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SUPERIOR COURT BERGEN COUNTY
FILED
MAR 16 2011
John G. Sullivan
DEPUTY CLERK

SYGMUND N. WILLIAMS, on behalf of
himself and all others similarly situated,
Plaintiff,

vs.

PALISADES COLLECTION, LLC,
Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – BERGEN COUNTY

Civil Action

Docket No. BER-L-001604-11

**NOTICE OF JOINT MOTION
FOR FINAL JUDGMENT
INCLUDING CLASS CERTIFICATION,
APPOINTMENT OF CLASS
REPRESENTATIVE AND CLASS
COUNSEL, APPROVAL OF CLASS
ACTION SETTLEMENT AGREEMENT,
AND AWARDING COUNSEL FEES**

ORAL ARGUMENT REQUESTED

Please take notice that on April 1, 2011, at 9:00 a.m., or as soon thereafter as counsel may be heard, the parties will jointly move for an order certifying this action as a class action for settlement purposes, appointing Plaintiff's counsel as class counsel, conducting a hearing pursuant to R. 4:32-2(e)(1)(C) to approve the Class Action Settlement Agreement, and awarding attorney's fees and costs to Class Counsel.

In support of this Motion, the following is submitted:

- [1] Memorandum and Stipulation with a copy of the executed Class Action Settlement Agreement attached as Exhibit 1;
- [2] proposed form of Judgment.

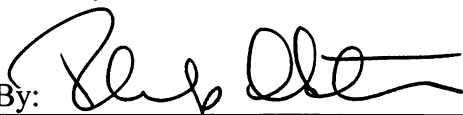
In addition, by separate filing, Defendant will join in this motion and submit one or more

affidavits set forth the particulars as to the class size, and the amounts of the credits and payments to the proposed class.

The parties request oral argument.

Respectfully submitted,

Philip D. Stern & Associates, LLC
Attorneys for Plaintiff

By: 
Philip D. Stern

Dated: March 15, 2011

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SYGMUND N. WILLIAMS, on behalf of
himself and all others similarly situated,
Plaintiff,

vs.

PALISADES COLLECTION, LLC,
Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – BERGEN COUNTY

Civil Action

Docket No. BER-L-001604-11

**JOINT MEMORANDUM AND
STIPULATION
IN SUPPORT OF JOINT MOTION
FOR FINAL JUDGMENT**

Plaintiff, Sygmund N. Williams and Defendant, Palisades Collection, LLC jointly move that the Court enter Final Judgment including certifying this action as a class action maintainable under “B1” and “B2”, appointing Plaintiff as the class representative and Plaintiff’s attorney as class counsel, approving and enforcing the Class Action Settlement Agreement (“Agreement”) attached as *Exhibit 1* pursuant to R. 4:32-1(B)(2), and awarding fees and expenses to Class Counsel.

In support of this Motion, Plaintiff and Defendant stipulate for settlement purposes only and show the following:

A. MOTION TO CERTIFY CLASS AND APPOINT CLASS COUNSEL

1. NATURE OF THE CASE

1.1. Plaintiff is a natural person residing in the City of Fresno, Fresno County, California. Plaintiff's claims arise under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692 et seq. Plaintiff essentially contends that he received a letter from Defendant which falsely implies that negative credit reporting will occur and that the class members received letters from Defendant containing the same offending verbiage.

1.2. Defendant is a Delaware limited liability company with principal offices located in the Borough of Englewood Cliffs, Bergen County, New Jersey. Defendant's principal purpose is the collection of debts. Defendant denies all liability and asserts, in part, that the allegedly offensive verbiage is, in the absence of a court order, required by the Fair Credit Reporting Act, 15 U.S.C. §1681 et seq.

1.3. On June 16, 2008, Defendant sent to Plaintiff a letter ("Williams Letter") in the form attached as Exhibit "A" to Plaintiff's Complaint. The Williams Letter concerned a debt allegedly assigned to Defendant and due from Plaintiff to the original creditor arising from one or more transactions in which the money, property, insurance, or services which was the subject of the transaction was primarily for personal, family, or household purposes.

1.4. Except for the name and address of the recipient, the date, the name of the creditor and amount of the debt, letters substantially identical to the Williams Letter were sent to nearly 206,000 consumers throughout the United States on and after June 16, 2008.

1.5. Plaintiff's virtually identical claims were alleged in an action commenced in the United States District Court for the District of New Jersey on June 15, 2009. Plaintiff and Defendant subsequently engaged the services of Honorable Marina Corodemus, retired, to

mediate the dispute and the parties participated in extensive mediation ultimately resulting in the Agreement and the parties consent to commence the present action and terminate the Federal action. A copy of the Stipulation of Dismissal filed in the Federal action is annexed as *Exhibit 2*. As reflected Exhibits 1 and 2, Plaintiff and Defendant agreed that the one-year statute of limitations under 15 U.S.C. §1692k(d) applicable to the Federal action would relate back to one year prior to the commencement of the Federal action instead of one year prior to the commencement of the present action. Consequently, the parties agreed that the class period commence on June 16, 2008.

1.6. Plaintiff therefore seeks to certify as a settlement class:

All persons in the United States whose accounts are owned by Defendant as of the date of certification and to whom, during the class period, Defendant mailed a letter in substantially the same form as Exhibit A to Plaintiff's Complaint, which letter was not returned by the Postal Service as undeliverable. Excluded from the class are:

- (i) all consumers who have filed for bankruptcy protection since the start of the class period;
- (ii) all consumers who have settled their accounts with Defendant for less than the full balance;
- (iii) all consumers who have entered into any general release of Defendant;
- (iv) all consumers who are deceased;
- (v) all consumers against whom Defendant has obtained a judgment; and
- (vi) all consumers who are class members in Case No. 1:08-cv-02607-RBR in the U.S. District Court for the S.D.N.Y.

1.7. Under the FDCPA, Defendant's liability for statutory damages to the class is "capped" at the lesser of \$500,000 or 1% of Defendant's net worth. 15 U.S.C. §1692k. At \$500,000, individual class members would recover no more than approximately \$2.42 based on the estimated class size of 205,943. An amount lower than \$500,000 could apply if either 1% of Defendant's net worth could be established at less than \$500,000 or the Court awarded less than

the maximum based on the factors set forth in 15 U.S.C. §1692k(b)(2). Plaintiff alleges that the Class on whose behalf he has sued should recover the maximum statutory damages pursuant to 15 U.S.C. §1692k.

1.8. Defendant has denied liability to Plaintiff, asserting the Defenses set forth in the Answer filed in this action. Defendant joins in this request for certification solely for settlement purposes. If the settlement is not approved or as may otherwise be provided in the Settlement Agreement, then, pursuant to the Settlement Agreement, the parties retain all *status quo ante* rights which are preserved without prejudice or limitation, including setting aside the class certification requested in this Joint Motion.

1.9. As explained in greater detail below, Defendant has agreed to relief which well exceeds the maximum relief Plaintiff could have obtained if this case proceeded on a contested basis.

1.10. Based upon the foregoing and all relevant circumstances, the parties jointly agree that the further conduct of this litigation would be protracted and expensive, and that it is desirable that this litigation be fully, finally and forever settled in the matter set forth in the Agreement.

2. CLASS CERTIFICATION REQUIREMENTS UNDER R. 4:32-1(a)

2.1. In New Jersey, Class Actions are liberally construed, and such an action is “permitted unless there is a clear showing that it is inappropriate or improper.” Lusky v. Capasso Bros., 118 N.J. Super. 369, 373 (App. Div.) certif. denied, 60 N.J. 466 (1972). In order to maintain a Class Action in New Jersey, the Class representative must satisfy all four prerequisites of R. 4:32-1(a); namely, numerosity, commonality, typicality and adequacy. See, In re Cadillac v. V8-6-4 Class Action, 93 N.J. 412, 424-25 (1983). Moreover, a Class Action is

considered the superior method for adjudication of consumer-fraud claims and Courts have been cautioned from withholding class certification in consumer-fraud cases where a Plaintiff may be unable to demonstrate all the requisites and proof that the suit is manageable. Riley v. New Rapids Carpet Ctr., 61 N.J. 218, 225 (1972). The FDCPA is a consumer protection statute. The purpose of class certification under this rule is to “save time and money for the parties and the public to promote consistent decisions for people with similar claims.” In re: Cadillac, supra, 93 N.J. at 430.

2.2. New Jersey Court Rule 4:32 governs the certification of class actions.

2.3. One or more members of a class may sue or be sued as representative parties on behalf of a class if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions 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. As discussed immediately below, all elements under R. 4:32-1(a) exist.

2.4. Numerosity: Plaintiff asserts, and Defendant so stipulates for purposes of settlement only, that the members of the class are so numerous, consisting of approximately 205,943 individuals, that joinder of all members is impracticable.

2.5. Commonality: Plaintiff asserts, and Defendant so stipulates for purposes of settlement only, that there are common questions of law or fact affecting the class, and that these questions include but are not limited to Defendant’s use of the letters in attempting to collect debts and whether the letters violated of 15 U.S.C. §1692e, 1692e(5), and 1692e(10). The critical consideration is whether there is a “common nucleus of operative facts.” Cadillac, supra, 93 N.J. at 431.

2.6. Typicality: Plaintiff asserts, and Defendant so stipulates for purposes of settlement only, that his claims are typical of the claims of the class. He alleges that he was a recipient of one or more of the letters. The members of the Class were also sent the letters.

2.7. Adequacy: A named Plaintiff must be able to provide fair and adequate protection for the interests of the Class. That protection involves two factors: (a) a plaintiff's attorney must be qualified, experienced and generally able to conduct the proposed litigation; and (b) the plaintiff must not have interests antagonistic to those of the class. Rosario v. Livaditis, 963 F.2d 1013, 1018 (7th Cir. 1992). See, also, Wetzel v. Liberty Mutual Ins. Co., 508 F.2d 239, 247 (3rd Cir. 1975); Lerwill v. Inflight Motion Pictures, Inc., 582 F.2d 507, 512 (9th Cir. 1978); In Re: Alcohol Beverages Litigation, 95 F.R.D. 321 (E.D.N.Y. 1982). Plaintiff contends that he will fairly and adequately represent the interests of the Class. He is a member of the proposed Class and he has expressed interest in representing the Class. Through his attorneys of record, the Plaintiff has been willing to pay the costs of litigation. Plaintiff represents to the Court that he has no interest adverse to other members of the Class. Plaintiff has hired the undersigned attorney to represent him in this matter who has substantial experience in class action litigation.

3. CLASS CERTIFICATION REQUIREMENTS UNDER R. 4:32-1(b)

3.1. Pursuant to R. 4:32-1(b), an action may be maintained as a class action if the four elements described above and set forth in R. 4:32-1(a) are satisfied and the conditions under any one of the following three paragraphs exist:

(1) the prosecution of separate actions by or against individual members of the class would create a risk either of :

(A) inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) 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; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The factors pertinent to the findings include:

(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(C) the desirability or undesirability in concentrating the litigation of the claims in the particular forum; and

(D) the difficulties likely to be encountered in the management of a class action.

3.2. The parties seek class certification under R. 4:32-1(b)(1) (“B1”) and 4:32-1(b)(2) (“B2”).

3.3. Defendant’s use of the letters is alleged to have affected all members of the Class. Inconsistent or varying adjudications with respect to individual members of the Class regarding the propriety and use of the letters might establish incompatible standards of conduct for Defendant justifying certification under B1.

3.4. With respect to Defendant’s alleged statutory violations under the FDCPA, Defendant acted on grounds generally applicable to the entire Class, thereby making final injunctive relief appropriate pursuant to B2. Plaintiff has sought (and this settlement provides for) permanent, nationwide injunctive relief. The granting of such an injunction in this case would, as a practical matter, render moot any similar request by any other class members.

3.5. Solely for the purposes of this settlement, Defendant does not dispute that a Class should be certified for settlement purposes only. Therefore, Plaintiff and Defendant

request that a class be certified under both B1 and B2.

3.6. The parties do not seek certification under R. 4:32-1(b)(3) (“B3”). Under the Agreement, Defendant will be proving monetary relief to the Class members however where, like here, damages are “incidental” to the injunctive relief, the action can be certified under B2 and not B3. Damages are “incidental” when “the computation of damages is mechanical, ‘without the need for individual calculation.’” In re Allstate Ins. Co., 400 F.3d 505, 507 (7th Cir. 2005) (citing decisions from the 5th, 9th and 11th Circuits and the Manual for Complex Litigation (Fourth)), and see, Drinkman v. Encore Receivable Mgmt., 2007 U.S. Dist. LEXIS 89514 (W.D. Wis. Dec. 3, 2007) (granting class certification in an FDCPA case under Fed.R.Civ.P. 23(b)(2), the Federal counterpart to B2).

3.7. The damages claim for the Class (as well as for Plaintiff) is for statutory damages under 15 U.S.C. §1692k(a)(2)(B) of the FDCPA. Statutory damages for the Class are based on four factors, none of which require “individual calculation” for each class member. Allstate, supra. Specifically, the factors under 15 U.S.C. §1692k(b)(2) are “the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector’s noncompliance was intentional.” Consequently, Plaintiff and Defendant request certification under B1 and B2.

4. NOTICE

4.1. Pursuant to R. 4:32-2(a), the court may, but need not, require notice for a class certified under B1 or B2. Under the terms of the Agreement, the absence of Class notice will not prejudice the rights of any Class member. Class members would be releasing only the claims alleged in the Complaint – they retain any other claims they might have against

Defendant.

4.2. In exchange for that release, the Class will receive far more than could have been obtained had this action been successfully prosecuted as a class action under the FDCPA. Under 15 U.S.C. §1692k(a)(2)(B), the FDCPA allows for statutory damages awarded to the Class not to exceed \$500,000. Furthermore, the FDCPA does not expressly authorize injunctive or equitable relief in a private action such as this action. *Weiss v. Regal Collections*, 385 F.3d 337, 342 (3rd Cir. 2004). Here, class members will be provided monetary benefits estimated at many multiples of the \$500,000 “cap” (the exact amount will be provided in a separate affidavit to be filed by Defendant at least 4 days before this Motion is to be heard) and Defendant has consented to injunctive relief. Thus, notice would serve no purpose. Plaintiff and Defendant request that no Class notice be required.

5. APPOINTMENT OF CLASS COUNSEL

5.1. Under the Settlement Agreement, the parties consent to and request the appointment of Philip D. Stern, Esq. as class counsel.

5.2. R. 4:32-2(a) requires the appointment of class counsel when the class is certified and R. 4:32-2(g)(1)(B) requires that class counsel “fairly and adequately represent the interests of the class” and R. 4:32-2(g)(1)(C) requires:

In appointing class counsel, the court must consider: (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel’s experience in handling class actions, other complex litigation, and claims of the type asserted in the action; (iii) counsel’s knowledge of the applicable law, and (iv) the resources counsel will commit to representing the class.

5.3. With respect to those factors, Plaintiff submits:

(a) Plaintiff’s counsel has investigated the claims by reviewing the pertinent letters and reviewing similar cases, including reviewing docket entries in cases filed in

Federal district courts asserting the same or similar claims against Defendant and other debt collectors;

(b) Plaintiff's counsel, who has been in the private practice of law for more than 26 years, is experienced in handling class actions and complex litigation including, but not limited to, being certified as class counsel in three matters, two of which were in the United States District Court for the Eastern District of New York and the third was in the United States District Court for the District of New Jersey;

(c) Plaintiff's counsel is knowledgeable in the Fair Debt Collection Practices Act as well as New Jersey practice including having filed dozens of actions under the FDCPA primarily in Federal district courts throughout the United States, when this motion is heard, will have attended over the last three years, four multi-day national conferences on consumer law and the FDCPA, and is a member of the National Association of Consumer Advocates; and

(d) Plaintiff's counsel has committed sufficient resources to fully prosecute this matter as a class action in accordance with the terms of the Agreement.

B. MOTION TO APPROVE SETTLEMENT

6. NATURE OF SETTLEMENT

6.1. Counsel for the parties represent to the Court that the proposed settlement was reached through extensive arms-length negotiations between the parties including, but not limited to, mediation before the Honorable Marina Corodemus (ret.) on April 21, 2010. The parties jointly agreed to mediate the dispute before Judge Corodemus, which involved both significant time and expense. The substantive terms of the Agreement were negotiated vigorously and through zealous advocacy.

6.2. Plaintiff and Defendant have agreed to a settlement of the suit on a Class-wide basis. The essential terms of the Settlement are set out in the Agreement attached hereto as *Exhibit 1*. The Settlement provides substantial benefits to the proposed Class.

6.3 The Settlement provides the following benefits for the Class:

(a) Defendant issues a credit to each Class member whose debt it still owns in the amount of 1% of the original face amount of the Class member's debt. If any Class member's remaining balance is less than 1% of the original face amount then the credit will be for the remaining balance. Credits will be in the amount set forth in a separate affidavit to be filed by Defendant at least 4 days before this Motion is to be heard.

(b) To approximately 2,150 Class members who already paid their debts in full, a check in the amount of 1% of the face amount of the Class member's debt that was obtained by Defendant will be mailed to the Class members last known address as reflected in Defendant records. Checks will total an amount set forth in a separate affidavit to be filed by Defendant at least 4 days before this Motion is to be heard. The proceeds of any of those checks that are returned as undeliverable or that remain uncashed 90 days after mailing will be paid to Legal Services of New Jersey, Inc. as a *cy pres* distribution for the benefit of the class.

(c) A prospective permanent injunction, as follows:

Henceforth, and until and unless otherwise Ordered by this Court, when giving the notice provided for by 15 U.S.C. §1681s-2(a)(7) (being Section 623(a)(7) of the Fair Credit Reporting Act), Defendant shall give such notice in the following form:

When permitted by law we may furnish
information about your account to credit

reporting agencies consequently, the balance due on your account is negative information which may be reflected on your credit report.

6.4. Defendant will also pay Plaintiff his individual claim for statutory damages in the amount of \$1,000.00 as provided for in 15 U.S.C. §1692k. As Plaintiff disputes the debt allegedly owed to Defendant, Defendant, in lieu of an incentive award to the Class Representative, waives all claims to Plaintiff's debt and agrees not to sell or assign the debt.

6.5. Plaintiff's counsel applies to the Court for an award of fees. Defendant has agreed to bear the costs of class administration and (subject to approval of the Court) pay \$42,500.00 as reasonable attorneys fees and expenses.

6.6. Upon Final Judgment and complete performance by Defendant of all of its obligations under the Settlement Agreement, Defendant will be fully, finally and completely released of all liability to the Plaintiff as to all claims and, except for those liabilities created by the Settlement Agreement, to the Class as to claims alleged in the Complaint.

6.7. When a proposed Class-wide settlement is reached, it must be submitted to the Court for approval. 2 H. Newberg & Conte, Newberg on Class Actions, (3d. ED. 1992) at Section 11.41, P. 11-87. Trial Courts are afforded broad discretion in determining whether to approve a proposed class action settlement. See, Eichenholtz v. Brennan, 52 F.3d 478, 482 (3d. Cir. 1995); Girsh v. Jepson, 521 F.2d 153 (3d Cir. 1975). This discretion is conferred in recognition that "[e]valuation of [a] proposed settlement in this type of litigation... requires an amalgam of delicate balancing, gross approximations and rough justice." City of Detroit v. Grinnell Corp., 356 F. Supp. 1380, 1385 (S.D.N.Y.) aff'd in part and rev'd in part on other grounds, 495 F.2d 448 (2d. Cir. 1974).

6.8. Thus, this Court is now asked to ascertain whether the proposed

Settlement is within a “range of reasonableness” which experienced attorneys could accept in light of the relevant risks of the litigation. See, Walsh v. Great Atlantic and Pacific Tea Co., 96 F.R.D. 632, 642 (D.N.J.) aff’d, 726 F.2d 956 (3d. Cir. 1983); see also, City of Detroit, 495 F.2d at 455. In determining what falls within this range, there is consideration of “the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion...”. Newman v. Stein, 464 F.2d 689, 693 (2d. Cir.) cert. denied., 409 U.S. 1039 (1972).

6.9. Recognizing that a settlement represents an exercise of judgment by the negotiating parties, courts have consistently held that the function of a judge reviewing a settlement is neither to rewrite the settlement agreement reached by the parties nor to try the case for resolving the issues intentionally left unresolved. Bryan v. Pittsburgh Plate Glass Co., 494 F. 2d 799, 804 (3d. Cir.) cert. denied., 419 U.S. 900 (1974); see also, Officers for Justice v. Civil Services Comm’n of San Francisco, 688 F.2d 615, 625 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983); Grunin v. International House of Pancakes, 513 F.2d 114, 123-24 (8th Cir.) cert. denied, 423 U.S. 864 (1975). A settlement represents the result of a process by which opposing parties attempt to weigh and balance the factual and legal issues that neither side chooses to risk taking to final resolution. Courts, therefore, have given considerable weight to the views of experienced counsel as to the merits of a settlement. See, Cotton v. Hinton, 559 F.2d 1316, 1330 (5th Cir. 1977); City of Detroit, 495 F.2d at 462; see also Lake v. First Nationwide Bank, 900 F. Supp. 726, 732 (E.D. Pa. 1995) (“Significant weight should be attributed to the belief of experienced counsel that settlement is in the best interest of the class”) (citation omitted); Fisher Bros. v. Cambridge-Lee Indus., Inc., 630 F. Supp. 482, 487 (E.D.Pa. 1985); In re: Baldwin-United Corp. Single Premium Deferred Annuities, Ins. Litig., 607 F. Supp. 1312, 1320 (S.D.N.Y.

1985); Oppenlander v. Standard Oil Co., 64 F.R.D. 597, 624 (D. Colo. 1974)(“[c]ourts have consistently refused to substitute their business judgment for that of counsel, absent evidence of fraud or over reaching...”).

6.10. Here, experienced counsel firmly believe that the settlement, as structured and contemplated by the parties, represents an educated and eminently reasonable resolution of the dispute. An evaluation of the relevant factors demonstrates that the settlement, including the provision for the award of attorney’s fees pursuant to statutory fee-shifting principals, fits well within the range of reasonableness and should be approved.

6.11. Absent the settlement, a lengthy and expensive trial would certainly ensue. Extensive trial preparation on both sides would be necessary and it would be unrealistic not to expect appeals from any result reached. Moreover, the Plaintiff anticipated filing a Motion for Class Certification shortly in the litigation and Defendant would have responded with a response in Opposition to Plaintiff’s Motion for Class Certification as well as a Motion for Summary Judgment and/or Motion for Judgment on the Pleadings. These items were not reached in anticipation of settlement and would otherwise be before the Court. Avoidance of this unnecessary expenditure of time and resources clearly benefits all parties. See, In re General Motors Pick-Up Trust Fuel Tank Products Liab. Litig., 55 F.3d 768, 812 (3rd Cir.), cert. denied, 516 U.S. 824 (1995) (concluding that lengthy discovery and ardent opposition from the defendant with “a plethora of pre-trial motions” where facts favoring settlement, which offers immediate benefits and avoids delay and expense).

6.12. The Settlement here comes only after pursuing sufficient pre-trial discovery so that all parties and the Court are able to assess its fairness adequately. The debt collection violations asserted in the Complaint on behalf of the Class stem primarily from the

allegedly improper wording employed by Defendant in the letter. As such, discovery into other areas of the claims asserted was limited once the parties commenced settlement discussions. As a result of the parties efforts, the litigation had reached a stage where “the parties certainly [had] a clear view of the strengths and weaknesses of their cases” In re: Warner Communications Sec. Litig., 618 F.Supp. 735, 745 (S.D.N.Y. 1985), aff’d, 798 F.2d 35 (2d Cir. 1986).

6.13. Courts have favorably reviewed settlements reached at relatively early stages of litigation. See, Weiss, 899 F.Supp. at 1301 (Settlement approved while “case is still in the early stages of discovery”). Because of the discovery conducted and due to the extensive and complicated settlement negotiations engaged in, the parties bring the proposed Settlement before the Court with a firm understanding of the strengths and weaknesses of the case. The legal and factual difficulties that Plaintiff foresees have been described above. Add to those difficulties the unpredictability and length of a jury trial and the benefits of the proposed settlement become all the more apparent.

6.14. The risk of establishing liability is another important factor warranting final approval of the Settlement. To prevail at trial, Plaintiff would need to succeed in his claims that Defendant violated the FDCPA by sending the letter. While Plaintiff strongly believes that the letter violated the FDCPA as set forth in the Complaint, he recognizes that a Court or a jury may not make that finding and Defendant may prevail on an affirmative defense. There are many cases from jurisdictions around the country interpreting §1692e of the FDCPA and whether or not certain debt collection letters violate its provisions. See, for example, Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Bingham v. Collection Bureau, Inc., 505 F. Supp. 864 (DC ND 1981); Riviera v. MAB Collections, Inc., 682 F. Supp. 174 (W.D.N.Y 1988); Rosa v. Gaynor, 784 F. Supp. 1 (D.C. Conn. 1989). The parties could have tried that issue until

conclusion and although Plaintiff was prepared to take on this burden, he faced significant risks.

6.15. Even if Plaintiff were to overcome the liability obstacles, there are substantial risks in proving damages, which Plaintiff has avoided by virtue of the proposed settlement. The determination of damages, like the determination of liability, is a complicated and uncertain process typically involving conflicting opinions. In this case, Plaintiff and the members of the Class would be seeking statutory damages as a result of their receipt of the letters. Statutory damages would be limited for the Class to the “lesser of \$500,000 or 1 per centum of the net worth of the debt collector.” 15 U.S.C. §1692k(a)(1)(2)(B). Furthermore, Plaintiff would have to demonstrate that the factors under 15 U.S.C. §1692k(b)(2) justified a maximum award. Those factors are “the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector’s noncompliance was intentional.” *Id.* Thus, even if Plaintiff were to prevail, its maximum class liability would be limited to \$500,000 which would cap individual recoveries to \$2.42 per Class member – or lower if 1% of Defendant’s net worth is less than \$500,000 or the factors do not justify to a jury that a maximum award should be given.

6.16. While Plaintiff believes that he could present clear and convincing testimony on the damages question and obtain a judgment for the full amount of damages available to him and the class, it is certainly not inconceivable that a jury and the Court might disagree with the Plaintiff. These risks underscore the reasonableness of the settlement.

6.17. The risks of being unable to certify a class if this matter were contested also substantiate the reasonableness of the settlement. Injunctive relief is not available under the FDCPA in a private action. *Weiss*, supra. Thus, a purely monetary class judgment would have to

proceed under R. 4:32-2(b)(3). The Court could determine that a *de minimis* individual recovery undermines the superiority requirement for certification as a “b3” class or that, in light of a minimal recovery, the costs of administration would be so great as to render the class unmanageable. Thus, it is by no means certain that the class will be certified or, if certified, not decertified during trial or on appeal.

6.18. Plaintiff and the members of the class seek statutory damages as a result of their receipt of the letters. Statutory damages would be limited for the Class to the “lesser of \$500,000 or 1% of the net worth of the debt collector.” 15 U.S.C. §1692k(a)(1)(2)(B). This means there is a cap on Class damages at a maximum of approximately \$2.42 per Class member (based on an estimated class size of 207,000). The maximum of approximately \$2.42 per class member would be lower if Defendant’s net worth is less than \$50 million or if the Court does not award the statutory maximum.

6.19. Plaintiff and Defendant have negotiated a Settlement Agreement whose overall value is far greater than that achievable had Plaintiff succeeded in a contested case.

6.20. Under the settlement, Defendant is providing monetary benefits to the class members in the form of checks and credits. Furthermore, Defendant is consenting to an injunction so as to conform its conduct on a prospective basis. Defendant will also pay Plaintiff his individual claim for statutory damages in the amount of \$1,000.00, as provided for in 15 U.S.C. §1692k, waive its alleged debt against him, and pay his attorney’s fees and costs of \$42,500.

6.21. In light of the serious questions of fact and law present in this litigation as discussed above, the value of the proposed settlement substantially outweighs the mere possibility of future relief. The parties estimate that a trial of this litigation would have lasted at

least several days with the possibility that it could run longer depending upon the need for and length of expert testimony. The expense of such a trial and the use of judicial resources and the resources of the parties would have been substantial. Moreover, in light of the highly contested nature of every aspect of the case, it is likely that any judgment entered would have been the subject of post-trial motions and appeals, further prolonging the litigation and reducing the value of any recovery. Thus, a settlement is advantageous to all concerned. An appeal could seriously and adversely affect the scope of an ultimate recovery, if not the recovery itself. See, Backman v. Polaroid Corp., 910 F.2d 10 (1st Cir. 1990)(class won a jury verdict and a Motion for Judgment N.O.V. was denied but on appeal the judgment was reversed and the case dismissed); Berkey Photo, Inc. v. Eastman Kodak Co., 603 F.2d 263 (2nd Cir. 1979), cert. denied, 444 U.S. 1093 (1980) (reversal of multi-million dollar judgment obtained after protracted trial); Transworld Airlines v. Hughes, 312 F. Supp. 478, 485 (S.D.N.Y 1970), modified, 449 F.2d 51 (2nd Cir. 1971), rev'd. 409 U.S. 363, 366 (1973) (\$145 million judgment overturned after years of litigation and appeals). While Plaintiff is confident of his ability to prevail at trial, no final adjudication has been made as to the validity of his claims. Plaintiff also recognizes that Defendant has continued to deny all liability and allegations of wrongdoing and some or all of Plaintiff's claims could be dismissed in connection with a filing of dispositive motions, and others filed, were the case to continue.

6.22. Given the nature of the hard-fought settlement discussions in the case and that the monetary and equitable relief exceeds that which would be available were this case litigated, it is apparent that the consideration to be made under the settlement represents an excellent resolution for the Class.

6.23. The Plaintiff's have obtained a substantial benefit for the Class. This

Settlement allows Plaintiff to avoid the risks described above and insures a substantial and immediate benefit to those members of the Class. Plaintiff believes the proposed Settlement is well within the range of reasonableness and should be approved.

C. FINAL JUDGMENT AND AWARD OF COUNSEL FEES AND EXPENSES.

7. JUDGMENT

7.1. Plaintiff and Defendant request that, upon completion of the Final Fairness Hearing, the Court enter Final Judgment giving effect to the Agreement.

8. AWARD OF CLASS COUNSEL FEES AND EXPENSES.

8.1. Plaintiff's attorney has agreed not to request an award of fees and costs in excess of \$42,500.00 and Defendant has agreed not to oppose that request. Defendant has agreed not to oppose any award for fees or costs if limited to \$42,500.00. In accordance with R. 4:32-2(h), the parties request that Class Counsel's fee application be heard at the same time as the Final Fairness Hearing.

8.2. For purposes of this application, the parties stipulate that Plaintiff is the prevailing party. Plaintiff's attorney now applies for fees and expenses in the amount of \$42,500.00. For settlement purposes, Plaintiff and Defendant stipulate that the full amount of \$42,500.00 is fair and reasonable under the circumstances including, without limitation:

(a) Fees under the FDCPA are generally awarded based on a lodestar analysis and Mr. Stern has been approved at a rate of \$425.00 (in *Decker, et al. vs. American Recovery Systems, Inc.*, Case No. 1:09-cv-00460 in the United States District Court for the Northern District of Illinois) and Mr. Stern represents and certifies that he has expended in excess of 60 hours beginning with the investigation of facts and law, legal research, searching and reviewing court records for similar cases involving Defendant and other debt collectors,

drafting pleadings and motions, communications with Plaintiff, the court and defense counsel, participation in mediation, and court appearances, and that his law clerk assisting him in this matter expended approximately 27 hours and that, were Mr. Stern forced to pursue a contested fee application, his time and expense for such an application would also be compensable;

(b) As this matter involves the creation of a common fund to the extent Class recovery has exceeded the maximum recovery allowed under the FDCPA, Mr. Stern would be entitled to a percentage of the common fund which, generally is between 20% and 33% (4 Newburg on Class Actions, §14:6 (4th ed. 2002));

(c) There are several factors supporting an enhancement or multiplier including the overall benefit to the Class and the Plaintiff under the Agreement and, specifically, successfully bringing about a result by settlement which well exceeds the maximum recovery had this action proceeded on a contested basis, Class Counsel's prospective services with respect to the administration of the Class pursuant to the Agreement, Class Counsel's willingness to limit fees and costs without the benefit of certainty as to the extent of necessary prospective services, Class Counsel's willingness to provide services for nearly two years without receipt of any compensation or reimbursement for expenses, Class Counsel's undertaking of the risk that compensation for services might never be paid even if the asserted claims were successfully prosecuted – namely, whether Defendant will be sufficiently solvent to satisfy its obligations under the Agreement;

(d) Mr. Stern represents and certifies that he has advanced litigation expenses including \$350.00 to file the complaint in the Federal action, \$29.95 for service of process, \$200.00 to file the Complaint in this Action, \$30.00 in motion filing fees, and \$2,500.00 for mediation services, and that Plaintiff has not paid any fees or expenses; and

(e) Mr. Stern represents and certifies that he is a graduate of the University of Pennsylvania and the Cardozo School of Law, that he has more than 26 years of private practice primarily in the state and federal courts in New Jersey, which has included several complex commercial litigations as well as class actions and appeals.

D. CONDITIONS OF SETTLEMENT AND NON-APPROVAL

8. CONDITIONS OF SETTLEMENT AND NON-APPROVAL

8.1. Pursuant to the Agreement, class certification is conditioned upon the following:

(a) Final approval of the Agreement;

(b) A final judgment which includes the permanent injunction as set forth in the Agreement; and

(c) The accuracy of the representations and warranties contained in the Agreement.

8.2. If any one of the foregoing conditions is not met as required by the Agreement then, in accordance with the attached Agreement and Stipulation of Dismissal, the Court will declare the Agreement null and void and all of the *status quo ante* rights of the parties shall be restored including, but not limited to, Defendant's right to oppose certification of a class and/or the merits of Plaintiff's Claims on any grounds legal or equitable, and nothing in this Joint Memorandum or other papers in support of this Motion will be used in favor or against any party with respect to the claims and defenses or any issue concerning class certification.

8.2. Plaintiff and Defendant stipulate that any failure of the Court to approve the settlement shall not operate as a waiver of the claims or defenses of any of the parties on the issue of certification at any such contested hearing.

WHEREFORE, Plaintiff and Defendant jointly request that the Court enter Final

Judgment:

1. Certifying that this action may proceed as a class action for settlement purposes as set forth in the Agreement, including defining the class and the class claims;
2. Appointing Plaintiff as a representative of the Class and Plaintiff's attorney as Class Counsel;
3. Approving, subject to a hearing pursuant to R. 4:32-2(e)(1)(C), the proposed Settlement Agreement;
4. Awarding Class Counsel attorney's fees and expenses in the amount of \$42,500; and
5. Such other and further relief, both at law and in equity, to effectuate the terms of the Agreement.

Respectfully submitted,

Philip D. Stern & Associates, LLC
Attorneys for Plaintiff

By: 

Philip D. Stern

Dated: March 15, 2011

PHILIP D. STERN & ASSOCIATES, LLC
697 Valley Street, Suite 2d
Maplewood, NJ 07040
(973) 379-7500
Attorney of Record: Philip D. Stern
Attorneys for Plaintiff, Sygmund N. Williams
and all others similarly situated

SPECTOR GADON & ROSEN P.C.
1635 Market Street, 7th Floor
Philadelphia PA 19103
(215) 241-8927
Attorney of Record: Jonathan J. Greystone
Attorneys for Defendant, Palisades Collection,
LLC

<p>SYGMUND N. WILLIAMS, on behalf of himself and all others similarly situated, Plaintiff,</p> <p>vs.</p> <p>PALISADES COLLECTION, LLC, Defendant.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION – ESSEX COUNTY</p> <p>Civil Action</p> <p>Docket No. ESX-L-5099-10</p>
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CLASS ACTION SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) in the above-captioned case between Plaintiff Sygmund N. Williams, individually, and on behalf of a Settlement Class of all similarly situated persons and Defendant Palisades Collection, LLC, was reached after arms-length negotiations between counsel for all parties, and is entered into as of April 21, 2010.

RECITALS:

A. The Class Members are a class of individuals (as defined below) on whose behalf Plaintiff filed a class action complaint in the above-styled and numbered cause.

B. The Complaint in the class action alleges that Defendant violated the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §1692 et seq., and that such alleged violations

render Defendant liable for statutory damages, costs, and reasonable attorneys' fees.

C. Defendant denies the material allegations in Plaintiff's Complaint, disputes both factually and legally that it is liable in any way to Plaintiff or the Class he seeks to represent, denies that its actions violated state or federal law in any manner, and asserts that even if Plaintiff were to prevail, the maximum statutory damages available to the Class under the FDCPA is \$500,000.00, which would limit each class member to a maximum of approximately \$2.42, and arguably a lower amount per class member if only Defendant's separate net worth is considered, unconsolidated with its corporate parent's net worth. Nevertheless, Defendant concludes that the further conduct of this litigation by it would be protracted and expensive, and that it is desirable that this litigation be fully, finally and forever settled in the manner set forth in this Agreement. Defendant is therefore willing to enter into this Agreement to avoid the further expense and inconvenience of litigation and to buy peace and resolve and settle all claims which have been made or could be made against it by Plaintiff and the Class arising out of alleged violations of the FDCPA or similar state laws.

D. Class Counsel (defined below) has experience in handling either class actions, consumer protection cases, or both. Class Counsel has analyzed the facts and law relevant to this litigation, and recognizes the substantial expense and delay associated with the continued prosecution of this litigation against Defendant through trial and through appeals, and the possibility that a trier of fact might award substantially less than the maximum statutory damages. Further, Class Counsel is mindful of the limitations on any possible recovery to the Class, even if he were to recover the maximum amount allowed by law, and recognizes that protracted litigation might not serve the interests of the Plaintiff or the Class.

E. Based on Class Counsel's extensive analysis of the facts at issue in this litigation

and law and upon data and records provided by the Defendant, and the fair, speedy, cost effective and assured procedures for providing a settlement for class members, pursuant to the advice of counsel, Plaintiff has determined that a settlement on the terms set forth herein is fair, adequate, and reasonable, and thus in the best interest of the Class.

F. Based on the extensive analysis of the law and facts at issue in this litigation, and the fair, flexible, speedy, cost-effective, and assured procedures set forth for providing substantial benefits to the Class Members, Defendant believes that this settlement with the Class on the terms set forth below is fair, adequate, and reasonable.

G. The Parties are desirous of entering into, and obtaining approval of this Agreement, pursuant to New Jersey Court Rule 4:32, in order to fully and finally resolve all claims and disputes arising out of, or related to Plaintiffs claims of violations of the FDCPA by Defendant or any of its officers, directors, shareholders, employees, agents, or representatives.

TERMS

Now, therefore, in consideration of the mutual promises and benefits set forth below, the undersigned agree to the following Terms:

ARTICLE I **DEFINITIONS**

When used in this Settlement Agreement, the following terms shall mean:

1.1 "AGREEMENT" means this Settlement Agreement in the above styled and numbered cause.

1.2 "BUSINESS DAY" means any day on which national banks are open for the conduct of general business.

1.3 "CLASS" means a class conditionally certified for purposes of settlement only, and in accordance with the terms of this Agreement only, which is described as:

All persons in the United States whose accounts are owned by Defendant as of the date of certification and to whom, during the class period, Defendant mailed a letter in substantially the same form as Exhibit A to Plaintiff's Complaint, which letter was not returned by the Postal Service as undeliverable. Excluded from the class are:

- (i) all consumers who have filed for bankruptcy protection since the start of the class period;
- (ii) all consumers who have settled their accounts with Defendant for less than the full balance;
- (iii) all consumers who have entered into any general release of Defendant;
- (iv) all consumers who are deceased;
- (v) all consumers against whom Defendant has obtained a judgment; and
- (vi) all consumers who are class members in Case No. 1:08-cv-02607-RBR in the U.S. District Court for the S.D.N.Y.

Subject to such exclusions the class consists of approximately 207,000 persons.

1.4 "CLASS COUNSEL" means Philip D. Stern.

1.5 "CLASS MEMBERS" means those persons who meet the Class definition in Section 1.3 and who are not subject to one or more of the exclusions.

1.6 "CLASS PERIOD" means the period from June 16, 2008, through the date of final approval.

1.7 "CONSUMMATION DATE" means the date upon which all obligations and duties of the Parties have been effectuated and the Agreement has been closed.

1.8 "COURT" means the Superior Court of the State of New Jersey, Law Division - Essex County.

1.9 "DEFENDANT" means Palisades Collection, LLC.

1.10 "EFFECTIVE DATE" means the date that this Agreement is finally approved by the Court, and neither Defendant, Plaintiff, nor Class Counsel has given notice of withdrawal as

provided in Section 5.2 This Agreement shall be finally approved only after the Court has entered the Final Order and Judgment and the later of (a) the time for perfecting an appeal of such Final Order and Judgment has expired with no appeal taken, (b) final dismissal of any appeal taken, or (c) affirmance of the Final Order which is not subject to further review by any court with appellate jurisdiction over the Litigation.

1.11 “FAIRNESS HEARING” means the hearing to be conducted by the Court pursuant to the New Jersey Court Rules to consider the fairness, adequacy, and reasonableness of the settlement reflected in this Agreement.

1.12 “FINAL JUDGMENT” means the final judgment to be entered by the Court approving this Agreement as fair, adequate, and reasonable under the New Jersey Court Rules, confirming certification of the Class for settlement purposes only, enjoining future litigation of Release Claims by the Class Members, awarding Plaintiff’s counsel fees and costs, and making such other findings and determinations as the Court deems necessary and appropriate to effectuate the terms of this Agreement.

1.13 “LITIGATION” means the above-captioned case.

1.14 “PARTIES” means the Class Members, Class Counsel and Defendant.

1.15 “RELEASED CLAIMS” means:

- A. For Plaintiff; all claims, actions, causes of action, demands, rights, damages, costs, attorneys’ fees, expenses, and compensation whatsoever that he or his heirs, executors, administrators, successors, assigns, and attorneys may have against Palisades Collection, LLC, or its parent, affiliate, and subsidiary entities, principals, members, managers, partners, officers, directors, shareholders, employees, agents, representatives, successors, assigns, insurance carriers,

sureties, clients, and attorneys as of the date of this Agreement, it being Plaintiff's intent to release all claims of any kind or nature, known or unknown, arising pursuant to the Fair Debt Collection Practices Act, contract, tort, common law, or regulation, that he may have against the parties herein released in the above captioned action.

- B. For the Class; all claims, actions, causes of action, demands, rights, damages, costs, attorneys' fees, expenses, and compensation whatsoever that the Class or the Class Members' respective heirs, executors, administrators, successors, assigns, and attorneys could assert against Palisades Collection, LLC, or any of its parent, affiliate, and subsidiary entities, principals, members, managers, partners, officers, directors, shareholders, employees, agents, representatives, successors, assigns, insurance carriers, sureties, clients, and attorneys resulting from Defendant's alleged violations of the Fair Debt Collection Practices Act or any state law providing substantially similar protections in the above captioned action.
- C. Plaintiff and the Class expressly waive all rights under Section 1542 of the Civil Code of California and any similar law of any state or territory of the United States. That section reads as follows:

1542. Certain claims not affected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

1.16 NON-RELEASED CLAIMS: This Agreement and the settlement embodied herein shall not release any claims of Defendant relating to the underlying debts of the Class,

except to the extent of the credits provided for herein, nor shall this Agreement release any defenses to such debts that are not based upon or do not arise out of the Released Claims.

ARTICLE II
TERMS AND CONDITIONS OF THE SETTLEMENT

Plaintiff and Defendant agree to the following settlement, subject to the terms and conditions of this Agreement and the terms and conditions of the incorporated documents. The relief provided for under this Agreement is in full satisfaction of all of Defendant's liability for all Released Claims (as defined above) of Plaintiff and all of the Class Members.

2.1 *Class Action Settlement Procedures*

- A. Plaintiff and Defendant agree to file a Joint Motion for Final Judgment Certification and Approval of Class Action Settlement with the Court (the "Certification Motion") seeking entry of an Order Certifying Class and Granting Approval of Settlement (the "Certification and Approval Order") which would (1) certify, for settlement purposes only, a class of Plaintiffs in the class action pursuant to N.J. COURT RULES 4:32-1(b)(1) and (2) and 4:32-2; (2) approve the Settlement set forth in this Agreement, and the relief sought thereby; (3) direct that the Settlement be implemented by Defendant; and (4) approve Plaintiff's application for fees and costs. Defendant agrees to support the entry by the Court of the Final Judgment. Defendant's agreement to support the Final Judgment is expressly conditioned upon the Court's approval of the Final Judgment. Furthermore, Plaintiff and his attorneys will support the Settlement and will take no action inconsistent with such support.
- B. The cost of implementing the Settlement shall be borne by Defendant.
- C. The Final Judgment shall include provisions which dismiss the Litigation with

prejudice, approve the proposed relief to the Class, and grant the individual and class releases described in this Agreement.

- D. Defendant shall exercise its best efforts to prepare a list of the members of the Class, which list shall be compiled from Defendant's records. The list shall be used by Defendant to provide to the Class the credits and payments required by the Settlement.
- E. Defendant's agreement to support certification is for the purposes of this Agreement only, and is without prejudice to any status quo ante defenses, rights, or positions in the Class Action. If this Agreement is not approved by the Court, or if such approval is reversed or modified on appeal (except for the modification of any attorney's fee award), or any one of the conditions precedent set forth in Article V of this Agreement is not met or any termination right under Section 5.2 of this Agreement is exercised, then the Final Judgment and all findings of fact and conclusions of law therein shall be automatically dissolved without further order of the Court, shall be null and void and of no force and effect, and all *status quo ante* rights of Plaintiff, the members of the Class, and Defendant shall in all respects be unaffected and preserved including, without limitation, (i) the right to pursue or oppose any subsequent efforts to certify this action as a class action, and (ii) all other defenses, rights, and positions. Plaintiff and Defendant agree that they are each estopped from taking any legal position contrary to this paragraph.

2.2 *The Class.* The Class is defined in Section 1.3. Furthermore, any person who would otherwise meet the Class definition but who files for bankruptcy protection between the

date of this agreement and the date of the Final Judgment shall also be excluded, as the parties agree that the above-named court may not adjudicate any asset which is property of bankruptcy estate.

2.3 *Settlement Consideration.* Subject to the terms of this Agreement, Defendant agrees to provide the following relief to Plaintiff and the Class:

A. Defendant shall grant to each Class Member whose debt it still owns a credit on his or her debt to Defendant.

(1) The credit shall be in the amount of 1% of the face amount of the Class Member's debt that was obtained by Palisades.

(2) If any Class Member has a balance that is less than that amount then the credit will be for the remaining balance.

(3) All credits will be posted to the affected Class Members' account within a reasonable period after the Effective Date with the Court setting the specific deadline.

(4) For each credit provided under this Paragraph 2.3.A., Defendant will provide to Class Counsel a listing ("List of Credits"), in electronic form to be agreed upon between counsel, containing information reasonably specific so as to identify each Class Member's account, the account's original creditor, the face amount of the account's debt, and the amount of the credit. The List of Credits will be provided within a reasonable time with the Court setting the specific deadline.

B. Defendant shall grant to each Class Member who paid their debts in full, a check.

(1) Defendant estimates that there are 2,150 Class Members who paid their debts in full.

(2) Each check will be in the amount of 1% of the face amount of the Class Member's debt that was obtained by Defendant.

(3) Each check will be mailed to the Class Member's last known address as reflected in Defendant's records.

(4) All checks will be mailed within a reasonable period after the Effective Date with the Court setting the specific deadline.

(5) For each check mailed under this Paragraph 2.3.B., Defendant will provide to Class Counsel a listing ("List of Checks"), in electronic form to be agreed upon between counsel, containing information reasonably specific so as to identify each Class Member's account, the account's original creditor, the face amount of the account's debt, the amount of the check, the check number and the mailing date. Such listing will be provided within a reasonable time with the Court setting the specific deadline.

(6) For each check mailed under this Paragraph 2.3.B. which is either returned as undeliverable or that remains uncashed for a period of 90 days after mailing, Defendant will provide a listing ("List of Check Results") including same information provided in the List of Checks and, in addition, a designation whether the check was undeliverable, uncashed, or cashed. The List of Check Results will be provided within a reasonable time with the Court setting the specific deadline.

(7) At the time of delivery of the List of Check Results, Defendant

will include a check payable to Class Counsel's trust account in the amount equal to the sum of all undelivered and uncashed checks reflected in the List of Check Results. Within 5 business days after receipt, Class Counsel will pay that sum to Legal Services of New Jersey, Inc. as a *cy pres* distribution for the benefit of the Class. Class Counsel will send a copy of the transmittal letter to Defendant's counsel and the Court.

C. Defendant will also pay Plaintiff his individual claim for statutory damages in the amount of \$1,000.00, as provided for in 15 U.S.C. § 1692k. Payment to be made within 3 Business Days after the Effective Date.

D. In consideration of his service to the Class, Defendant will waive its claim against Plaintiff and Defendant agrees not to sell or assign that claim. This is a disputed claim and, therefore, Defendant will not issue a 1099 for the debt that he owes to Defendant.

E. Palisades will stipulate to an injunction in the Final Judgment which provides:

The Court hereby mandatorily enjoins Defendant as follows: Henceforth, and until and unless otherwise ordered by this court, when giving the notice provided for by 15 U.S.C. § 1681s-2(a)(7) (Section 623(a)(7) of the Fair Credit Reporting Act) Defendant shall give such notice in the following form:

When permitted by law, we may furnish information about your account to credit reporting agencies. Consequently, the balance due on your account is negative information which may be reflected on your credit report.

F. Defendant shall bear the costs of class administration, and (subject to approval of the Court) pay the reasonable attorney's fees and expenses of Plaintiff's attorney, Philip D. Stern, Esq. Plaintiff's attorney has agreed that he will not request an award of fees and costs in excess of \$42,500.00, and Defendant agrees not to oppose a request for fees and costs in that

amount. Payment of the awarded amount to be made within 3 Business Days after the Effective Date.

2.4 *Exclusion of Certain Class Members.* The Class will exclude any consumer who would meet the Class definition but who is subject to the exclusions described in Section 1.4 above. However, because this is a settlement under N.J. COURT RULES 4:32-1(B) (1) and (2), no opt-outs by Class members will be permitted.

2.5 *Class Notice.* Because this is a settlement under N.J. COURT RULES 4:32-1(B)(1) and (2), no notice will be required.

2.6 *Class Members' Release and Exclusive Remedy.*

A. Upon entry of the Final Order and Judgment, each Class Member, including the Plaintiff, on behalf of such Class Members and of any person claiming by or through each such Class Member as heir, administrator, devisee, predecessor, successor, representative of any kind, or assignee shall be deemed to release and forever discharge Defendant Palisades Collection, LLC, and its parent, affiliate, and subsidiary entities, principals, members, managers, partners, officers, directors, shareholders, employees, agents, representatives, successors, assigns, insurance carriers, sureties, clients, and attorneys (the "Released Persons"), from any and all of the Released Claims arising out of the above captioned matter.

B. The relief described herein is the exclusive method of recovery and exclusive remedy for all Class Members for any and all of the Released Claims, and shall be in lieu of any other remedy or right of action against the Released Persons for the Released Claims. Accordingly, the Released Persons shall not be subject to liability of any kind to any Class Member with respect to any of the Released Claims, other than as set forth in this

Agreement.

C. Each Class Member, upon the Court's entry of the Final Judgment, shall be enjoined by that Judgment from instituting or maintaining any action for the Released Claims against the Released Persons. Defendant represents that it is unaware of any pending action in which a Class Member has asserted a claim which is the same or substantially similar to Plaintiff's claims however Defendant discloses that, due to the nature of managing collection actions, it is difficult to ascertain whether a claim which is the same or substantially similar to Plaintiff's claims has been asserted as a counterclaim in a collection action. The Court's Final Judgment shall enjoin such actions for the Released Claims. The Court shall retain jurisdiction over the administration of this Agreement and may use its equitable powers to enforce this Agreement.

2.7 *Bar of Contribution Claims by Non-Defendants.* The proposed Final Order and Judgment shall provide that all claims for contribution, indemnification or reimbursement, however denominated, against Defendant arising under state or federal law, including those based in tort, contract or statute or any other body of law, in favor of persons, including any nonreleased persons who are asserted to be or who may be joint tortfeasors or wrongdoers with Defendant shall be extinguished, discharged, satisfied, barred and enjoined.

2.8 *Class Counsel's Attorney's Fees and Expenses.* Class Counsel will seek from the Court an award of his reasonable attorney's fees and costs. Should the Court approve a lesser amount of fees and costs, such approval shall not be a basis for any party to withdraw from the settlement. Regardless of the amount approved by the Court, in no event will Defendant pay to Class Counsel fees and expenses in excess of \$42,500.00. Defendant will not object to any request for fees and costs that does not exceed a total of \$42,500.00.

2.9 *Attorney's Fees of Individual Class Members.* Any Class Member or other person may be represented by counsel of his or his choice, but all fees and expenses of such counsel, if other than Class Counsel paid under Section 2.8 above, shall be paid by the Class Member or other person.

2.10 *No Admission of Liability by Defendant.* The parties and their attorneys stipulate that this Agreement does not constitute an admission by Defendant that any claim or fact alleged by any party in the Class Action is true or correct, and Defendant expressly denies any liability or wrongdoing whatsoever in connection with matters which are the subject of the Class Action.

ARTICLE III **REPRESENTATIONS AND WARRANTIES**

3.1 *Representations and Class Counsel's Warranties.* Class Counsel represents and warrants as follows:

- A. that except as may be ordered by the Court in this case all financial information furnished by Defendant is, and shall remain confidential, and shall not be released or divulged to any other person or entity without Defendant's express written permission; and
- B. that all financial information furnished by Defendant shall be returned to Defendant at the conclusion of the litigation, without retention or duplication of any of such information, except for financial information Defendant designates otherwise.

However, such representations shall not constitute the giving of legal advice to Defendant, which stipulates it is relying on the legal advice of its own attorneys in deciding whether to enter into this settlement.

3.2 *Representations and Warranties of the Plaintiff.* Plaintiff represents and warrants as follows:

- A. that on the date of execution of this Agreement he is the owner of the individual claims asserted in the Lawsuit, that he has not assigned, pledged (except to his

attorneys), sold or otherwise transferred such claims (or any interest in such claims), and that on the Effective Date, he will own such claims free and clear of any and all liens, claims, charges, security interests or other encumbrances of any nature whatsoever, except for any contingent legal fees and expenses; and

- B. that this Agreement does not constitute an admission by Defendant that any claim or fact alleged by any party in the Class Action is true or correct, and Defendant has always and consistently expressly denied any liability or wrongdoing whatsoever in connection with matters which are the subject of the Class Action.

ARTICLE IV **CONDITIONS TO CLOSING**

4.1 *Conditions.* The foregoing agreements of Plaintiff and Defendant are subject to the accuracy of the representations and warranties contained in this Agreement and to the performance by the parties hereto of their obligations under this Agreement in all material respects. Additionally, Defendant's obligation to provide the class relief described herein and to proceed with closing shall be subject to the satisfaction of each of the following conditions to closing on or prior to the Consummation Date (unless such conditions are waived by Defendant):

- A. the Effective Date shall have occurred;
- B. the Court shall have approved and signed a Final Judgment that includes a release of all of the Released Claims;
- C. Defendant and Plaintiff shall have been furnished with such additional documents as may be reasonably required in order to implement the transactions contemplated by this Agreement;
- D. the representations and warranties contained in Article III of this Agreement shall be true and correct as of the date of execution of this Agreement.

ARTICLE V **MISCELLANEOUS PROVISIONS**

5.1 *Appeals.* If an appeal is taken by a Class Member or any other person from the Certification and Approval Order or the Final Judgment, the parties to this Agreement agree to

support the position on such appeal that the order or judgment appealed from should be affirmed in its or their entirety, and to file briefs or other appropriate court papers in support of that position. Nothing contained herein, however, shall prejudice the rights of Plaintiff, Class Counsel, or Defendant to appeal from any order of the Court that is inconsistent with the orders contemplated by this Agreement.

5.2 *Termination.* This Agreement shall be terminable by Defendant upon five (5) Business Days written notice if any of the terms, conditions, or representations of the Agreement are not adhered to by the Court or by the Plaintiff or Class Counsel or if the Court permits members of the Class to opt out of the Class. If this Agreement is terminated, Plaintiff, Defendant, and each of the Class Members shall be deemed to be in the same position as existed prior to its execution, with the same status quo ante rights and interests as they may have had absent the entry by Defendant and Plaintiff into these settlement discussions, and this Agreement and all other understandings and agreements between the parties and their respective counsel relating to the settlement, shall be deemed to be null and void and of no force and effect, and the parties will jointly notify the Court of the need to decide Plaintiff's class certification as a contested motion or, at Plaintiff's option, to dismiss this action and file the action in the United States District Court for the District of New Jersey.

5.3 *Distribution of Settlement Funds.* Subject to Approval of the Court, the settlement funds will be distributed as follows:

- A. Within thirty days after a judgment by the Court approving the Settlement becomes final, checks representing the distribution due to Plaintiff and Class Counsel described above will be sent by Defendant to Class Counsel.
- B. Within ninety days after a judgment by the Court approving the

Settlement becomes final, all required account credits will be provided to the Class, and checks representing the distribution to the Class members entitled to checks will be sent by Defendant to those persons entitled to a distribution under the terms of this Agreement.

5.4 All checks to Class Members will expire after 90 days. Any portion of the cash distribution to the Class that is unclaimed by the Class, because the settlement check was returned as undeliverable or without a forwarding address, or because the check remains uncashed 90 days after distribution, or any funds otherwise remaining after the distribution was calculated, Defendant shall pay to Class Counsel's trust account who will pay that amount to Legal Services of New Jersey, Inc. as a *cy pres* remedy within 10 days after his receiving those funds from Defendant.

5.5 *Claims of Persons Who Are Excluded As Class Members.* The claims of all persons who would have fallen within the putative class, but who are excluded for the reasons set forth above shall be dismissed without prejudice in the Final Judgment.

5.6 *No Admission.* The Parties and their attorneys stipulate that this Agreement is a compromise of disputed claims, and that this Agreement is entered into without admitting any liability, which liability is expressly denied, and without agreement by any Party to any of the allegations made by another Party. The Parties and their attorneys further stipulate that nothing contained in this Agreement, the supporting documents, or the negotiations leading up to this Agreement shall be construed as an admission of liability or wrongdoing of any kind, or, if this Agreement is terminated, as a waiver of any claim or defense that Defendant or Plaintiff may have in the Litigation, nor of Plaintiff's right to seek class certification on a contested basis, nor of Defendant's right to oppose such certification.

5.7 *Entire Agreement.* This Agreement, including all referenced Exhibits, is the entire agreement of the Parties. All antecedent or contemporaneous extrinsic representations, warranties, or collateral provisions concerning the negotiation and preparation of this Agreement are intended to be discharged and nullified.

5.8 *Modification.* No modification of this Agreement may be made, except by written agreement executed by Plaintiff, Class Counsel, and Defendant, and approved by the Court.

5.9 *Notices.* All notices between and to Class Counsel and Defendant required under this Agreement shall be sent by certified mail, by hand delivery, or by facsimile, to the recipient designated in this Agreement. The timeliness of all submissions and notices shall be measured by the date that is three days after the date of the postmark (if sent by mail), or by the date of receipt (if hand delivered or sent by facsimile). The persons designated to receive notice are as follows:

CLASS COUNSEL:
Philip D. Stern, Esq.
Philip D. Stern & Associates, LLC
697 Valley Street, Suite 2D
Maplewood, NJ 07040
Fax: (973) 532-0866

and:

ATTORNEY FOR DEFENDANT:
Jonathan J. Greystone, Esq.
Spector Gadon & Rosen P.C.
1635 Market Street 7th Floor
Philadelphia PA 19103
Fax: (215) 531-9140

5.10 *Execution in Counterparts.* This Agreement may be executed in any number of counterparts and each of which when so executed shall be deemed an original and all of which

taken together shall constitute one and the same Agreement.

5.11 *Applicable Law.* This Agreement shall be governed by and shall be construed and enforced in accordance with the laws of the State of New Jersey except for any conflict of law provision in the laws of the State of New Jersey that might otherwise require the application of the laws of a jurisdiction other than that of the State of New Jersey to the performance, validity, construction, or enforcement of this Agreement.

5.12 *Headings.* Article and Section headings in this Agreement are for convenience of reference only and are not to be taken to be a part of the provisions of this Agreement, nor to control or affect meanings, constructions or the effect of the same.

5.13 *Benefit of Agreement.* The Agreement shall be binding upon and inure to the benefit of the parties hereto, the Class Members, the Released Persons, and their respective successors, heirs, and assigns. Nothing in this Agreement is intended or shall be construed to give any other person or corporation any legal or equitable right, remedy or claim under or in respect to this Agreement or any provision herein entered.

5.14 *Place of Performance.* This Agreement shall be performed in Essex County, New Jersey.

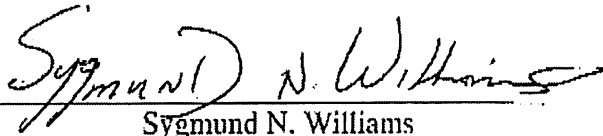
5.15 *Best Efforts.* All signatories to this Agreement and their counsel shall exercise their best efforts to take all steps and expend all efforts that may become necessary to effectuate this Agreement.

WHEREFORE, the parties set forth their signatures as evidence of their assent to this Class Action Settlement Agreement.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE

Palisades Collection, LLC



Sigmund N. Williams

Dated: *Nov 17th 2010*

By: _____
Gary Stern, Manager

Dated:

Philip D. Stern & Associates, LLC
Attorneys for Plaintiff


By: _____
Philip D. Stern

Dated: *November 17, 2010*

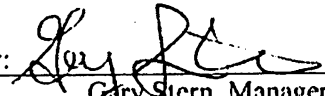
Spector Gadon & Rosen P. C.
Attorneys for Defendant

By: _____
Jonathan J. Greystone

Dated:

SIGNATURE PAGE

Palisades Collection, LLC

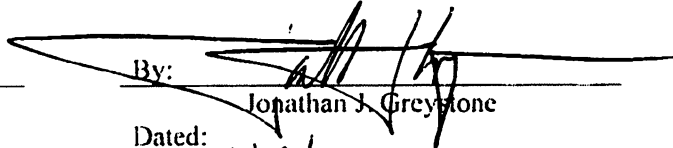
By: 
Gary Stern, Manager
Dated: 11/17/10

Sigmund N. Williams
Dated:

Philip D. Stern & Associates, LLC
Attorneys for Plaintiff

Spector Gadon & Rosen P. C.
Attorneys for Defendant

By: _____
Philip D. Stern
Dated:

By: 
Jonathan J. Greystone
Dated: 11/18/10

b. Attorneys fees of \$39,390.05 based on 60 hours of attorney time for an effective rate of \$656.50 based on a combination of lodestar and common fund analyses.

5. Continuing Jurisdiction; Disputes. The Court retains jurisdiction over the interpretation, enforcement and implementation of the Settlement Agreement and this Judgment. Except as retained, all claims against Defendant are dismissed with prejudice and without taxing costs. Counsel for the parties will make a good faith attempt to confer and resolve all disputes regarding compliance with this Judgment before applying to the Court for relief.
6. Service. A copy of this Order will be served on all parties or their respective counsel within 7 days.

Opposed: NO

HONORABLE ROBERT C. WILSON, J.S.C.