgment is vacated, reversed or modified on appeal, then this entire Agreement shall become null and void, unless the Parties hereto agree in writing to proceed with this Agreement with modifications thereto.



## **VIII.**

### **DEFINITION OF THE CLASS CLAIMS**

8.01 For the purpose of this settlement, the claims of the Named Plaintiffs and the Settlement Class shall consist of all claims asserted by the Named Plaintiffs in the Second Amended and Restated Class Action Complaint, filed on August 11, 2011.

## **IX.**

### **RELEASE OF CLAIMS**

9.01 Entry of the Final Order and Judgment on this Settlement shall constitute and have the full force and effect of a release by Plaintiffs Washer & Refrigeration Supply Co., Inc., David L. Smith, Fun Source, Inc., Hollywood Pool and Spa, Inc. and all Settlement Class Members of the Alabama Taxing Jurisdictions and RDS, together with its past and present members, divisions, subsidiaries, parent corporations, sister companies or corporations, affiliated corporations or companies, stockholders, partners, directors, officers, agents, employees, attorneys, representatives, trustees, insurers, instrumentalities, assignors, assignees, transferors, transferees, and affiliates (the "RDS Released Parties") from any and all Class Claims as defined in Paragraph 8.01. The Action shall also be dismissed with prejudice.

9.02 The Parties hereto agree that the Named Plaintiffs and all Settlement Class Members are permanently enjoined from bringing and prosecuting any claim or action against RDS and any other party released under Paragraph 9.01 for any claims referenced above.

**X.**

**PROCEDURES FOR PRESENTING OBJECTIONS**

10.01 Settlement Class Members shall have the right to appear and show cause, 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. The right of a Class Member to object shall be deemed waived, however, and the objections shall not be heard, unless he, she, or it:

(a) files a written statement of any objection he, she, or it may have to the settlement; and

(b) delivers by hand or mails copies of the same by first class U.S. mail to the Settlement Administrator, Counsel for RDS, and Class Counsel.

10.02 The written statement of objection must be signed by the Settlement Class Member making such objection and must include:

(a) the Settlement Class Member's name and address along with the name, telephone number, and address of a contact person who is knowledgeable about the objection;

(b) the title and case number of this Action;

(c) a statement that the objection is submitted in response to a Notice of Settlement in the Action; and

(d) a brief statement of the substance and grounds for the objection.

10.03 All such written statements of objectors must be received by the Court, the Settlement Administrator, Counsel for RDS, and Class Counsel no later than thirty (30) calendar days before the date set for the hearing to determine the

fairness of the proposed settlement, which date shall be set forth in the Notice to be provided to Class Members pursuant to Paragraph 5 hereof. Objections filed and served in accordance with the foregoing procedure may be considered by the Court regardless of whether the objecting Settlement Class Member appears personally or by counsel at the hearing to argue the same.

10.04 Any Settlement Class Member may appear at the Fairness Hearing and request an opportunity to be heard, but only if such person or entity has filed and served a Notice of Intent to Appear and Present Objections. This Notice of Intent to Appear must be filed and served in the same manner and within the same 30-day period referenced above for objections.

## **XI.**

### **SETTLEMENT CLASS RELIEF**

11.01 In return for the release and dismissal of the Class Claims, the Named Plaintiffs and the Settlement Class shall obtain the relief described below. The sole relief obtained by the class as settlement of this Action shall be non-monetary relief and shall be implemented pursuant to the Named Plaintiffs' claims for declaratory and injunctive relief. The relief shall consist exclusively of changes to RDS's business practices. The settlement relief shall be embodied in the form of a Final Judgment entered by the Court.

11.02 Specifically, RDS agrees to the following modifications or supplementations of its business practices, or as the case may be, corrective measures undertaken to resolve situations where RDS's actions were not in conformance with its own existing policies, procedures, or established practices:

**(a) Changes To Assessment Procedures: Notification To The Taxing Jurisdictions Prior To Entry of Assessments.**

11.03. RDS already has procedures in place that allow the Taxing Jurisdictions to monitor RDS's audit and assessment projects. RDS maintains a client reporting portal on its computer system, which houses on-line reports that are specific to each Taxing Jurisdiction and reflect the current daily status of ongoing and unresolved audit or assessment projects. These reports are currently available to the Taxing Jurisdictions on a continuous basis, and they are updated simultaneously with RDS's in-house software systems. RDS currently provides personal on-site demonstration programs and webinars to ensure that the Taxing Jurisdictions know how to make use of the client reporting portal.

11.04. Notwithstanding these measures that provide its clients with immediate access to the situations involving RDS's audits and assessments, RDS agrees to provide each of the Taxing Jurisdictions with e-mail notification on a monthly basis containing a summary of the preliminary and/or final assessments entered against taxpayers.

**(b) Changes To Responsible Party Assessments/Research Of Prior Tax Liens To Determine If There Is Non-Compliance With RDS's Protocol For Filing Liens On Property Owned By Responsible Persons.**

11.05. RDS currently has adopted, and maintains in effect, the procedures and provisions promulgated by the Alabama Department of Revenue pursuant to the Alabama Administrative Procedure Act regarding assessments against "responsible persons" under ALA. CODE §§ 40-29-72 and 40-29-73. See Ala. Admin. Code r. 810-12-1-.01 and .02. RDS agrees to follow these provisions to ensure that notice will be provided to any proposed "responsible person," which

will allow the individual to rebut the presumption that they are indeed a "responsible person." This notice and opportunity to be heard will be given prior to the entry of a preliminary assessment against that individual.

11.06. Additionally, RDS will research all tax liens entered on "responsible persons" to determine whether the protocol called for in the ADOR regulation has been followed. If any such improper liens are discovered, they will be removed at RDS's expense within five (5) business days of their discovery. RDS has already removed the lien on Joel Laird's property at its expense.

**(c) Changes To Audit Selection Criteria, Voluntary Disclosure To Taxpayers Of The Criteria Leading To Their Selection For Audit, Discontinuance Of "Projected Findings" As An Audit Criteria, And Elimination Of "3 to 1" Ratios.**

11.07. RDS agrees to inform taxpayers of the reasons why they were selected for an audit. This information will be disclosed in the initial letter that is sent to a taxpayer advising them that RDS intends to examine the taxpayer's books and records.

11.08. RDS already has discontinued all practices involving "projected findings" as a valid audit selection criteria. RDS will agree to eliminate in the future any references and/or notations in its Project I.D. Request Form of "projected findings" in an audit.

11.09. RDS denies it had an expected ratio or goal of "3 to 1" for its audits (meaning 3 dollars collected for Taxing Jurisdictions for every dollar billed to them). Nevertheless, RDS agrees to remove from its web-site and from any marketing materials any reference to historical statistics showing that RDS's audit collections are tied in any way to the amount of billings to its clients.

**(d) Changes To Practices Relating To Jurisdictions That Decide To "Opt-Out" Of An Audit.**

11.10. RDS agrees to send a letter notifying each taxpayer of the Taxing Jurisdictions which opted out of the audit, as well as a separate letter to each Taxing Jurisdiction that opts out of an audit informing such jurisdictions that they will not participate in any recovery against the taxpayer, even if RDS's audit determines that taxes were owed to the Taxing Jurisdiction(s) which opted out. Copies of the language to be used in the proposed letters are attached hereto as Exs. "G" and "H." Further, RDS agrees that it will not conduct a further audit of a taxpayer on behalf of a Taxing Jurisdiction that opts out of an audit within the time period prescribed in ALA. CODE § 40-2A-13.

**(e) Changes To And Supplements RDS's Fidelity Bond Coverage.**

11.11. In addition to the Commercial Crimes/fidelity bond coverage that it already has in place, RDS will secure a surety bond that will insure payment of any judgment obtained by a taxpayer against RDS or any Taxing Jurisdiction (up to \$5,000) based on injuries suffered by any taxpayer for the types of conduct covered under RDS's Commercial Crimes policy now in effect.

**(f) Changes In RDS's Discovery/Recovery Practices.**

11.13. RDS agrees to operate the Discovery/Recovery service ("DRE") in conformance with all statutory provisions prescribed by Alabama law. RDS agrees that they will make every effort to maintain (and strive to improve upon) the separation that currently exists between the audit department (which is involved in examination of taxpayers' books and records, determinations of tax, and the entry of assessments) and any contingency based business license collections

activities within the DRE department. The employees of DRE shall not have any access to the internal books and records of any taxpayers. These employees will not be involved in the waiver of any interest or penalties set by the provisions of the various Taxing Jurisdictions' Business License Codes. These employees will have no involvement in the determination of a taxpayer's gross receipts to be used in arriving at the amount of license taxes owed. These employees will not help taxpayers in completing the form unless specifically asked to do so by a taxpayer. These employees will not share information about taxpayers with the other RDS employees who conduct examinations of taxpayers' books and records. Moreover, the DRE license applications/notices will no longer request or require gross receipt numbers from taxpayers who owe or are subject to a flat-rate business license tax. Any disputes over the proper classification of a taxpayer under the applicable Business License Code, over the proper amounts of gross receipts, or over whether interest or penalties may be waived will be presented to and determined by the appropriate Taxing Jurisdiction. Nothing in this provision, however, will limit or restrict a Taxing Jurisdiction's right to consult with RDS on these disputed matters. DRE personnel will not be involved in any of the assessment procedures referenced in any Recovery/Discovery contracts between RDS and any Taxing Jurisdictions.

**(g) Changes In RDS's Practices Regarding Creation Of A "Taxpayer's Representative."**

11.14. RDS agrees to employ at its expense an independent "taxpayer representative" to serve in a role similar to the role played by the Taxpayer Advocate for the Alabama Department of Revenue. Contact information for the taxpayer representative will be contained in the Alabama Taxpayer's Bill of Rights

leaflet provided to taxpayers and posted on RDS's website. The taxpayer representative shall have the same authority to act on behalf of taxpayers and to make recommended determinations as the Taxpayer Advocate has under ALA. CODE § 40-2A-4(b).

**(h) Changes In The Manner In Which RDS Conducts Administrative Appeals.**

11.15. RDS agrees to conduct its administrative appeals of preliminary and final assessments in a manner consistent with the way those proceedings are conducted within the Alabama Department of Revenue ("ADOR"). Petitions for review of preliminary assessments will be handled internally by personnel employed by RDS -- just like ADOR internally handles petitions for review filed by state taxpayers. Appeals from final assessments of local taxes will be handled in the same manner as final assessment appeals to ADOR, or to other self-administered jurisdictions in Alabama, by an employee of RDS with legal training to handle the appeal and who was not the decision-maker on the petition for review of the preliminary assessment. If the taxpayer objects to an employee of RDS deciding the administrative appeal, then RDS will assign the appeal to an outside attorney with tax experience who is on retainer with RDS. The person deciding the administrative appeal will be charged with the responsibility of providing a fair, efficient, unbiased, and complete resolution of all matters in this dispute. To the extent allowed by law, Administrative appeals will be handled in a manner consistent with ALA. CODE § 40-2A-9 and § 11-51-191 (1975), conjunctively. RDS will also agree to publish any opinions entered on appeals of final assessments by placing those opinions on its web-site. Before publishing



these opinions, however, RDS will take steps to ensure that confidential information about the taxpayer will not be divulged.

**(i) Changes In RDS's Practices Regarding Appeals Of Both Chapter 40 Taxes (Sales, Use, Lodging, And Rental Taxes) And Chapter 11 Taxes (Business License Taxes): "One-Step" Administrative Appeal.**

11.16. RDS has never required a separate or dual appeal process regarding taxes governed under various Titles of the Code of Alabama. The uniform revenue procedures under the separate titles are nearly identical, and RDS provides consolidated tax appeals for all types of tax involved in an examination in conformance with both Titles 11 and 40 of the Code of Alabama. RDS agrees to continue this practice unless otherwise prohibited by law.

**(j) Changes In RDS's Practices Regarding Publication Of Common "Tax Nexus" Questions/Applications On RDS's Web-Site.**

11.17. RDS agrees to publish on its web-site information relating to the issue of tax nexus. Specifically, RDS will post on its web-site, in a conspicuous manner, a link to ADOR's web-site where tax nexus issues are addressed.

**(k) Changes In RDS's Practices Regarding The Issuance Of Subpoenas.**

11.18. RDS agrees not to unilaterally issue any subpoenas to taxpayers to turn over their books and records prior to receiving written authorization from a Taxing Jurisdiction with a relative connection to the taxpayer. If a taxpayer fails or refuses to turn over its books and records for examination, RDS will contact one or more of the Taxing Jurisdictions who have a connection to the taxpayer at issue and request that the Taxing Jurisdiction take such actions as it deems appropriate, or provide written authorization for RDS to act in such a manner on

their behalf, to include the issuance of a subpoena which identifies the Taxing Jurisdictions which so authorized the issuance by RDS.

## **XII.**

### **ADDITIONAL TERMS OF FINAL JUDGMENT ORDER**

12.01. In addition to incorporating the foregoing changes to or modifications of RDS's business practices, the Final Judgment Order entered in this case must include the following terms:

(a) An acknowledgement that RDS, as an agent or designee, has the general statutory authority under ALA. CODE §§ 11-51-90.1, 11-51-191(c)(1), 40-2A-3(21), and 40-2A-13(b) to enter assessments on behalf of the Taxing Jurisdictions with whom it has active contracts.

(b) An acknowledgement that RDS maintains the right to conduct audits and examinations of a taxpayer's books and records as long as those audits or examinations are in compliance with Titles 11 and 40 of the Alabama Code.

(c) An acknowledgement that the settlement does not affect or reduce the amount of any taxes of any description owed by any settlement class members or other taxpayers pursuant to Titles 11 and 40 of the Alabama Code.

(d) An acknowledgement that RDS has the right to file liens on behalf of the Taxing Jurisdictions against taxpayers (and persons deemed to be responsible persons of those taxpayers) as long as RDS abides by the Alabama statutes and regulations governing assessments and the filing of liens.

(e) An acknowledgement that (i) any current and ongoing audits or examinations of taxpayers' books and records may continue, (ii) any preliminary assessments entered during the class period or thereafter may continue to be

processed, (iii) any final assessments entered during the class period or thereafter may be administered and presented for collection, as the case may be; and (iv) any petitions for review of preliminary assessments (or any administrative appeals of final assessments) filed during the class period and thereafter may continue to be administered by RDS in a manner consistent with Titles 11 and 40 and with the terms of this Settlement Agreement.

(f) An acknowledgement that taxpayers may still file administrative or judicial appeals of final assessments (as well as petitions for refund of taxes previously paid), but only on such grounds that are not barred by the release and dismissal of the Class Claims (e.g., taxpayers may still appeal or seek refunds of taxes based on improper calculations, improper tax nexus determinations, improper applications of the pertinent limitations periods, improper applications of the facts to the tax laws and regulations, or misapplication of substantive Alabama tax laws or regulations).

(g) An acknowledgement that RDS's contracts with the Taxing Jurisdictions are not in violation of Alabama law.

12.02. The parties acknowledge that Class Counsel will not be able to stipulate to some or all of the foregoing acknowledgements as Class Counsel's position on such issues have been previously set forth in court filings. RDS understands that it will have the obligation to demonstrate to the trial court why these acknowledgements should be a part of the Final Judgment entered in this case.

### **XIII.**

#### **COVENANTS OF CLASS COUNSEL**

13.01 The Class Counsel acknowledge that the following conduct would constitute a conflict of interest with the interests of the Settlement Class, which they purport to represent, and with the position Class Counsel has taken as to the fairness and reasonableness of the Class Settlement: the representation of any taxpayers (i) who are Settlement Class Members and who challenge in any way the settlement; (ii) who may later claim at some date that they were not bound by the terms of the Class Settlement for any reason; (iii) who may claim that the Release of Claims provision in the Class Settlement does not bar their claims; or (iv) who challenge any of the business practices of RDS that are the subject of this Action and which are set forth as allowable practices in the Final Judgment entered in this case.

13.02. Notwithstanding the foregoing covenants, the parties acknowledge that class counsel may hereafter represent future clients who have claims different from the Class Claims embraced by this Settlement, with respect to any other disputes with RDS or one of the Taxing Jurisdictions. Class Counsel agree, however, that before they commence litigation against RDS or one of the Taxing Jurisdictions, they will present the dispute to RDS (or to the Taxing Jurisdictions, as the case may be). RDS and/or the Taxing Jurisdiction will then have forty-five (45) days to resolve the dispute to Class Counsel's or their clients' satisfaction before a lawsuit may be filed. Provided further, however, that Class Counsel may commence litigation within this forty-five day period if necessary to avoid expiration of a statute of limitations or any jurisdictional or procedural bar.

During the forty-five day review period, RDS and/or Taxing Jurisdiction may seek the aid of a mediator to assist in resolution of the dispute. Class Counsel stipulate that they currently have no clients with plans to commence such litigation and that they have no present intentions or plans to commence such litigation on behalf of any clients. Class Counsel also agree that they will not solicit any clients to pursue such litigation.

#### **XIV.**

##### **FAILURE TO OBTAIN FINAL COURT APPROVAL**

14.01 If the parties' agreed upon Final Order is not entered, or if the Settlement is not finally approved and consummated on the terms agreed to by the parties, or if the Final Order is reversed on appeal, or if appealed, the Final Order is not affirmed in all respects, the Settlement Agreement shall be null and void for all purposes. However, the parties may agree to go forward with the Settlement under such modified terms. If the parties elect to exercise this right, they must do so in writing, with copies provided to the Court, within seven (7) days of any such order.

#### **XV.**

##### **NO ADMISSIONS BY RDS**

15.01 Neither the Settlement Agreement nor any court orders relating to the settlement shall be construed as a concession or admission of wrongdoing or liability by RDS and shall not be cited to or otherwise used or construed as an admission of any fault, omission, liability or wrongdoing on the part of RDS in any statement, release, testimony, written document, or financial report issued, filed, or made or in any pending or future litigation. Neither the Settlement Agreement,

nor the fact of settlement, nor any settlement negotiations or discussions, nor the judgments to be entered approving the Settlement, nor any related document shall be deemed an admission, concession, presumption, or inference against RDS in a proceeding other than such a proceeding as may be necessary to consummate or enforce the Settlement. The parties acknowledge and agree that RDS vigorously disclaims and denies any liability or wrongdoing whatsoever, and that RDS has entered into the Settlement solely to avoid future inconvenience and protracted costly litigation and to forever purchase its peace.

## **XVI.**

### **BEST EFFORTS**

16.01. The Parties and counsel shall use their best efforts to cause the Court to give preliminary approval to the Settlement Agreement as promptly as possible and to take all steps contemplated by the Agreement to effectuate the Settlement on the stated terms and conditions and, further, to obtain final approval of the settlement contained in the Agreement. Specifically, the Named Plaintiffs and Class Counsel agree (a) to recommend the Settlement contained in this Stipulation as being in the best interests of the Settlement Class Members under the circumstances, (b) to oppose any objections, and (c) not to cooperate with objectors or their counsel. No Settlement Class Member, however, other than the Named Plaintiffs, shall be precluded from questioning or objecting to the proposed settlement at the hearing for final approval thereof by the Court notwithstanding Settlement Class Counsel's recommendation, provided that the procedure for objections ordered by the Court is followed. The Named Plaintiffs and Class Counsel, however, agree not to solicit, request, or advise Settlement

Class Members to object to the settlement or to arrange representation for Settlement Class Members objecting to the settlement.

16.02. No party will institute, participate in, or encourage any appeal from an order implementing the Settlement Agreement; provided, however, any party shall have the right to appeal an order which is materially different from the terms of the Settlement Agreement, or which alters the consideration to be given by or to any party.

## **XVII.**

### **WARRANTIES AND INDEMNIFICATION**

17.01. The Named Plaintiffs, by and through their Class Counsel, warrant and represent to RDS that they have not conveyed, pledged, transferred, hypothecated, or in any manner encumbered or assigned the Class Claims to any other natural person, firm, corporation, partnership, joint venture, trust or estate, business, association, or any form of legal entity. Counsel for the parties also warrant that the Settlement Agreement has been entered into in good faith following extensive negotiations and that no conflicts of interest exist on their part.

## **XVIII.**

### **CONTINUING JURISDICTION OF THE COURT**

18.01. The Court will retain exclusive jurisdiction over the interpretation, effectuation, implementation, and enforcement of the Settlement Agreement. Further, any breach of the Settlement Agreement or violations of orders of the Court in regard to this litigation and Settlement shall not automatically affect the validity of the Agreement, any final judgment entered by the Court, or any release hereunder. Instead, any person making such allegations shall bring such

complaints to the Court. If the Court determines there was a breach, it may assess damages against the party causing the breach, including legal fees and costs reasonably incurred as a consequence of the breach.

**XIX.**

**RETURN OF DISCOVERY MATERIALS**

19.01. Promptly after the Effective Date of the Settlement, the Named Plaintiffs and Class Counsel must (a) return to RDS's Counsel any and all documents in their possession, custody, or control which have been produced to them in discovery by RDS in this or any other case, or (b) destroy such documents and provide a written certification that such documents have been destroyed. Class Counsel must certify in writing that they and the Named Plaintiffs are in compliance with this requirement and in compliance with the terms of the Protective Order previously entered by the Court forbidding the disclosure to others of documents marked "Confidential" by RDS.

**XX.**

**NON-COOPERATION WITH OTHER COUNSEL**

20.01. The Named Plaintiffs and Class Counsel agree not to share with other counsel or persons any other documents produced to them in discovery by RDS in this action or in any other action, or any depositions obtained in this or in any other action involving RDS.

**XXI.**

**ATTORNEYS' FEES AND EXPENSES**

21.01. Plaintiffs' Counsel agree not to seek an amount in excess of \$650,000 in attorneys' fees and costs. As long as the petition for fees and



expenses does not exceed \$650,000, RDS agrees not to oppose the petition or object to the fees as excessive. RDS agrees to pay \$650,000, if approved by the Court, within ten (10) business days after the Effective Date of the settlement. The Effective Date will be a date five (5) days after entry of a Final Judgment and the expiration of the period during which an appeal may be taken (of if an appeal is filed, five days after the appeal is successfully resolved and the time for further review of that appeal has expired). This amount shall cover any claims for fees and expenses of Class Counsel in this case (or of other counsel who have provided assistance to Class Counsel). Unreimbursed fees and expenses of other counsel providing assistance to Class Counsel in this and related matters may be submitted in support of the Petition. From this amount \$30,000 will be used toward satisfying any pending assessment against the Named Plaintiffs by RDS on behalf of any Taxing Jurisdictions it represents (or represented at the time of the assessments). Any remaining portions of those assessments will be vacated, released, and extinguished. Additionally, if the Named Plaintiffs receive any incentive payments, the amount of those payments must come from the \$650,000 paid pursuant to this Paragraph or from Class Counsel's other resources, not from Defendant. Under no circumstances shall RDS be responsible to pay any additional expenses or attorneys' fees in settlement of this Action.

21.02 Class Counsel and RDS agree that neither the Settlement Class nor any member of that Class shall be liable for any attorneys' fees or costs (except for any attorney they hire to submit objections to the Settlement). Failure by the Court to grant any fee and expense petition by Class Counsel in the amount and manner sought by Class Counsel shall not affect or vitiate any other provision of

this Agreement or the finality of the Final Judgment, nor shall it affect or relieve Class Counsel's obligations hereunder to use their best efforts to effect the consummation and implementation of this Agreement and the Settlement provided for herein.

21.03. Plaintiffs and Class Counsel represent that the fees and expenses petitioned for in Paragraph 21.02 of this Agreement, includes all persons (natural or legal) having any interest in any award of attorneys' fees and costs in connection with this Action. Plaintiffs and Class Counsel warrant that any award of fees/costs shall include within its scope all attorneys and law firms with a financial interest in any such award.

**XXII.**

**BENEFITS TO NAMED PLAINTIFFS**

22.01. RDS agrees not to initiate any audits of the Named Plaintiffs on behalf of the Taxing Jurisdictions for a two-year period after the Settlement Agreement is executed by the parties.

**XXIII.**

**DISMISSAL OF FUN SOURCE'S ADMINISTRATIVE  
AND JUDICIAL APPEALS**

23.01. Within five (5) days of the vacation and release of the assessments referenced in Paragraph 21 above, Fun Source will file a motion or other appropriate papers dismissing both its administrative and judicial appeals of the assessments, noting that costs should be taxed as paid.

**XXIV.**

**MISCELLANEOUS PROVISIONS**

24.01 This Agreement reflects, among other things, the compromise and settlement of disputed claims among the Parties hereto, and nothing in this Agreement nor any action taken to effectuate this Agreement, is intended to be an admission or concession of liability of any party of the validity of any claim.

24.02. This Agreement is entered into only for purposes of settlement. In the event that Final Approval of this Agreement and this Settlement does not occur for any reason, including without limitation if such Final Approval is reversed on appeal, this Agreement shall become null and void. In that event, the Parties shall be absolved from all obligations under this Agreement, and this Agreement, any draft thereof, and any discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions leading to the execution of this Agreement shall have no effect and shall not be admissible evidence for any purpose. Any orders entered pursuant to the Settlement shall be null and void, shall not be an adjudication of any fact or issue for any purpose other than the effectuation of this Agreement, and shall not be considered as law of the case, *res judicata*, or collateral estoppel in this or any other proceeding. In addition, the status of the Action shall revert to the state it was in prior to settlement, and the agreements contained herein shall be null and void.

24.03 This Agreement shall be governed by Alabama law.

24.04. This Agreement shall be deemed to have been drafted jointly by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Agreement.

24.05. The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

24.06 This Agreement shall inure to the benefit of (and shall be binding upon) the respective heirs, successors and/or assigns of the Parties, and the Released Parties shall be deemed to be intended third-party beneficiaries of this Agreement, and once approved by the Court, of the Settlement.

24.07. With the exceptions of non-parties who are covered by the releases in Paragraph 9, this Agreement may not be relied upon for any purpose by, or create any rights in, any person who is not a Settlement Class Member, as that term is defined herein in Paragraph 1.04.

24.08. This Agreement shall become effective upon its execution by counsel for all Parties. The Parties may execute this Agreement in counterparts. Each counterpart shall be deemed to be an original, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

24.09. The Named Plaintiffs, RDS, and Class Counsel each represent and warrant that they are fully authorized to enter into this Agreement and to carry out the obligations provided for herein. Each person executing this Agreement on behalf of a Party covenants, warrants and represents that he is and has been fully authorized to do so by such Party. The parties hereto further represent and warrant that they intend to be bound fully by the terms of this Agreement.

24.10. If either party breaches the terms of any of the representations and warranties in this section, it shall be fully liable for all damages it caused,

including legal fees and costs reasonably incurred as a consequence of the breach, to any adversely-affected Party. The adversely-affected Party may institute a proceeding before the Court in this Action to recover all sums due and owing under this paragraph, and to seek additional equitable relief as the Court deems proper and just, and the Court shall retain jurisdiction over this matter to entertain such proceedings.

**XXV.**

**BINDING EFFECT OF THE AGREEMENT**

25.01. This Agreement shall be binding upon and inure to the benefit of the Named Plaintiffs, the Settlement Class Members, the Defendants, as well as their respective heirs, representatives, executors, predecessors, successors and assigns, and upon any corporations or other entities with which they may merge or consolidate.

**XXVI.**

**HEADINGS**

26.01. The headings used in this Settlement Agreement are for the purposes of convenience and do not constitute part of the Settlement Agreement, and no heading shall be used to help construe the meaning of the Settlement Agreement.

**XXVII.**

**ENTIRE AGREEMENT**

27.01. The foregoing constitutes the entire agreement between the Parties with respect to the subject matter hereof and may not be modified or amended except in writing signed by Class Counsel and counsel for RDS. To the extent that

this Settlement Agreement differs in any manner whatsoever from prior written or oral agreements regarding the subject matter hereof, the terms and conditions of this Settlement Agreement shall control.

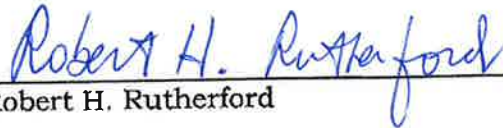
**IN WITNESS WHEREOF**, this Settlement Agreement has been executed and delivered as of the 13<sup>th</sup> day of Oct, 2014.



Charles A. McCallum, III  
R. Brent Irby  
Attorneys for the Named Plaintiffs and  
the Settlement Class

**OF COUNSEL:**

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PRA Government Services, LLC

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A

**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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**PLAINTIFFS' MOTION FOR ORDER CONDITIONALLY CERTIFYING A  
SETTLEMENT CLASS, PRELIMINARILY APPROVING THE CLASS ACTION  
SETTLEMENT, AND SCHEDULING A HEARING FOR FINAL APPROVAL**

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Plaintiffs, Washer & Refrigeration Supply Co., Inc., David L. Smith, Fun Source Inc., and Hollywood Pool & Spa, Inc. (the "Named Plaintiffs"), by and through their counsel, hereby move this Court to enter an order conditionally certifying a settlement class, preliminarily approving the proposed class action settlement, and setting a date for a fairness hearing to determine whether the settlement should be approved as fair, reasonable, adequate, and in the best interests of the class. As support for this motion, plaintiffs present as Exhibit 1 the Class Action Settlement Agreement between the parties. As further support for this motion, plaintiffs state as follows:

1. Named Plaintiffs, on behalf of themselves and as the taxpayer representatives of the Class described herein, brought this action against Defendant RDS and some 275 counties and municipalities ("Taxing Jurisdictions") located within the state of Alabama. On behalf of the class, Plaintiffs claim that RDS, through its contractual arrangements with Alabama counties and municipalities and its own



business practices, is in violation of the Alabama Taxpayers' Bill of Rights ("TBOR") and other laws that protect Alabama taxpayers from private tax auditing and collection entities. Plaintiffs seek declaratory and injunctive relief from Defendant's alleged ongoing violations of Alabama law.

2. Following extensive discovery and motion practice, the parties began discussions to determine if this case could be settled on a classwide basis.

3. The parties engaged the services of former Alabama Supreme Court Justice Bernard Harwood as a mediator. After three separate mediation sessions with Justice Harwood over the course of a year, and after additional negotiations on their own, the parties finally reached a tentative agreement on the terms of a classwide settlement. This settlement was the product of extensive arms-length negotiations free from any collusion.

4. Plaintiffs and their counsel have entered into the proposed settlement after weighing the benefits of the settlement against the possibilities of success or failure in this Action, the substantial costs to continue pursuit of this litigation, and the delays that would likely occur if this case went to trial (and after trial, to appeal).

5. Plaintiffs and their counsel have concluded that the proposed settlement, as set forth in the Class Action Settlement Agreement, provides substantial benefits to Plaintiffs and the Settlement Class; resolves substantial issues without having to go through a lengthy class certification hearing, interlocutory appeal, and trial; and is in the best interests of the class. Plaintiffs and their counsel, therefore, have concluded that the proposed settlement is fair, reasonable, and adequate.

6. Although RDS denies any wrongdoing and any liability whatsoever, and asserts that it has valid defenses to class certification, it believes that it is in its best interest to settle this Action on the terms set forth in the Class Action Settlement

Agreement in order to avoid further expense, inconvenience, and uncertainty in connection with this lawsuit.

7. Class Representatives and Class Counsel. Plaintiffs request that Washer & Refrigeration Supply Co., Inc., David L. Smith, Fun Source Inc., and Hollywood Pool & Spa, Inc. be designated representatives of the Settlement Class, as defined below, for the purpose of seeking approval of the Class. The parties further request that Charles A. McCallum III and R. Brent Irby be designated as class counsel for the Plaintiff Settlement Class.

8. Preliminary Class Certification for Settlement Purposes. Based upon the foregoing, plaintiffs request that the Court preliminarily certify the Class for settlement purposes under Alabama Rule of Civil Procedure 23(b)(2). The Class consists of "all taxpayers who are shown in RDS's computer records or in the records of the Alabama Taxing Jurisdictions as either residing in or doing business in Alabama from the time period between January 1, 2007 through the date of the Preliminary Approval order." In order to qualify as a member of the Settlement Class, a taxpayer:

(a) must be subject to Local Taxes that are administered or collected by or through RDS or its agents on behalf of local Alabama Taxing Jurisdictions that have contracted with RDS; or (b) must have received from RDS a notice that the taxpayer may owe business license taxes to one or more of the Alabama Taxing Jurisdictions represented by RDS; or (c) must have received notice from RDS that they were selected for an audit (or who were actually audited by RDS through an examination of those taxpayers' books and records). Additionally, the Settlement Class will include any person who has had a "responsible person" lien placed on their real property by RDS, even if outside the class period. These "persons" and "taxpayers" will be referred to as the Settlement Class Members.

Excluded from the Settlement Class are

those persons or entities (a) who had judicial claims against RDS pending before either a federal or state court (or were involved in an administrative appeal of a final assessment of taxes) as of the date of Preliminary Approval; (b) who previously released all claims against RDS; (c) who had previously settled their claims independent of any Settlement

Agreement reached in this case; or (d) who are agents, employees, members, officers, or directors of RDS.

9. Plaintiffs assert that the requisite elements of Alabama Rules of Civil Procedure 23(a) and 23(b)(2) have been satisfied for purposes of this proposed Settlement Class. Moreover, in accordance with relevant class action precedent and the class certification material and evidence previously submitted in this litigation, plaintiffs intend to offer evidence at the hearing on Settlement Class certification:

a. Numerosity: Rule 23(a)(1) requires that the proposed class be so numerous that joinder of all members is impractical. In this case, Plaintiffs assert that the class consists of tens of thousands of Alabama taxpayers. Plaintiffs assert that separate adjudication of thousands of claims arising out of this case will waste ample judicial time and resources. Plaintiffs further assert that it is impractical to attempt to join all members of the class to the case, and the numerosity requirement is clearly satisfied.

b. Commonality: Rule 23(a)(2) requires the existence of questions of law or fact common to the entire class. The Supreme Court recently explained that the commonality component of Rule 23 requires that the plaintiff "demonstrate that the class members have suffered the same injury." Wal-Mart Stores, Inc. v. Dukes, 131 S. Ct. 2541 (2011). Thus, common class questions "must be of such a nature that it is capable of classwide resolution -- which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." Id. at 2551.

Here, plaintiffs assert that the Wal-Mart standard is met because the claims of all Class members turn on the determination of two key issues: (1) the validity of uniform provisions of Defendant's RAD and DRE contract under Alabama law, and (2) the legality of the challenged business practices of RDS under Alabama law. Because

all claims arise under Alabama law and all Class members are Alabama taxpayers, plaintiffs assert that the legal issues in this case can be resolved by simply applying Alabama law to each issue. There are no impediments to classwide resolution of the issues such as conflicts of law or a multi-state class. Moreover, plaintiffs assert that, because each Class members' claims arose out of standard form contracts and RDS's uniform business practice within the state, each class member suffered the "same injury" under Alabama law. Id. at 2541. With "one stroke," the Court can resolve thousands of claims against RDS simply by resolving a handful of legal issues common to each class members' claim. Id. at 2551. As such, the commonality requirement under Rule 23(a)(2) is met and satisfies the Supreme Court's mandate in Wal-Mart.

c. Typicality: Rule 23(a)(3) requires that claims or defenses of the representative parties be typical. The commonality and typicality requirements tend to merge, as "both serve as guideposts for determining . . . whether the named plaintiff's claim and the class claims are so interrelated that the interest of class members will be fairly and adequately protected in their absence." General Telephone Co. v. Falcon, 457 U.S. 147, 157 (1982). A named plaintiff's claim is typical of the class if "it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory." 1 NEWBERG ON CLASS ACTIONS § 3.13 (4th ed. 2002) at 327-29. Thus, the typicality component of Rule 23 does not require identical factual backgrounds of the named plaintiff and the class, but rather, requires that "the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented." Id.

In this case, plaintiffs assert that the claims of the Named Plaintiffs are typical of the claims of the proposed taxpayer class. All are Alabama taxpayers that have been subjected to RDS's challenged practices and all claims stem from RDS's contractual relationships with the Taxing Jurisdictions. RDS holds no claims or defenses unique to Named Plaintiffs that would prevent the Court from providing the requested declaratory and injunctive relief.

d. Adequacy: Rule 23(a)(4) requires that named class plaintiffs will adequately and fairly represent the interests of the class. 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., So. 2d 450 (Ala. 1980).

Here, all Named Plaintiffs are Alabama taxpayers who contend that they have been and continue to be affected by RDS's business practices under RAD and DRE contracts. These Plaintiffs allege the same injury as the Class as a whole, and therefore, Plaintiffs seek remedies that will benefit both themselves and the Class. Moreover, there is evidence that each of the proposed representatives have also been advised of and understand their duties and obligations as class members. Smith Aff., ¶ 5; Hacker Aff., ¶ 4; Branch Aff., ¶ 3.<sup>1</sup> Also, there is no conflict that would disqualify the Plaintiffs from serving as representatives of the Class.

The Named Plaintiffs have retained class counsel that are qualified, experienced, and competent to conduct the litigation at hand. McCallum Decl., ¶¶ 1-13.

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<sup>1</sup> The affidavits and declarations referenced herein were submitted in support of plaintiffs' Motion for Class Certification.

10. Satisfaction of Rule 23(b)(2). Rule 23(b)(2) authorizes a class action where "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...." The Supreme Court has interpreted Rule 23(b)(2) as imposing two related requirements: (1) general applicability to all class members, and (2) appropriateness of final injunctive relief. Ryan v. Patterson, 23 So. 3d 12, 19 (Ala. 2009).

In application to this case, the plaintiffs assert that the requirements of Rule 23(b)(2) have been satisfied. Moreover, they assert that evidence supports the notion that RDS provided Taxing Jurisdictions with the standard contracts in the form of either the RAD agreement or the DRE agreement. They also assert that RDS employed uniform business strategies throughout Alabama while exercising its contractual authority. The enforceability of the same standard form contracts at issue, and the improper business conduct alleged, applies to the entire Class as a whole. In light of this uniformity, plaintiffs contend that final injunctive relief prohibiting any legal violations or improper conduct by RDS is appropriate for the Class as a whole. Therefore, the requirements of Rule 23(b)(2) are satisfied.

**WHEREFORE**, the plaintiffs respectfully request this Court to enter an order conditionally certifying a settlement class, preliminarily approving the class action settlement, and scheduling a date for the fairness hearing in this case.

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Charles A. McCallum, III  
R. Brent Irby

Attorneys for the Named Plaintiffs

**OF COUNSEL**

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(205) 824-7767 Phone  
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[birby@mhcilaw.com](mailto:birby@mhcilaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing by Notice of Electronic Filing, or, if the party served does not participate in Notice of Electronic Filing, by U.S. First Class Mail on this the \_\_\_\_\_ day of \_\_\_\_\_, 2014:

Robert H. Rutherford, Esq.  
BURR & FORMAN LLP  
420 North 20th Street  
Wells Fargo Tower, Suite 3400  
Birmingham, Alabama 35203

James S. Ward, Esq.  
Ward & Wilson  
2100A Southbridge Parkway  
Suite. 580  
Birmingham, AL 35209

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Of Counsel

**B**



**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 \_\_\_\_\_, 2014 at \_\_\_\_ . m. in Courtroom 330 [Hon. Robert S. Vance] of the Jefferson County Circuit Court, 716 North Richard Arrington Jr. Boulevard North, 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 \_\_\_\_\_, 2014.

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: \_\_\_\_\_, 2014.

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ROBERT S. VANCE  
JEFFERSON COUNTY CIRCUIT COURT

C

## **NOTICE OF CLASS ACTION SETTLEMENT**

The Circuit Court of Jefferson County, Alabama authorized this notice. This is not a solicitation from a lawyer. You are not being sued.

- This Notice has been sent to you pursuant to Rule 23 of the Alabama Rules of Civil Procedure. The purpose of this Notice is to inform you of the proposed settlement of a class action involving PRA Government Services, LLC (also known as "RDS").
- A settlement will provide benefits to persons or companies who had local taxes administered by RDS on behalf of over 250 taxing jurisdictions in Alabama.
- The settlement was reached after 5 years of litigation and three mediation sessions. It resolves a lawsuit over whether RDS violated state law in its administration and/or collection of those local taxes. It avoids costs and risks to you from continuing the lawsuit. It also releases RDS from liability.
- The two sides disagree on what would have happened if there had been a trial of this case.
- Your legal rights are affected whether you act or don't act. Please read this notice carefully because it explains decisions you must make.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
Do Nothing	Receive the non-monetary benefits under the settlement.
Object	Write to the Court about why you don't like the settlement.
Go To A Hearing	Ask to speak in Court about the fairness of the settlement.

- These rights and options -- and the deadlines to exercise them -- are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Benefits under the settlement will occur if the Court approves the settlement and after any appeals are resolved if filed. Please be patient.

QUESTIONS? Call 1-800-\_\_\_-\_\_\_ Toll Free, or Visit [RDSSettlement.Com](http://RDSSettlement.Com)

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QUESTIONS? Call 1-800-\_\_\_\_-\_\_\_\_ Toll Free, or Visit [RDSSettlement.Com](http://RDSSettlement.Com)



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QUESTIONS? Call 1-800-\_\_\_-\_\_\_ Toll Free, or Visit [RDSSettlement.Com](http://RDSSettlement.Com)

## **BASIC INFORMATION**

### **1. Why Did I Get This Notice Package?**

You may be a taxpayer who owes or has paid local taxes to various counties, cities, and towns in Alabama.

The Court sent you this notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options, before the Court decides whether to approve the settlement. If the Court approves it and after objections and appeals are resolved, then the non-monetary benefits will be implemented.

This package explains the lawsuit, the settlement, your legal rights, and what benefits are available.

The Court in charge of the case is the Jefferson County Circuit Court, with the Honorable Robert S. Vance, Jr. presiding. The case is known as Washer & Refrigeration Supply Co. and David L. Smith vs. PRA Government Services, LLC, d/b/a Revenue Discovery Systems and/or RDS and/or Alatax, et al., Civil Action No. CV-2010-903417.00. The companies and the individual who sued are called the Plaintiffs, and the company who is sued (RDS) is called the Defendant.

### **2. What Is This Lawsuit About?**

The lawsuit claimed that RDS violated state law in the manner in which it assessed, administered, and/or collected local taxes for the various Alabama Taxing Jurisdictions. RDS denies that it did anything wrong. A list of the Alabama Taxing Jurisdictions is found on the Web-site [RDSSettlement.com](http://RDSSettlement.com). Click on the link "List of Alabama Taxing Jurisdictions."

### **3. Why Is This A Class Action?**

In a class action, one or more parties called Class Representatives (in this case, Washer & Refrigeration Supply Co., Inc., David L. Smith, Fun Source, Inc., and Hollywood Pool & Spa, Inc.) sue on behalf of people who have similar claims. All of these people are Class Members. One court resolves the issues for all Class Members.

### **4. Why Is There A Settlement?**

The Court has not finally decided the case in favor of Plaintiff or Defendant. The Plaintiffs think they could have won the case at trial. The Defendants think the Plaintiffs would not have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they avoid the cost of a trial, and the people affected will receive the benefits of the settlement. The Class Representative and the Class Attorneys think the settlement is best for all Class Members.

QUESTIONS? Call 1-800-\_\_\_-\_\_\_ Toll Free, or Visit [RDSSettlement.Com](http://RDSSettlement.Com)

## **WHO IS IN THE SETTLEMENT**

To see if you will receive benefits from this settlement, you first have to decide if you are a Class Member.

### **5. How Do I Know If I Am Part Of The Settlement?**

Judge Robert S. Vance, Jr. decided that everyone who fits the following description is a Class Member: The Settlement Class shall consist of all taxpayers who are shown in RDS's computer records or in the records of the Alabama Taxing Jurisdictions as either residing in or doing business in Alabama from the time period between January 1, 2007 through the date of the Preliminary Approval order. To further qualify as a Settlement Class Member, such taxpayers (a) must be subject to Local Taxes that are administered or collected by or through RDS or its agents on behalf of local Alabama Taxing Jurisdictions that have contracted with RDS; or (b) must have received from RDS a notice that the taxpayer may owe business license taxes to one or more of the Alabama Taxing Jurisdictions represented by RDS; or (c) must have received notice from RDS that they were selected for an audit (or who were actually audited by RDS through an examination of those taxpayers' books and records). Additionally, the Settlement Class will include any person who has had a "responsible person" lien placed on their real property by RDS, even if outside the class period. These "persons" and "taxpayers" will be referred to as the Settlement Class Members. The period of January 1, 2007 through \_\_\_\_\_ is known as the "Class Period."

### **6. Are There Exceptions To Being Included?**

You are not a Class Member if you had judicial claims against RDS pending before either a federal or state court as of \_\_\_\_\_. You are also not a Class Member if you filed an administrative appeal from a final assessment of local taxes as of \_\_\_\_\_. Finally, you are also not a Class Member if you had previously settled and released claims you had against RDS or if you are an agent, employee, member, officer, or director of RDS.

### **7. I'm Still Not Sure If I Am Included.**

If you are still not sure whether you are included, you can ask for free help. You can call 1-800-\_\_\_\_-\_\_\_\_. Or visit [www.RDSSettlement.com](http://www.RDSSettlement.com) for more information. Or you can write to the Settlement Administrator at \_\_\_\_\_, \_\_\_\_\_, to see if you qualify.

QUESTIONS? Call 1-800-\_\_\_\_-\_\_\_\_ Toll Free, or Visit [RDSSettlement.Com](http://RDSSettlement.Com)

## **THE SETTLEMENT BENEFITS - WHAT YOU GET**

### **8. What Does The Settlement Provide?**

RDS has agreed to modify, supplement, and/or maintain its business practices, as the case may be, on a going-forward basis in the following respects: (a) RDS will supplement certain of its assessment and notification procedures; (b) notice and an opportunity to be heard will be provided before the entry of any responsible party assessments; (c) prior responsible party assessments made without proper notice will be removed at RDS's expense; (d) taxpayer audit selection criteria will be modified; (e) taxpayers will be informed by RDS of any taxing jurisdiction that it represents which will not be participating in any taxpayer audit; (f) RDS will continue to provide its current statutory fidelity coverage and will supplement that with additional coverage in the form of a surety bond designed to protect taxpayers against certain unlawful conduct; (g) any employee or division in RDS working on a collection activity based upon a contingency will not have access to internal records of a taxpayer or have the ability to make determinations respecting the amount of taxpayer revenues that determine taxes owed; (h) at its own expense RDS shall make available a taxpayer's advocate to assist taxpayers in resolving issues when the taxpayer believes RDS is failing to adhere to proper procedures; (i) RDS will supplement the manner in which it conducts administrative appeals; (j) taxpayers will continue to be entitled to consolidated tax appeals provided that current law would allow for such consolidated appeals; (k) taxpayers will have web-site access to information pertaining to nexus determinations for taxability; and (l) RDS will refrain from unilaterally issuing subpoenas to taxpayers to appear or produce records without receiving express permission from an affected Taxing Jurisdiction.

A full description of these changes are set forth in the Settlement Agreement that can be obtained as described under Question 17.

### **9. Do I Receive Any Money From The Settlement?**

The relief obtained for the Class Members in this case is non-monetary. The relief consists exclusively of alterations to RDS's business practices.

## **THE LAWYERS REPRESENTING YOU**

### **10. Do I Have A Lawyer In This Case?**

The Court approved the law firm of McCallum, Hoaglund, Cook & Irby, L.L.P., 905 Montgomery Highway, Suite 201, Vestavia Hills, Alabama 35216 to represent you and other Class Members. These lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

QUESTIONS? Call 1-800-\_\_\_\_-\_\_\_\_ Toll Free, or Visit [RDSSettlement.Com](http://RDSSettlement.Com)

**11. How Will The Lawyers Be Paid?**

Class Counsel will seek payment of up to \$650,000 to them for attorneys' fees and expenses. The fees would pay Class Counsel for investigating the facts, litigating the case, and negotiating the settlement. The Court may award less than these amounts. These amounts will be paid by RDS. RDS has agreed not to oppose the payment of these fees and expenses as long as the total does not exceed \$650,000. **YOU ARE NOT OBLIGATED TO PAY ANY PORTION OF THESE LEGAL FEES.**

**OBJECTING TO THE SETTLEMENT**

You can tell the Court that you don't agree with the settlement or some part of it.

**12. How Do I Tell The Court That I Don't Like The Settlement?**

If you're a Class Member, you can object to the settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to the proposed settlement in Washer & Refrigeration Supply Co. and David L. Smith vs. PRA Government Services, LLC, d/b/a Revenue Discovery Systems and/or RDS and/or Alatax, et al., Civil Action No. CV-2010-903417.00. Be sure to include your name, address, telephone number, your signature, and the specific reasons you object to the settlement. Mail the objection to the following places postmarked no later than \_\_\_\_\_, 2014:

**COURT**

Clerk of the Court  
Jefferson County Circuit Court  
716 N. Richard Arrington Jr. Blvd.  
Birmingham, Alabama 35203  
Attn: RDS Class Action Settlement

Charles A. McCallum, III  
McCallum, Hoaglund, Cook & Irby, L.L.P.  
905 Montgomery Highway  
Suite 201  
Vestavia Hills, Alabama 35216

**SETTLEMENT ADMINISTRATOR**

Dahl Administration  
\_\_\_\_\_  
Birmingham, Alabama \_\_\_\_\_  
Attn: RDS Class Action Settlement

Robert H. Rutherford  
Burr & Forman LLP  
420 North 20th Street  
Wells Fargo Tower, Suite 3400  
Birmingham, Alabama 35203

QUESTIONS? Call 1-800-\_\_\_\_-\_\_\_\_ Toll Free, or Visit [RDSSettlement.Com](http://RDSSettlement.Com)

If you plan to submit any evidence, affidavit, or legal brief in opposition to the proposed Settlement, you must also present that information by mailing it at the same time and to the same people mentioned just above.

## **THE COURT'S FAIRNESS HEARING**

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

### **13. When And Where Will The Court Decide Whether To Approve The Settlement?**

The Court will hold a Fairness Hearing at \_\_\_\_\_ A.M. \_\_\_\_\_, 20\_\_ in Courtroom 330 at the Jefferson County Circuit Court, 716 North Richard Arrington, Jr. Blvd, Birmingham, Alabama 35203. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections the Court will consider them. Judge Vance will listen only to those people who have previously asked to speak at the hearing. The Court may also decide how much to pay Class Counsel and the Class Representatives. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

### **14. Do I Have To Come To the Hearing?**

No. Class Counsel will answer questions Judge Vance may have. But you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection in time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

### **15. May I Speak At The Hearing?**

You may ask the Court for permission to speak at the Fairness Hearing. But, to do so, you must send a letter saying that it is your "Notice of Intention to Appear in Washer & Refrigeration Supply Co., Inc., et al. v. PRA Government Services, LLC, d/b/a Revenue Discovery Systems and/or RDS and/or Alatax, et al." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than \_\_\_\_\_, 2014, and be sent to the same people at the same addresses listed in Question 12. You cannot speak at the hearing unless you send in this Notice.

QUESTIONS? Call 1-800-\_\_\_\_-\_\_\_\_ Toll Free, or Visit [RDSSettlement.Com](http://RDSSettlement.Com)

**16. What Happens If I Do Nothing At All?**

If you do nothing and the settlement is approved, you'll get the benefits flowing to the Class from the settlement. In return, you will have been deemed to have released RDS and the Alabama Taxing Jurisdictions from any claims involving the specific legal issues in this case. You won't be able to start a lawsuit, continue a lawsuit, or be part of any other lawsuit against RDS or the Alabama Taxing Jurisdiction about the specific legal claims and issues involved in this case, ever again.

**GETTING MORE INFORMATION**

**17. Are There More Details About The Settlement?**

This notice summarizes the proposed settlement. More details are in a Settlement Agreement. You can get a copy of the Settlement Agreement by writing to \_\_\_\_\_ or by visiting [www.RDSSettlement.com](http://www.RDSSettlement.com) and clicking on the link that says "\_\_\_\_\_."

**18. How Do I Get More Information?**

**DO NOT WRITE OR TELEPHONE THE JUDGE OR CLERK'S OFFICE SEEKING INFORMATION ABOUT THE SETTLEMENT.** Please address all questions to the Settlement Administrator. You can call the Settlement Administrator at 1-800-\_\_\_\_ - \_\_\_\_ toll free; or you can write to \_\_\_\_\_; or you can visit the website at [www.RDSSettlement.com](http://www.RDSSettlement.com), where you will find answers to common questions about the settlement, plus other information to help you determine whether you are a Class Member and whether you are eligible for payment. You may inspect the Court file at the Clerk's office at the address listed above. You may make copies of documents on file with the Court, but only at your own expense. You may also contact Class Counsel at [cmccallum@mhcilaw.com](mailto:cmccallum@mhcilaw.com).

**BY ORDER OF THE COURT:**

ROBERT S. VANCE, JR.  
CIRCUIT COURT JUDGE FOR THE  
JEFFERSON COUNTY CIRCUIT COURT

DATE: \_\_\_\_\_

QUESTIONS? Call 1-800-\_\_\_\_ - \_\_\_\_ Toll Free, or Visit [RDSSettlement.Com](http://RDSSettlement.Com)

D



**E-MAIL NOTICE**

In the Circuit Court of Jefferson County, Alabama  
Washer & Refrigeration Supply Co., et al.  
vs. PRA Government Services, LLC

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT  
YOUR LEGAL RIGHTS MIGHT BE AFFECTED BY THIS SETTLEMENT  
PLEASE READ CAREFULLY**

You may be a member of class in a case that has been preliminarily approved for settlement. The case is listed above and is pending in the Circuit Court of Jefferson County, Alabama (Civil Action No. 2010-903417). The class action lawsuit above was filed on behalf of taxpayers against PRA Government Services, LLC, d/b/a RDS, alleging that RDS violated state law with respect to its assessment, administration, and/or collection of certain local taxes for and behalf of several Alabama municipalities and counties during the period between January 1, 2007 and \_\_\_\_\_. RDS denies all allegations in the lawsuit and contends that all of its practices conform to Alabama law.

Excluded from the class are taxpayers who had judicial claims against RDS pending in a state or federal court as of \_\_\_\_\_; or had filed an administrative appeal from a final assessment of local taxes as of \_\_\_\_\_; or had previously settled and released claims against RDS; or are an agent, employee, member, officer, or director of RDS.

You can learn more about the case and the settlement at [www.RDSSettlement.com](http://www.RDSSettlement.com) or by calling the Settlement Administrator at 1-\_\_\_\_-\_\_\_\_-\_\_\_\_\_.

To object to this settlement you must file a written objection by \_\_\_\_\_, \_\_\_\_\_, and you may (but are not required to) appear through counsel if you wish to do so. The exact procedures for objecting and appearing at the hearing are provided at [www.RDSSettlement.com](http://www.RDSSettlement.com), or may be obtained by calling the settlement administrator at 1-\_\_\_\_-\_\_\_\_-\_\_\_\_\_.

If the settlement is approved, any legal action you may have against RDS regarding the conduct at issue in the lawsuit will be released.

RDS SETTLEMENT ADMINISTRATOR  
C/O \_\_\_\_\_  
PO BOX \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

E

## **PUBLICATION NOTICE**

### **YOU MAY BE A MEMBER OF A SETTLEMENT CLASS OF TAXPAYERS IN A LAWSUIT AGAINST PRA GOVERNMENT SERVICES, LLC**

A settlement has been reached in a class action lawsuit brought against PRA Government Services, d/b/a RDS. The lawsuit alleges that RDS violated Alabama state laws with respect to the manner in which it assessed, administered, and collected certain local taxes for and on behalf of various municipalities and counties in Alabama. RDS denies that it did anything wrong and contends that all of its actions were consistent with Alabama law. The case is currently pending in the Circuit Court of Jefferson County, Alabama before Hon. Robert S. Vance, Jr.

#### **How Do I Know If I Am Part Of The Settlement?**

Judge Robert S. Vance, Jr. decided that everyone who fits the following description is a Class Member: All taxpayers who are shown in RDS's computer records or in the records of the Alabama Taxing Jurisdictions as either residing in or doing business in Alabama from the time period between January 1, 2007 through the date of the Preliminary Approval order (\_\_\_\_\_, 2014). To further qualify as a Settlement Class Member, such taxpayers (a) must be subject to Local Taxes that are administered or collected by or through RDS or its agents on behalf of local Alabama Taxing Jurisdictions that have contracted with RDS; or (b) must have received from RDS a notice that the taxpayer may owe business license taxes to one or more of the Alabama Taxing Jurisdictions represented by RDS; or (c) must have received notice from RDS that they were selected for an audit (or who were actually audited by RDS through an

examination of those taxpayers' books and records). Additionally, the Settlement Class will include any person who has had a "responsible person" lien placed on their real property by RDS, even if outside the class period. These "persons" and "taxpayers" will be referred to as the Settlement Class Members. The period of January 1, 2007 through \_\_\_\_\_ is known as the "Class Period."

### **What Does The Settlement Provide?**

RDS has agreed to modify, supplement, and/or maintain, as the case may be, its business practices on a going-forward basis in the following respects: (a) RDS will supplement certain of its assessment and notification procedures; (b) notice and an opportunity to be heard will be provided before the entry of any responsible party assessments; (c) prior responsible party assessments made without proper notice will be removed at RDS's expense; (d) taxpayer audit selection criteria will be modified; (e) taxpayers will be informed by RDS of any taxing jurisdiction that it represents which will not be participating in any taxpayer audit; (f) RDS will continue to provide its current statutory fidelity coverage and will supplement that with additional coverage in the form of a surety bond designed to protect taxpayers against certain unlawful conduct; (g) any employer or division in RDS working on a collection activity based upon a contingency will not have access to internal records of a taxpayer or have the ability to make determinations respecting the amount of taxpayer revenues that determine taxes owed; (h) at its own expense RDS shall make available a taxpayer's advocate to assist taxpayers in resolving issues

when the taxpayer believes RDS is failing to adhere to proper procedures; (i) RDS will supplement the manner in which it conducts administrative appeals; (j) taxpayers will continue to be entitled to consolidated tax appeals provided that current law would allow for such consolidated appeals; (k) taxpayers will have web-site access to information pertaining to nexus determinations for taxability; and (l) RDS will refrain from unilaterally issuing subpoenas to taxpayers to appear or produce records without receiving express permission from an affected Taxing Jurisdiction.

### **What Are Your Options?**

You may do nothing and obtain the benefits of the settlement. Or, if you're a class member, you may object to any part of the settlement you don't like, and the Court will consider your views. You must submit any objection in writing and must provide evidence of your membership in the class. The procedures for submitting written objections are set out in the detailed notice (available at [www.RDSSettlement.com](http://www.RDSSettlement.com) or by calling 1-\_\_\_-\_\_\_-\_\_\_).

The Court will hold a Fairness Hearing at \_\_\_\_\_ on \_\_\_\_\_ in Birmingham, Alabama. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate and whether to approve attorneys' fees not to exceed \$650,000. You may attend the hearing, and you may hire your own lawyer, but you are not required to do so. If there are objections that have been properly submitted in writing in advance of the hearing, the Court will consider them. The Court will listen to people who have made a prior

written request to speak at the hearing. After the hearing, the Court will decide whether to approve the settlement.

**What To Do If You Have Questions**

This notice is just a summary. The detailed class notice, as well as the Settlement Agreement and some other documents filed in this lawsuit, can be found online at [www.RDSSettlement.com](http://www.RDSSettlement.com). You also may call or write to the Settlement Administrator at 1-800-\_\_\_\_-\_\_\_\_ and RDS Settlement Administrator c/o \_\_\_\_\_, PO Box \_\_\_\_\_, \_\_\_\_\_ for more information.

QUESTIONS? CALL 1-\_\_\_\_-\_\_\_\_-\_\_\_\_ or VISIT [www.RDSSettlement.com](http://www.RDSSettlement.com).

F



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

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

**Plaintiffs,**

**vs.**

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

**Defendant.**

**CIVIL ACTION NO.**

**CV-2010-903417.00**

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**[PROPOSED] FINAL ORDER AND JUDGMENT  
APPROVING CLASS ACTION SETTLEMENT  
AND DISMISSAL WITH PREJUDICE OF CLASS CLAIMS**

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**THIS CAUSE** came before the Court on \_\_\_\_\_, after notice of the Proposed Settlement was given to all class members who could be identified through reasonable effort. The Court conducted a hearing on that date (a) to determine whether this action should remain certified as a class action pursuant to Rule 23(b)(2), Ala. R. Civ. P.; (b) to determine whether the Class Action Settlement Agreement between the Named Plaintiffs and RDS (hereinafter referred to as the "Settlement" or "Settlement Agreement") is fair, reasonable and adequate and should be finally approved; (c) to determine the amount of attorneys' fees and expenses that should be awarded; (d) to determine the amount of an incentive payment that should be awarded to the Class Representatives; (e) to entertain any objections of any affected persons as to approval of the Settlement Agreement, and

all matters related thereto; (f) to determine whether final judgment should be entered thereon, pursuant to the terms of the Settlement Agreement; and (g) to rule on all other matters related to or impacted by the Settlement Agreement.

The Court preliminarily approved the proposed Settlement Agreement between Plaintiffs and RDS by Order dated \_\_\_\_\_, 2014 and directed notice to the Settlement Class of the status of the pendency of this class action and the terms of the proposed settlement, the manner of submitting objections, and the date of the fairness hearing. The terms and definitions used in the Settlement Agreement are incorporated herein by reference and are adopted for use herein.

The Court has considered the terms of the Settlement Agreement between Plaintiffs and RDS, reviewed all pleadings, relevant briefs and other papers in this matter, considered the objections, heard arguments of counsel, and deliberated and considered the totality of the circumstances surrounding the Settlement Agreement. Based upon the foregoing, the Court hereby **ENTERS FINAL JUDGMENT** as follows:

#### **FINDINGS**

1. This Court has subject matter jurisdiction over the claims at issue in this Action, as well as *in personam* jurisdiction over the named parties and the Settlement Class.

2. The Court's Order dated \_\_\_\_\_, 2014, preliminarily approving the class action settlement, was appropriate and warranted under the circumstances.

3. The Court finds and determines that the Settlement Class, as defined by Paragraph 3 of the Settlement Agreement (referred to herein as the "Settlement Class"), should be and hereby remains certified pursuant to Rule 23(b)(2), Ala. R. Civ. P.

4. The claims of the Named Plaintiffs are typical of the claims of the Settlement Class against RDS, in that they arose out of the same pattern of alleged misconduct which is claimed to have injured the Class.

5. The Named Plaintiffs are adequate class representatives whose interests are consistent with the interests of the Settlement Class. Through counsel, and individually, they have vigorously represented the class.

6. McCallum, Hoaglund, Cook & Irby, L.L.P., as Class Counsel, are adequate, and they have vigorously pursued the interests of the Settlement Class since 2010. They have extensively briefed numerous legal issues successfully. They have developed an extensive record, including taking several depositions of former and current RDS employees. They have compiled the evidence in a professional and organized fashion.

7. Class Counsel have a wide range of experience with respect to complex and class action litigation. Class Counsel have demonstrated their familiarity with the claims and facts in this case, and have negotiated, at arms length, a fair, reasonable, and adequate settlement with the Defendant. The Court finds that the "adequacy of representation" requirements of Rule 23(a)(4) have been satisfied.

8. The Settlement Class is numerous, consisting of several thousand members, which means that the "numerosity" requirements of Rule 23(a)(1) are satisfied.

9. Common issues have been alleged by the Plaintiffs, both as to the common core facts relating to RDS's administration of its contracts with the Local Taxing Jurisdictions and the legal claims which have been asserted by the Named Plaintiffs. The remaining issues to be determined by the Court presented issues of law and fact that were typical and common to the class. The Court makes this determination that the requirements of Rule 23(a)(2) are satisfied based upon its analysis of the legal and factual issues which would be considered at trial.

10. The Court also determines that the requirements of Rule 23(b)(2) are satisfied because RDS has acted in a manner that is generally applicable to the class, which means that injunctive and declaratory relief are appropriate with respect to the class as a whole.

11. Notice to the Settlement Class was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated. The Individual Notice contained all of the essential elements necessary to satisfy any due process concerns, including the class definition, the identities of the Parties, a summary of the terms of the proposed Settlement and of Class Counsel's intent to apply for fees, and information regarding the manner in which objections could be submitted. The Notice properly informed Settlement Class Members of the relief obtained through the Settlement. The court-approved Notice also informed Settlement Class Members of the date and location of the Fairness hearing on the

Settlement. The content of the Notice, therefore, satisfied all requirements of Rule 23, Ala. R. Civ. P., and due process.

12. The manner in which the Notice was disseminated satisfied the requirements of due process and Rule 23, Ala. R. Civ. P. Individual Notice was either e-mailed or sent by regular mail at the Court's direction to all Settlement Class members whose names and last known addresses were reasonably available. Appropriate efforts were made to attempt to obtain more current addresses for all Class Members by transmitting a list of all such Class Members to an organization experienced in updating addresses. In addition, all notices that were returned by the U.S. Postal Service with a "Forwarding Order Expired" sticker were remailed to the updated addresses. And, in order to ensure wider dissemination of this Settlement, another form of notice was published in newspapers having a circulation in Alabama's four largest cities (Huntsville, Birmingham, Montgomery, and Mobile). The Court also finds that the timing of the dissemination of the Individual Notice and the Publication Notice, within \_\_\_ to \_\_\_ days prior to the Fairness Hearing, comports with due process and the requirements of Rule 23, Ala. R. Civ. P.

13. The discovery in this case (and a similar case) has been substantial. The Court has had the benefit of the evidence and arguments presented at several hearings in this case, including hearings on potentially dispositive motions. These hearings, as well as a review of all the pleadings, relevant motions and briefs, have enabled the Court to evaluate the strength of the Plaintiffs' claims, the propriety of class certification, and the value of the Settlement.

14. The Settlement proposed by the Parties is fair, adequate and reasonable, and it deserves final approval. It provides immediate benefits to all Class members.

15. The terms of the Settlement Agreement are favorable to the Settlement Class. The Parties have presented evidence to the Court which demonstrates that Settlement Class Members have obtained fair, adequate and reasonable relief under this Settlement.

16. The response of the Settlement Class to this Settlement has been overwhelmingly favorable. Only \_\_\_\_\_ Class Members have objected to the Settlement. The Court has reviewed and thoroughly considered the articulated objections to the Settlement, each of which it finds to be without merit. The objections are overruled.

17. The Settlement was the product of arms-length negotiation subsequent to Court-ordered mediation. The Court is informed that the settlement discussions were adversarial in nature and hard-fought on both sides.

18. The Settlement avoids complex, expensive, and prolonged litigation which could have inured to the disadvantage of all parties and the Court. It is possible that absent a settlement, individual class members would have received no benefits whatsoever as a result of RDS prevailing on its many defenses at trial.

19. The Settlement is supported by adequate discovery. Over the course of several years, Class Counsel have undertaken substantial discovery, taken numerous depositions, and obtained a favorable ruling on the defendants' dispositive motions. They are unquestionably aware of the remaining strengths and weaknesses of the claims of the Settlement Class. The Settlement reflects the

strengths and weaknesses of Plaintiffs' claims, and it is supported by Class Counsel. The Court specifically finds the Settlement to be fair, reasonable and adequate.

**THEREFORE, IT IS HEREBY ORDERED:**

1. The Court confirms certification of the Settlement Class, defined in paragraph 3 of the Settlement Agreement as follows:

2. The certification of this proceeding as a class action pursuant to Rule 23(b)(2), Ala. R. Civ. P., is affirmed.

3. The Named Plaintiffs, as well as Class Counsel (McCallum, Hoaglund, Cook & Irby, LLP), have fairly and adequately represented and protected the interest of the Settlement Class.

4. The method of identifying Settlement Class members, as well as the timing, method, content and form of the Individual Notice and Publication Notice given to the Settlement Class Members, and the dissemination thereof, satisfied the requirements of both Rule 23, Ala. R. Civ. P., and due process.

5. The Settlement set forth in the Settlement Agreement is, in all respects, fair, reasonable, adequate and just to the Settlement Class Members, and is finally approved. Judgment as set forth herein is entered thereon, and the Parties are directed to perform and carry out their respective obligations under the Settlement Agreement as approved by this Final Judgment and otherwise consistent therewith.

6. The Named Plaintiffs and all Settlement Class Members release the Alabama Taxing Jurisdictions and RDS, together with its past and present members, divisions, subsidiaries, parent companies or corporations, sister

companies or corporations, affiliated corporations or companies, stockholders, partners, directors, officers, agents, employees, attorneys, representatives, trustees, insurers, instrumentalities, assignors, assignees, transferors, transferees, and affiliates (the "RDS Released Parties") from any and all Class Claims as defined in Paragraph 8 of the Settlement Agreement.

7. All claims asserted in this Action against RDS are dismissed on the merits and with prejudice. The Named Plaintiffs, and all Settlement Class Members are permanently enjoined from bringing or prosecuting any claim or action which is released under paragraph 6 above.

8. Based upon the pleadings, memoranda, and other materials filed by the parties, the Court further finds and concludes as follows:

(a) RDS, as an agent or designee, has the general statutory authority under ALA. CODE §§ 11-51-90.1, 11-51-191(c)(1), 40-2A-3(21), and 40-2A-13(b) to enter assessments on behalf of the Taxing Jurisdictions with whom it has active contracts.

(b) RDS maintains the right to conduct audits and examinations of a taxpayer's books and records as long as those audits or examinations are in compliance with Titles 11 and 40 of the Alabama Code.

(c) The settlement does not affect or reduce the amount of any taxes of any description owed by any settlement class members or other taxpayers pursuant to Titles 11 and 40 of the Alabama Code.

(d) RDS has the right to file liens on behalf of the Taxing Jurisdictions against taxpayers (and persons deemed to be responsible persons of



those taxpayers) as long as RDS abides by the Alabama statutes and regulations governing assessments and the filing of liens.

(e) Any current and ongoing audits or examinations of taxpayers' books and records may continue, any preliminary assessments entered during the class period or thereafter may continue to be processed, any final assessments entered during the class period or thereafter may be administered and presented for collection (as the case may be), and any petitions for review of preliminary assessments (or any administrative appeals of final assessments) filed during the class period and thereafter may continue to be administered by RDS in a manner consistent with Titles 11 and 40 and with the terms of this Settlement Agreement.

(f) Taxpayers may still file administrative or judicial appeals of final assessments (as well as petitions for refund of taxes previously paid), but only on such grounds that are not barred by the release and dismissal of the Class Claims (e.g., taxpayers may still appeal or seek refunds of taxes based on improper calculations, improper tax nexus determinations, improper applications of the pertinent limitations periods, improper applications of the facts to the tax laws and regulations, or misapplication of substantive Alabama tax laws or regulations).

(g) RDS's contracts with the Taxing Jurisdictions are not in violation of Alabama law.

9. In return for the release and dismissal of the Class Claims, the Named Plaintiffs and the Settlement Class shall obtain the relief described below. The sole relief obtained by the class as settlement of this Action is non-monetary relief that shall be implemented pursuant to the Named Plaintiffs' claims for

declaratory and injunctive relief. The relief consists exclusively of changes to RDS's business practices.

10. Specifically, RDS agrees to modify, supplement, and/or maintain, as the case may be, its business practices on a going-forward basis in the following respects.

**(a) Changes To Assessment Procedures: Notification To The Taxing Jurisdictions Prior To Entry of Assessments.**

11. RDS already has procedures in place that allow the Taxing Jurisdictions to monitor RDS's audit and assessment projects. RDS maintains a client reporting portal on its computer system, which houses on-line reports that are specific to each Taxing Jurisdiction and reflect the current daily status of ongoing and unresolved audit or assessment projects. These reports are currently available to the Taxing Jurisdictions on a continuous basis, and they are updated simultaneously with RDS's in-house software systems. RDS currently provides personal on-site demonstration programs and webinars to ensure that the Taxing Jurisdictions know how to make use of the client reporting portal.

12. Notwithstanding these measures that provide its clients with immediate access to the situations involving RDS's audits and assessments, RDS shall provide each of the Taxing Jurisdictions with e-mail notification on a monthly basis containing a summary of the preliminary and/or final assessments entered against taxpayers.

**(b) Changes To Responsible Party Assessments/Research Of Prior Tax Liens To Determine If There Is Non-Compliance With RDS's Protocol For Filing Liens On Property Owned By Responsible Persons.**

13. RDS currently has adopted, and maintains in effect, the procedures and provisions promulgated by the Alabama Department of Revenue pursuant to the Alabama Administrative Procedure Act regarding assessments against "responsible persons" under ALA. CODE §§ 40-29-72 and 40-29-73. See Ala. Admin. Code r. 810-12-1-.01 and .02. RDS shall follow these provisions to ensure that notice will be provided to any proposed "responsible person," which will allow the individual to rebut the presumption that they are indeed a "responsible person." This notice and opportunity to be heard will be given prior to the entry of a preliminary assessment against that individual.

14. Additionally, RDS will research all tax liens entered on "responsible persons" to determine whether the protocol called for in the ADOR regulation has been followed. If any such improper liens are discovered, they will be removed at RDS's expense within five (5) business days of their discovery.

**(c) Changes To Audit Selection Criteria, Voluntary Disclosure To Taxpayers Of The Criteria Leading To Their Selection For Audit, Discontinuance Of "Projected Findings" As An Audit Criteria, And Elimination Of "3 to 1" Ratios.**

15. RDS shall inform taxpayers of the reasons why they were selected for an audit. This information will be disclosed in the initial letter that is sent to a taxpayer advising them that RDS intends to examine the taxpayer's books and records.

16. RDS already has discontinued all practices involving "projected findings" as a valid audit selection criteria. RDS shall eliminate in the future any

references and/or notations in its Project I.D. Request Form of "projected findings" in an audit.

17. RDS denies it had an expected ratio or goal of "3 to 1" for its audits (meaning 3 dollars collected for Taxing Jurisdictions for every dollar billed to them). Nevertheless, RDS shall remove from its web-site and from any marketing materials any reference to historical statistics showing that RDS's audit collections are tied in any way to the amount of billings to its clients.

**(d) Changes To Practices Relating To Jurisdictions That Decide To "Opt-Out" Of An Audit.**

18. RDS shall send a letter notifying each taxpayer of the Taxing Jurisdictions which opted out of the audit, as well as a separate letter to each Taxing Jurisdiction that opts out of an audit informing such jurisdictions that they will not participate in any recovery against the taxpayer, even if RDS's audit determines that taxes were owed to the Taxing Jurisdiction(s) which opted out. Copies of the language to be used in the proposed letters are attached hereto as Exs. "\_\_" and "\_\_\_." Further, RDS shall not conduct a further audit of a taxpayer on behalf of a Taxing Jurisdiction that opts out of an audit within the time period prescribed in ALA. CODE § 40-2A-13.

**(e) Changes To RDS's Fidelity Bond Coverage.**

19. In addition to the Commercial Crimes/fidelity bond coverage that it already has in place, RDS shall secure a surety bond that will insure payment of any judgment obtained by a taxpayer against RDS or any Alabama Taxing Jurisdiction (up to \$5,000) based on injuries suffered by any taxpayer for the types of conduct covered under RDS's Commercial Crimes policy now in effect.

**(f) Changes In RDS's Discovery/Recovery Practices.**

20. RDS shall operate the Discovery/Recovery service ("DRE") in conformance with all statutory provisions prescribed by Alabama law. RDS is directed to make every effort to maintain the separation that currently exists between the audit department (which is involved in examination of taxpayers' books and records, determinations of tax, and the entry of assessments) and any contingency based business license collections activities within the DRE department. The employees of DRE shall not have any access to the internal books and records of any taxpayers. These employees cannot be involved in the waiver of any interest or penalties set by the provisions of the various Taxing Jurisdictions' Business License Codes. These employees can have no involvement in the determination of a taxpayer's gross receipts to be used in arriving at the amount of license taxes owed. These employees cannot help taxpayers in completing the form unless specifically asked to do so by a taxpayer. These employees cannot share information about taxpayers with the other RDS employees who conduct examinations of taxpayers' books and records. Moreover, the DRE license applications/notices can no longer request or require gross receipt numbers from taxpayers who owe or are subject to a flat-rate business license tax. Any disputes over the proper classification of a taxpayer under the applicable Business License Code, over the proper amounts of gross receipts, or over whether interest or penalties may be waived must be presented to and determined by the appropriate Taxing Jurisdiction. Nothing in this provision, however, limits or restricts a Taxing Jurisdiction's right to consult with RDS on these disputed matters. DRE personnel will not be involved in any of the assessment procedures

referenced in any Recovery/Discovery contracts between RDS and any Taxing Jurisdictions.

**(g) Changes In RDS's Practices Regarding Creation Of A "Taxpayer's Representative."**

21. RDS shall employ at its expense an independent "taxpayer representative" to serve in a role similar to the role played by the Taxpayer Advocate for the Alabama Department of Revenue. Contact information for the taxpayer representative must be set forth in the Alabama Taxpayer's Bill of Rights leaflet provided to taxpayers and posted on RDS's website. The taxpayer representative shall have the same authority to act on behalf of taxpayers and to make recommended determinations as the Taxpayer Advocate has under ALA. CODE § 40-2A-4(b).

**(h) Changes In The Manner In Which RDS Conducts Administrative Appeals.**

22. RDS shall conduct its administrative appeals of preliminary and final assessments in a manner consistent with the way those proceedings are conducted within the Alabama Department of Revenue ("ADOR"). Petitions for review of preliminary assessments may be handled internally by personnel employed by RDS -- just like ADOR internally handles petitions for review filed by state taxpayers. Appeals from final assessments of local taxes will be handled in the same manner as final assessment appeals to ADOR, or to other self-administered jurisdictions in Alabama, by an employee of RDS with legal training to handle the appeal and who was not the decision-maker on the petition for review of the preliminary assessment. If the taxpayer objects to an employee of RDS deciding the administrative appeal, then RDS must assign the appeal to an

outside attorney with tax experience who is on retainer with RDS. The person deciding the administrative appeal has the responsibility of providing a fair, efficient, unbiased, and complete resolution of all matters in this dispute. To the extent permitted by law, Administrative appeals must be handled in a manner consistent with ALA. CODE § 40-2A-9 and § 11-51-191 (1975), conjunctively. RDS must also publish any opinions entered on appeals of final assessments by placing those opinions on its web-site. Before publishing these opinions, however, RDS must take steps to ensure that confidential information about the taxpayer will not be divulged.

**(i) Changes In RDS's Practices Regarding Appeals Of Both Chapter 40 Taxes (Sales, Use, Lodging, And Rental Taxes) And Chapter 11 Taxes (Business License Taxes): "One-Step" Administrative Appeal.**

23. RDS has never required a separate or dual appeal process regarding taxes governed under various Titles of the Code of Alabama. The uniform revenue procedures under the separate titles are nearly identical, and RDS provides consolidated tax appeals for all types of tax involved in an examination in conformance with both Titles 11 and 40 of the Code of Alabama. RDS must continue this practice unless otherwise prohibited by law.

**(j) Changes In RDS's Practices Regarding Publication Of Common "Tax Nexus" Questions/Applications On RDS's Web-Site.**

24. RDS must publish on its web-site information relating to the issue of tax nexus. Specifically, RDS must post on its web-site, in a conspicuous manner, a link to ADOR's web-site where tax nexus issues are addressed.

**(k) Changes In RDS's Practices Regarding The Issuance Of Subpoenas.**

25. RDS cannot unilaterally issue any subpoenas to taxpayers to turn over their books and records prior to receiving written authorization from a Taxing Jurisdiction with a relative connection to the taxpayer. If a taxpayer fails or refuses to turn over its books and records for examination, RDS must contact one or more of the Taxing Jurisdictions who have a connection to the taxpayer at issue and request that the Taxing Jurisdiction take such actions as it deems appropriate, or alternatively provide written authorization for RDS to act in such a manner on their behalf, to include the issuance of a subpoena which identifies the Taxing Jurisdictions which so authorized the issuance by RDS.

26. The Court retains continuing jurisdiction over: (a) all matters and issues relating to the interpretation, administration, implementation, effectuation, and enforcement of the Settlement Agreement and this Final Order and Judgment, specifically including, but not limited to, the allocation, payment and distribution of Class Counsels' attorneys' fees and expenses, fees to referring attorneys, and Plaintiff Class Representatives' incentive awards; and (b) all parties to this action, including all Settlement Class members, for the purposes of enforcing and administering the Settlement Agreement and this Final Order and Judgment.

**DONE and ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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**ROBERT S. VANCE, JR.**  
**CIRCUIT COURT JUDGE**



G

**EXHIBIT "G"**

**[TO BE INCLUDED IN INITIAL LETTER TO TAXPAYER]**

Even though they have provided RDS with written authorization to conduct the examination of your books and records on their behalf, the following Taxing Jurisdictions have nevertheless specifically informed RDS that they do not want to participate in this specific examination for the purpose of determining delinquent taxes: [LIST NAMES OF OPT-OUT JURISDICTIONS]. Nevertheless, RDS will remain obligated to notify you of any refund due from the taxing jurisdictions, along with the general procedures by which to petition for a refund, should the examination reveal a refund is due.

H

**[EXHIBIT 'H']**

**[PROPOSED LETTER TO OPT-OUT  
TAXING JURISDICTIONS]**

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

**Re: Examination of \_\_\_\_\_'s Books and Records.**

Dear: \_\_\_\_\_:

[City or County] has entered into a \_\_\_\_\_ Agreement with RDS to conduct examinations of taxpayers' books and records to determine compliance with any tax collection/remittance obligations to [City or County]. You have provided general written authorization for RDS to conduct such examinations. Nevertheless, you have specifically informed RDS that [City or County] does not wish to participate in the examination of \_\_\_\_\_.

As a result of your specific directions, RDS will not be conducting the examination of \_\_\_\_\_ to determine compliance with tax collection remittance obligations to [City or County]. Accordingly, [City or County] will not be billed by RDS for any examination services, nor will [City or County] recover or receive information regarding any unpaid taxes or license fees from \_\_\_\_\_, even if the examination reveals that such taxes or license fees are otherwise owed to [City or County]. Additionally, pursuant to ALA. CODE § 40-2A-13(b)(1975), RDS will not be involved in any additional examinations of \_\_\_\_\_ on [City's or County's] behalf during the three-year period contemplated in Section 40-2A-13(b). In the event that [City or County] establishes

the basis for a second examination in compliance with Sections 40-2A-13(b) or (c), the examination must be conducted without RDS's involvement. Furthermore, should the examination reveal that the taxpayer is due a refund from [City or County], RDS will remain obligated to notify [City or County] and the taxpayer of the refund and refund claim procedures in accordance with ALA. CODE §40-2A-13(h).

If this letter does not correctly reflect the [City's or County's] position about its participation in the examination of \_\_\_\_\_ books and records, please let me know within seven (7) days of the date of this letter. We appreciate your prompt attention to this matter.

Sincerely,

\_\_\_\_\_  
TITLE