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*Jeffrey H. Schervone*

DIRECT DIAL: 856-914-4905  
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March 28, 2011

## **VIA FED-EX**

Civil Motions Clerk  
Superior Court of New Jersey  
Bergen County, Law Division  
Justice Center, Room 119  
10 Main Street  
Hackensack, NJ 07601

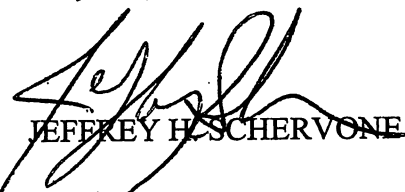
**Re: Williams v. Palisades Collection, LLC**  
**Docket No.: BER-L-1604-11**  
**Motion Return Date: April 1, 2011**  
**Our File No.: 037207-0032**

Dear Madame/Sir:

This firm represents the Defendant, Palisades Collection, LLC in the above-captioned matter. Returnable before Judge Wilson on April 1, 2011 is the parties' Joint Motion for Final Judgment Including Class Certification, Appointment of Class Representative and Class Counsel, Approval of Class Action Settlement, Award of Counsel Fees and Joint Memorandum and Stipulation in Support of Joint Motion for Final Judgment Order.

I am enclosing an original and one copy of Defendant's submission joining in the parties' Joint Motion. Kindly file the original with the court and return a conformed copy in the enclosed self-addressed stamped envelope.

Very truly yours,



JEFFREY H. SCHERVONE

JHS/mt  
Encl.

cc: Philip Stern, Esquire (w/enclosures)  
Jonathon J. Greystone, Esquire (w/enclosures)

**SPECTOR GADON & ROSEN, P.C.**

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March 28, 2011

**VIA FED-EX**

Honorable Robert C. Wilson, J.S.C.  
Superior Court of New Jersey  
Bergen County, Law Division  
Bergen County Justice Center  
10 Main Street  
Hackensack, NJ 07601

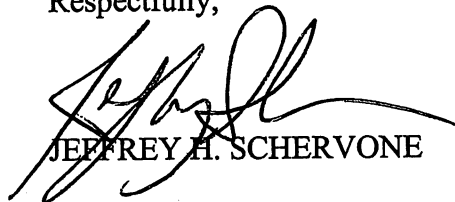
**Re: Williams v. Palisades Collection, LLC**  
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Dear Judge Wilson:

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Thank you for Your Honor's time and consideration regarding this matter.

Respectfully,



JEFFREY H. SCHERVONE

JHS/mt  
Encl.

cc: Philip Stern, Esquire (w/enclosures)  
Jonathon J. Greystone, Esquire (w/enclosures)

SPECTOR GADON & ROSEN P.C.  
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Fax: 856.722.5344  
Attorney of Record: Jeffrey H. Schervone  
Jonathan J. Greystone (Pro Hac Vice)  
Attorneys for Defendant, Palisades Collection,  
LLC

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION – BERGEN COUNTY

Civil Action

Docket No. BER-L-001604-11

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

vs.

PALISADES COLLECTION, LLC,  
Defendant.

**DEFENDANT’S, PALISADES  
COLLECTION, LLC, JOINDER IN  
JOINT MOTION FOR FINAL  
JUDGMENT INCLUDING CLASS  
CERTIFICATION, APPOINTMENT OF  
CLASS REPRESENTATIVE AND CLASS  
COUNSEL, APPROVAL OF CLASS  
ACTION SETTLEMENT AGREEMENT,  
AWARD OF COUNSEL FEES AND  
JOINT MEMORANDUM AND  
STIPULATION IN SUPPORT OF JOINT  
MOTION FOR FINAL JUDGMENT AND  
PROPOSED FINAL JUDGMENT ORDER**

Defendant, Palisades Collection, LLC (hereinafter also referred to as “Palisades”), by and through its counsel, Spector Gadon & Rosen, P.C., hereby joins in the Notice of Joint Motion for Final Judgment Including Class Certification, Appointment of Class Representative and Class Counsel, Approval of Class Action Settlement Agreement, Award in Counsel Fees, and the Joint Memorandum and Stipulation in Support of Joint Motion for Final Judgment and the Proposed Final Judgment and further avers as follows:

1. On or about March 15, 2011, Plaintiff, Sygmund N. Williams, filed a “Notice of Joint Motion for Final Judgment Including Class Certification, Appointment of Class Representative and Class Counsel, Approval of Class Action Settlement Agreement, and Award in Counsel Fees” with the Superior Court of New Jersey, Law Division, Bergen County, in the above-captioned and docketed action. A true and correct copy of said document is attached hereto as exhibit “A”.

2. Defendant, Palisades Collection, LLC, joins with Plaintiff, Sygmund N. Williams, in that document identified as Exhibit “A” herein now pending before this Honorable Court.

3. On or about March 15, 2011, Plaintiff, Sygmund N. Williams, filed a Joint Memorandum and Stipulation in Support of Joint Motion for Final Judgment with the Superior Court of New Jersey Law Division, Bergen County in the above-captioned and docketed matter. A true and correct copy of that document is attached hereto as Exhibit “B”.

4. Defendant, Palisades Collection, LLC, joins with Plaintiff, Sygmund N. Williams, in the Joint Memorandum and Stipulation in Support of Joint Motion for Final Judgment pending before this Honorable Court.

5. On or about March 15, 2011, Plaintiff, Sygmund N. Williams, filed a Proposed Final Judgment with the Superior Court of New Jersey Law Division, Bergen County in the above-captioned and docketed matter. A true and correct copy of said document is attached hereto as Exhibit “C”.

6. Defendant, Palisades Collection, LLC, joins with Plaintiff, Sygmund N. Williams, in the Proposed Final Judgment now pending before this Honorable Court for its consideration.

7. By way of supplement to Exhibit “B” attached hereto and more specifically Section 4.2 of said Exhibit, Palisades avers as follows:

The putative Class Members will be provided credit and monetary benefits in the total estimated amount of Eight Million Two Hundred Sixteen Thousand Five Hundred Forty Eight (\$8,216,548.00) dollars.

8. By way of supplement to Exhibit "B" attached hereto and more specifically Section 6.3(a) of said Exhibit, Palisades avers as follows:

Credits to certain of the putative Class Members are estimated to be in the amount of Eight Million One Hundred Fifty Seven Thousand and Five (\$8,157,005.00) dollars.

9. To approximately Six Thousand Thirty Nine (6,039) putative Class Members who already paid their debts in full, a check in the amount of one (1%) percent of the face amount of the Class Members debt that was obtained by Defendant will be mailed to the putative Class Members last known address as reflected in Defendants records. Checks are estimated to total Fifty Nine Thousand Five Hundred Forty Three (\$59,543.00) dollars.

10. Defendant, Palisades Collection, LLC, provides an Affidavit in Support of its representations and averments contained in Paragraphs 7, 8 and 9. A true and correct copy of the Affidavit is attached hereto as Exhibit "D".

WHEREFORE, Plaintiff and Defendant Jointly request that the Court:


1. Grant the Joint Motion for Final Judgment Including Class Certification, Appointment of Class Representative and Class Counsel, Approval of Class Action Settlement Agreement and the Award of Counsel fees; and
2. Enter the Proposed Final Judgment.

Respectfully Submitted,

**SPECTOR GADON & ROSEN, P.C.**

Dated: March 28, 2011

BY:

  
JEFFREY H. SCHERVONE  
JONATHAN J. GREYSTONE

1000 Lenola Road  
P.O. Box 1001  
Moorestown, NJ 08057  
Tel: 856.778.8100  
Fax: 856.722.5344

Attorneys for Defendant,  
Palisades Collection, LLC

**CERTIFICATE OF FILING AND SERVICE**

I HEREBY CERTIFY that a true and correct copy of Defendant's, Palisades Collection, LLC, Joinder in Joint Motion for Final Judgment Including Class Certification, Appointment of Class Representative and Class Counsel, Approval of Class Action Settlement Agreement, Award of Counsel Fees and Joint Memorandum and Stipulation in Support of Joint Motion for Final Judgment and Proposed Final Judgment Order, was forwarded via overnight delivery for filing with the Clerk of the Superior Court New Jersey, Bergen County, Law Division, and has been furnished via Overnight Mail, on this 28<sup>th</sup> day of March, 2011 to:

Philip D. Stern, Esquire  
Philip D. Stern & Associates, LLC  
697 Valley Street, Suite 2d  
Maplewood, NJ 07040  
Morristown, NJ 07960

**SPECTOR GADON & ROSEN, P.C.**

Dated: March 28, 2011

By:  \_\_\_\_\_

Jeffrey H. Schervone, Esquire

Jonathan J. Greystone, Esquire

Attorneys for Defendant,  
Palisades Collection, LLC

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

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 AWARDED COUNSEL FEES**

ORAL ARGUMENT REQUESTED

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

vs.

PALISADES COLLECTION, LLC,  
Defendant.

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

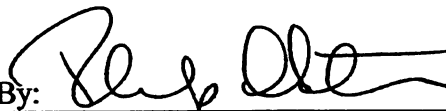


affidavits set forth the particulars as to the class size, and the amounts of the credits and payments to the proposed class.

The parties request oral argument.

Respectfully submitted,

Philip D. Stern & Associates, LLC  
Attorneys for Plaintiff

By: 

---

Philip D. Stern

Dated: March 15, 2011

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

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 (11<sup>th</sup> 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: 

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Philip D. Stern

Dated: March 15, 2011

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(973) 379-7500  
Attorney of Record: Philip D. Stern  
Attorneys for Plaintiff, Sygmund N. Williams  
and all others similarly situated

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Attorney of Record: Jonathan J. Greystone  
Attorneys for Defendant, Palisades Collection,  
LLC

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

**FINAL JUDGMENT**

THIS MATTER having come before the Court on the joint application of Philip D. Stern & Associates, LLC (Philip D. Stern, Esq., appearing), attorneys for Plaintiff, Sygmund N. Williams, on behalf of himself and all others similarly situated, and by Spector Gadon & Rosen, P.C. (Jonathan J. Greystone, Esq., appearing), attorneys for Defendant, Palisades Collection, LLC, for final judgment certifying this matter as a class action under R. 4:32, for approval of a class-wide settlement agreement, and for approval of fees and costs awardable to class counsel, and a copy of the Class Action Settlement Agreement having been filed with the Court in satisfaction of R. 4:32-2(e)(2), and the Court having conducted a fairness hearing pursuant to R. 4:32-2(e)(1)(C) in the presence of counsel, and based on foregoing, the Court concludes that:

A. The Class consists of more than 200,000 members and is so numerous that joinder of all



members is impracticable;

- B. There are questions of law and fact common to the proposed Class, namely, whether the Defendant's written communications to consumers, in the form attached to the Complaint as Exhibit A, contains the threat to take any action that cannot legally be taken or that is not intended to be taken, uses any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer, or uses any false, deceptive, or misleading representation or means in connection with the collection of any debt in violation of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692 et seq.;
- C. The individual claims of Plaintiff are typical of the claims of the Class;
- D. Plaintiff is an appropriate and adequate representative for the Class;
- E. Based on Paragraphs A through D, the prerequisites under R. 4:23-1(a) have been satisfied;
- F. Defendant's use of the letter in the form attached to the Complaint as Exhibit A affects all members of the Class. Inconsistent or varying adjudications with respect to individual members of the Class regarding the propriety and use of that form of letter might establish incompatible standards of conduct for Defendant;
- G. The proposed settlement includes, among other things, Defendant's consent to an injunction and final injunctive relief is appropriate respecting the Class as a whole as Defendant has acted on grounds generally applicable to the Class, thereby making final injunctive relief appropriate;
- H. Class damages as provided in the settlement agreement are incidental to the injunctive relief as they arise from Defendant's conduct with respect to the class without any inquiry

as to the specific circumstances of any class member;

- I. Based on Paragraphs F, G and H, a class action is maintainable under R. 4:32-1(b)(1) and (2);
- J. Inasmuch as the settlement agreement and this Final Judgment releases Class members' claims only for the same violations alleged in the Complaint and provides that the Class will receive more than it could have received in a successful contested action adjudicating those claims, the Court concludes that no notice to the Class is required and, inasmuch as this action is not being maintained under R. 4:32-1(b)(3), Class members are not entitled to opt out;
- K. With respect to the proposed Settlement Agreement which has been filed with the Motion, the Court finds that the proposed settlement is fair, reasonable, and adequate;
- L. With respect to the appointment of Settlement Class Counsel under R. 4:32-2(g), the Court finds, after consideration of the factors described in that Rule, Plaintiffs' counsel, Philip D. Stern, Esq., will fairly and adequately represent the interests of the Settlement Class; and
- M. With respect to the award of counsel fees and litigation expenses for Class Counsel, the Court finds that the information certified to in the Joint Memorandum and Stipulation in Support of Joint Motion for Final Judgment satisfies the requirements of R. 4:42-9 and the amount applied for is both fair and reasonable;

and for good cause shown;

IT IS ON THIS FIRST DAY OF APRIL, 2011; ORDERED AND ADJUDGED:

- 1. Class Certification. The Court certifies this action as a class action maintainable under R. 4:32-1(b)(1) and (2), and, in accordance with R. 4:32-2(a):

- a. defines the “Class” 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.

and

- b. defines the “Class Claims” as any and all claims arising from Defendant sending the letter in substantially the same form as Exhibit A to Plaintiff’s Complaint which were sent to members of the Class on or after June 16, 2008 up through and including the date of this Order.

2. Approval of Settlement Agreement. The Class Action Settlement Agreement previously filed with the Court is declared to be fair, reasonable and adequate.

3. Enforcement of Settlement Agreement. In accordance with the Class Action Settlement Agreement:

- a. Definitions. For purposes of this Judgment:

- i. “Effective Date” means the later of

- 1. the time for perfecting an appeal of such Final Order and Judgment has expired with no appeal taken,

2. final dismissal of any appeal taken, or
  3. affirmance of this Judgment which is not subject to further review by any court with appellate jurisdiction over this action.
- ii. “Business Day” which means any day on which national banks are open for the conduct of general business. Unless expressly specified as a Business Day, a day is a calendar day.

b. Checks.

- i. Within 28 days after the Effective Date, for each Class Member whose account has no outstanding balance, Defendant shall issue a check payable to the Class member in the amount of 1% of the amount paid on the account and mailed addressed to the Class member at the last address known to Defendant.
- ii. Within 14 days after mailing the checks, Defendant will deliver to Class Counsel a listing, in electronic format (such as a Microsoft Excel spreadsheet, a comma-separated value file, or similar format acceptable to Class Counsel), reflecting the following information for EACH check:
  1. Defendant’s internal account number (i.e., “Debtor ID”),
  2. the name of the original creditor,
  3. the face amount of the debt,
  4. the amount of the check,
  5. the check number, and
  6. the mailing date.

iii. Within 150 days after mailing the checks, Defendant will deliver to Class Counsel a listing, in electronic format (such as a Microsoft Excel spreadsheet, a comma-separated value file, or similar format acceptable to Class Counsel) reflecting the following information for EACH check which was not cashed or was returned as undeliverable:

1. Defendant's internal account number (i.e., "Debtor ID"),
2. the name of the original creditor,
3. the face amount of the debt,
4. the amount of the check,
5. the check number,
6. the mailing date, and
7. a designation whether the check was undeliverable or uncashed.

and, at the same time, pay by check or wire transfer to the trust account of Class Counsel the amount which is the sum of all undelivered checks and all uncashed checks. Within 10 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. Credits.

- i. Within 28 days after the Effective Date, for each Class Member other than those described in Paragraph 3.b., Defendant will enter a credit on

his or her account in the amount of either 1% of the amount shown as due on each debt at the time Defendant acquired the debt or the currently remaining outstanding balance due, whichever is less.

ii. Within 14 days after entering those credits, Defendant will deliver to Class Counsel a listing, in electronic format (such as a Microsoft Excel spreadsheet, a comma-separated value file, or similar format acceptable to Class Counsel), reflecting the following information for EACH credit:

1. Defendant's internal account number (i.e., "Debtor ID"),
2. the name of the original creditor,
3. the face amount of the debt, and
4. the amount of the credit.

d. Injunction. 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.

e. Individual Statutory Damages. Within 3 Business after the Effective Date, Defendant will pay to Plaintiff the sum of \$1,000.

f. Class Representative. Defendant is deemed to waive any and all claims it may have against Plaintiff in connection with an alleged debt designated in

Defendant's records as Debtor ID 19281257 regarding First USA Account Number ending 8320.

g. Release. Upon Defendant's compliance with Paragraph 2(a), (b), (c), (e), (f) and Paragraph 3, Defendant is hereby deemed released from:

i. Regarding Plaintiff, all claims, actions, causes of action, demands, rights, damages, costs, attorneys' fees, expenses, and compensation whatsoever that his or her heirs, executors, administrators, successors, assigns, and attorneys may have against Defendant, 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 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; and

ii. Regarding 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.

- iii. 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.

- iv. This Judgment does 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 Judgment release any defenses to such debts that are not based upon or do not arise out of the conduct which forms the basis for Defendant's alleged violations of the Fair Debt Collection Practices Act.
- v. Defendant's compliance with Paragraph 2(a), (b), (c), (e), (f) and Paragraph 3 shall be evidence by a certification made by Class Counsel setting forth such compliance.

4. Approval of Counsel Fees and Expenses. The Court approves an award of \$42,500.00 for attorney's fees and costs to Class Counsel which, within 3 Business Days after the Effective Date, Defendant will pay to Class Counsel. as follows:

- a. Costs and expenses in the amount of \$ 3,109.95; and



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

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

**SPECTOR GADON & ROSEN, P.C.**

ATTORNEYS AT LAW

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March 29, 2011

**VIA FACSIMILE & FIRST CLASS MAIL**

**Fax # 201-371-1152**

Kelly Zampino, Law Clerk

Chambers of Honorable Robert C. Wilson, J.S.C.

Bergen County Superior Court of New Jersey

Bergen County Justice Center, Room 215

10 Main Street

Hackensack, NJ 07601

**Re: Williams v. Palisades Collection, LLC**

**Docket No.: BER-L-1604-11**

**Motion Return Date: April 1, 2011**

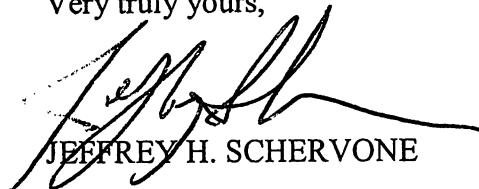
**Our File No.: 037207-0032**

Dear Ms. Zampino:

Further to our conversation this morning, I am enclosing a document titled Affidavit of Stephen Braun for your insertion after the Exhibit D tab to the Defendant's Joinder in Joint Motion, submitted yesterday for filing. Regrettably, this document was inadvertently omitted from Defendant's submission to the Court.

Thank you for your understanding and courtesies in this matter.

Very truly yours,



JEFFREY H. SCHERVONE

JHS/mt

Enclosure

cc: Philip Stern, Esquire (w/enclosures)

Jonathon J. Greystone, Esquire (w/enclosures)

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

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

**AFFIDAVIT OF STEPHEN BRAUN**

BE IT KNOWN, that on this 28 day of MARCH, 2011,

BEFORE ME, a duly sworn and competent authority in the State of New Jersey, for the  
County of BERGEN, NOTARY PUBLIC and the undersigned Affiant herein  
appearing herein below,

**DID PERSONALLY APPEAR:** Stephen Braun, a person of the full age of Majority,  
residing and domiciled in the State of New Jersey, County of BERGEN.

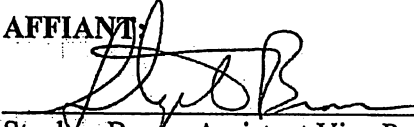
**AFTER BEING DULY SWORN BY ME,** did depose and state for purposes of the  
above-captioned litigation matter only:

1. I am Assistant Vice President of Operations and Director of Litigation at Palisades Collection, LLC, Defendant in the instant matter.
2. I am familiar with the following documents filed in the instant action: (a) 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; (b) Joint Memorandum and Stipulation In Support of Joint Motion for Final Judgment; and (c) the proposed Final Judgment.

3. I have conducted a duly diligent and comprehensive review of all Palisades Collection, LLC files, materials, accounts, documents and records with reference to those particular sections "4.2", "6.3 (a)" and "6.3 (b)" of the Joint Memorandum and Stipulation In Support Of Joint Motion For Final Judgment ("Joint Motion").
4. In supplement to section "4.2" of the Joint Motion, the putative Class Members will be provided monetary benefits and Credits whose combined value is approximately \$8, 216,548.00.
5. In supplement to section "6.3 (a)" of the Joint Motion, Credits are estimated to be in the amount of \$8,157,005.00.
6. In supplement to section "6.3(b)" of the Joint Motion, Checks to approximately 6,039 putative Class Members are estimated to total \$59,543.00.
7. The combined size of the putative Class Membership receiving Credits or Checks is estimated at approximately 210,000.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

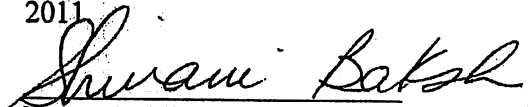
AFFIANT:

  
 Stephen Braun, Assistant Vice President of  
 Operations and Director of Litigation at  
 Palisades Collection, LLC

STATE OF NEW JERSEY :  
 :  
 COUNTY OF *Bergen* : SS

Sworn to and subscribed to before me by Stephen Braun, on this 28 day of March

2011

  
 Notary Public

