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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 MARIA CONCEICAO SILVA, on behalf of
14 herself and others similrly situated,

15 Plaintiffs,

16 v.

17 PATENAUDE & FELIX, A PROFESSIONAL
18 CORPORATION, a California corporation; and
19 RAYMOND ALCIDE PATENAUDE,
20 individually and in his official capacity,

21 Defendants.

Case No.: C08-03019 JW

**AMENDED ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT**

22 This case comes before the Court on the Joint Motion of Plaintiff Maria Conceicao Silva, on
23 behalf of herself and the class she represents, and Defendants Patenaude & Felix and Raymond Alcide
24 Patenaude (hereinafter, "Defendants") for preliminary approval of the Class Action Settlement
25 Agreement. The Court is fully advised of the following premises of the proposed Class Settlement:

26 A. Plaintiff and Defendants have entered into a Class Action Settlement Agreement
27 ("Settlement Agreement"), attached to the Joint Motion as Exhibit A .

28 B. The Settlement Agreement is submitted to the Court for approval pursuant to Rule 23(e)
of the Federal Rules of Civil Procedure.

1 C. Pursuant to the Settlement Agreement, Defendants agrees to certification of a class
2 action as a **Rule 23(b)(3)** class with class notice provided to the class members as described in the
3 Settlement Agreement by first class mail.

4 D. Pursuant to the Settlement Agreement, Raymond Patenuade will pay \$8,250, 0.4% of
5 his net worth, as purported statutory damages to the class which will be distributed on a pro rata basis;
6 any funds which cannot be distributed will be awarded to Pro Bono Project Silicon Valley for
7 consumer education or reproduction as a *cy pres* fund.

8 E. Pursuant to the Settlement Agreement, Defendants will pay notice costs upon
9 preliminary approval of class settlement.

10 F. Pursuant to the Settlement Agreement, Defendants will pay \$1,125 to Plaintiff Maria
11 Conceicao Silva, inclusive of all purported damages, actual and statutory.

12 G. Pursuant to the Settlement Agreement, Defendants will pay reasonable attorneys' fees
13 and costs to be determined by the Court, absent an agreement by the parties.

14 H. Pursuant to the Settlement Agreement, Defendants will provide the names and
15 addresses of the class members to class counsel and the Class Administrator.

16 I. Pursuant to the Settlement Agreement, Plaintiff and each class member shall, as of the
17 Effective Date, be deemed to release and discharge forever Defendants and their heirs, current and
18 former officers, directors, successors, predecessors, executors, administrators, assigns, shareholders,
19 affiliated companies, insurers, attorneys, clients, and employees, from all claims, controversies,
20 liabilities, actions and causes of action made in this litigation. This release is conditioned upon the
21 performance by Defendants of their obligations toward Plaintiff and the class members as set forth in
22 the Settlement Agreement. Defendants do not release any obligation by any debtor to any of
23 Defendants' client or to Defendants.

24 **IT IS HEREBY ORDERED THAT:**

25 1. Pursuant to Rule 23, the class is defined as follows:

- 26 (i) all persons who were sent a collection letter from Defendants in a
27 form materially identical or substantially similar to the letter attached as
28 Exhibit "1" to the Class Action Complaint (ii) where such letter was sent
to an address in California (iii) regarding a debt allegedly due to Target
National Bank (iv) incurred for personal, family or household purposes

1 (v) which was not returned as undeliverable by the U.S. Post Office (vi)
2 and where such letter was sent between June 19, 2007, and June 3, 2009,
3 but (vii) excluding persons who have settled or otherwise resolved their
4 FDCPA and/or RFDCPA claims after June 19, 2007.

5 The parties have interpreted “in the form of **Exhibit 1** attached to the Complaint” as used above
6 in the class definition to mean letters that were worded as Exhibit 1, and that were addressed to
7 California residents and referenced debts owed by these California residents to Target National Bank.

8 2. The Class Action Settlement Agreement (Exhibit A) is preliminarily approved.

9 3. The names and addresses of all class members shall be provided by Defendants to Class
10 Counsel and the Class Administrator.

11 4. A Class Notice in a substantially similar form as Exhibit B shall be mailed to each class
12 member as described in the settlement agreement within 60 days of the date of entry of this order.

13 6. The Final Fairness Hearing will be conducted before the Honorable James Ware, at the
14 U.S. District Court for the Northern District of California, San Jose Division, 280 South First Street,
15 Room 2112, San Jose, CA 95113, in Courtroom 4 on **February 8, 2010 at 9 a.m.** On or before
16 **February 1, 2010**, the parties shall file their Motion and Proposed Order for Final Approval of
17 Settlement as a separate Docket Item Number.

18 7. Barring an agreement between the parties, Plaintiff shall file a motion for an award of
19 costs and reasonable attorneys’ fees no later than 14 days after final judgment has been entered, after
20 final approval of class settlement.

21 DATE: August 31, 2009

22 
23 JAMES WARE
24 UNITED STATES DISTRICT JUDGE

EXHIBIT A

1 Mark E. Ellis - 127159
June D. Coleman - 191890
2 Jennifer S. Gregory - 228593
ELLIS, COLEMAN, POIRIER, LAVOIE, & STEINHEIMER LLP
3 555 University Avenue, Suite 200 East
Sacramento, CA 95825
4 Tel: (916) 283-8820
Fax: (916) 283-8821
5 MEllis@ecplslaw.com
JColeman@ecplslaw.com
6 JGregory@ecplslaw.com

7 Attorneys for
DEFENDANT PATENAUDE & FELIX AND RAYMOND ALCIDE PATENAUDE

8
9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 MARIA CONCEICAO SILVA, on behalf of
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17 CORPORATION, a California corporation; and
18 RAYMOND ALCIDE PATENAUDE,
individually and in his official capacity,

19 Defendants.

Case No.: C08-03019 JW

**CLASS ACTION SETTLEMENT
AGREEMENT**

20 1. **PARTIES:** The parties to this Settlement Agreement are: Plaintiff Maria Conceicao
21 Silva ("Plaintiff"), on behalf of herself and all others similarly situated, and Defendants Patenaude &
22 Felix and Raymond Alcide Patenaude ("Defendants"). This Agreement binds the Plaintiff, the class
23 members, and the Defendants, their assigns and successors, officers and employees of Defendants, and
24 all others acting with knowledge of this Agreement.

25 2. **NATURE OF LITIGATION:** On June 19, 2008, Plaintiff filed this class action
26 lawsuit in the United States District Court for the Northern District of California, alleging that
27 Defendants violated the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 *et seq.*
28 ("FDCPA") and California's Rosenthal Fair Debt Collection Practices Act ("RFDCPA"), Cal. Civ.

1 Code §§ 1788, *et seq.*

2 3. **LIABILITY:** The claims of the Plaintiff are disputed. Plaintiff and Defendants
3 consider it desirable that the action and the claims therein be settled upon the terms and conditions set
4 forth in this Settlement Agreement, in order to avoid further expense as well as burdensome and
5 protracted litigation.

6 In that Defendants enter into this settlement to buy peace, defendants believe that they cannot
7 justify the expense of additional litigation when compared to the expense of the settlement. There is
8 no admission of liability.

9 4. **INVESTIGATION:** Counsel for the class has investigated the facts available to
10 counsel and the applicable law. Defendants have cooperated fully with counsel for the class and have
11 made Patenaude & Felix's balance sheet available to counsel for the class, as well as Defendant
12 Patenaude's statement of net worth. All financial information has been provided subject to a protective
13 order. Defendants acknowledge that Plaintiff and class counsel have relied on this information in
14 agreeing to this Settlement Agreement.

15 5. **COMPROMISE:** Plaintiff and the class members desire to settle their claims against
16 Defendants, having taken into account, through their counsel, the risks, delay and difficulties involved
17 in further litigation. Based on the foregoing, and upon an analysis of the benefits which this
18 Settlement Agreement affords the class, counsel for the class considers it to be in the best interest of
19 the class to enter into this Settlement Agreement.

20 6. In consideration of the foregoing and other good and valuable consideration,
21 Defendants, Plaintiff, and counsel for the members of the class agree that the claims of the Plaintiff
22 and the members of the class against Defendants should be and are compromised and settled, subject to
23 the approval of the Court, upon the following terms and conditions.

24 **TERMS**

25 7. **EFFECTIVE DATE:** This Settlement Agreement shall become effective ("Effective
26 Date") upon the occurrence of the following:

27 Five days after the Court's order granting final approval of the class settlement is final and not
28 subject to appeal, or if an appeal has been sought, the expiration of five days after the final disposition
of any such appeal which disposition approves the Court's order granting final approval of the class

1 settlement.

2 8. **CLASS MEMBERS:** Class members are defined as follows:

3 (i) all persons who were sent a collection letter from Defendants in a
4 form materially identical or substantially similar to the letter attached as
5 Exhibit "1" to the Class Action Complaint (ii) where such letter was sent
6 to an address in California (iii) regarding a debt allegedly due to Target
7 National Bank (iv) incurred for personal, family or household purposes
8 (v) which was not returned as undeliverable by the U.S. Post Office (vi)
9 and where such letter was sent between June 19, 2007, and June 3, 2009,
10 but (vii) excluding persons who have settled or otherwise resolved their
11 FDCPA and/or RFDCPA claims after June 19, 2007.

12 The parties have interpreted "in the form of Exhibit 1 attached to the Complaint" as used above
13 in the class definition to mean letters that were worded as Exhibit 1, and that were addressed to
14 California residents and referenced debts allegedly owed by these California residents to Target
15 National Bank.

16 9. **MONETARY RELIEF TO THE CLASS:** Defendant Raymond Alcide Patenaude
17 will pay \$8,250, 0.4% of his net worth, to be used as pro rata payments to the class, as purported
18 statutory damages pursuant to **15 U.S.C. §1692k(a)(2)(B)(ii)**. Mr. Patenaude will deposit these
19 settlement funds in a separate bank account within 45 days of the effective date of the settlement
20 agreement. Any funds which remain 90 days after the pro rata settlement payments are disbursed to
21 the class will be paid to Pro Bono Project Silicon Valley as a cy pres fund for consumer education and
22 representation.

23 10. **Class Settlement Notice.** Defendants will pay the costs of mailing the notice to the
24 class members, which includes a National Change Of Address (NCOA) search upon preliminary
25 approval of class settlement. These administration expenses exclude any attorneys' fees.

26 11. The Class Administrator shall be First Class, 626 South Clark Street, Floor 7, Chicago,
27 IL 60605-1711. Defendants will provide a list of class members and their addresses to the class
28 administrator and class counsel within 30 days of the Court's order preliminarily approving the class
settlement. Notice shall be sent within 45 days of the Court's order preliminarily approving the class
settlement.

12. Notice will be sent to the class member's last known address as listed in Patendaude &
Felix's records, as updated from an NCOA search by the class administrator, unless the class member
has informed Patenaude & Felix as of the date of the Court's preliminary approval order that (1) he or

1 she is represented by an attorney, and provided a mailing address for that attorney or (2) that Patenaude
2 & Felix should communicate with a non-attorney third party rather than the class member. If the class
3 member has informed Patenaude & Felix that he or she is represented by an attorney, and provided a
4 mailing address for that attorney, the class notice will be mailed to the attorney's last known address
5 contained in Patenaude & Felix's records, as updated by an NCOA search by the class administrator.
6 If the class member has informed Patenaude & Felix that Patenaude & Felix should communicate with
7 a non-attorney third party, the class notice will be mailed to the class member's last known address
8 contained in Patenaude & Felix's records as updated from an NCOA search by the class administrator.

9 13. The class notice will be in the general format attached hereto.

10 14. **MONETARY RELIEF TO THE NAMED PLAINTIFF:** Defendants will pay
11 \$1,125 to Plaintiff Maria Conceicao Silva as all purported damages, actual and statutory. Said
12 payment will be made to Class Counsel upon the effective date of the settlement agreement.

13 15. **ATTORNEYS' FEES AND COSTS:** Defendants will pay reasonable and necessary
14 attorneys' fees and costs to be determined by the Court absent an agreement by the parties within 45
15 days after entry of the Court's order awarding fees and/or costs, unless a notice of appeal has been
16 filed. The Motion for Attorneys' Fees and Costs must be filed within 14 days after final judgment is
17 entered by the Court.

18 16. **RELEASE:** Plaintiff and each class member shall, as of the Effective Date, be deemed
19 to release and discharge forever Defendants and their heirs, current and former officers, directors,
20 successors, predecessors, executors, administrators, assigns, shareholders, affiliated companies,
21 insurers, attorneys, clients, and employees, from all claims, controversies, liabilities, actions and
22 causes of action which were asserted or could have been asserted in this litigation. This release is
23 conditioned upon the performance by Defendants of its obligations toward Plaintiff and the class
24 members as set forth in this Settlement Agreement. Defendants do not release any obligation by any
25 debtor to any of Defendants' clients or to Defendants.

26 17. If this Settlement Agreement is not approved by the Court or for any reason does not
27 become effective, it shall be deemed null and void and shall be without prejudice to the rights of the
28 parties hereto and shall not be used as a limitation on Plaintiff's alleged damages nor an admission of
liability by Defendants in any subsequent proceedings in this or any other litigation, or in any manner

1 whatsoever. The parties agree that if this Settlement Agreement is not approved by the Court or for
2 any reason does not become effective, the parties shall seek a new scheduling order to place the parties
3 in the same position that they were in as of June 18, 2009.

4 18. **CLASS MEMBERS' RIGHT OF EXCLUSION:** Any class member can seek to be
5 excluded from this Settlement Agreement and from the class, within the time and in the manner
6 provided by Court Order. Any class member so excluded shall not be bound by the terms of this
7 Settlement Agreement nor entitled to any of its benefits.

8 19. **PRELIMINARY APPROVAL:** As soon as practicable after execution of this
9 Settlement Agreement, the parties shall apply to the Court for an Order which:

- 10 a. Preliminarily approves this Settlement Agreement.
- 11 b. Schedules a hearing for final approval of this Settlement Agreement by the Court.
- 12 c. Approves the form of notice to the class, to be published as described above.
- 13 d. Finds that mailing of such class notice is the only notice required and that such notice
14 satisfies the requirements of due process and Rule 23 of the Federal Rules of Civil
15 Procedure.

16 20. **FINAL APPROVAL:** After the conclusion of the final fairness hearing, the Court will
17 determine whether to enter a Final Order approving the terms of this Settlement Agreement as fair,
18 reasonable and adequate, providing for the implementation of those terms and provisions, finding that
19 the notice given to the class members satisfies the requirements of due process and Rule 23 of the
20 Federal Rules of Civil Procedure, directing the entry of the Final Order, and retaining jurisdiction to
21 enforce the provisions of this Settlement Agreement.

22 21. **SETTLEMENT DOCUMENTS:** The parties propose to use a form of notice to the
23 class similar to Exhibit A, a form of proposed Preliminary Order similar to Exhibit B, and a form of
24 Final Order similar to Exhibit C. The fact that the Court may require non-substantive changes in the
25 notice or either order does not invalidate this Settlement Agreement.

26 22. **OTHER MATTERS:** The parties and their attorneys agree to cooperate fully with one
27 another in seeking court approval of this Settlement Agreement, and to use their best efforts to effect
28 the consummation of this Settlement Agreement and the settlement provided for herein as soon as is
reasonably possible.

1 **23. ENFORCEMENT OF THE SETTLEMENT:** If this settlement agreement is
2 breached, reasonable and necessary attorneys' fees are awardable to the non-breaching party.

3 24. The foregoing constitutes the entire Agreement between the parties with regard to the
4 subject matter hereof and may not be modified or amended except in writing, signed by all parties
5 hereto, and approved by the Court.

6 25. This Settlement Agreement may be executed in counterparts, in which case the various
7 counterparts shall be said to constitute one instrument for all purposes. The several signature pages
8 may be collected and annexed to one or more documents to form a complete counterpart. Photocopies
9 of executed copies of this Settlement Agreement may be treated as originals.

10 26. Each and every term of this Settlement Agreement shall be binding upon and inure to
11 the benefit of Plaintiff, the class members, and any of their successors and personal representatives,
12 and shall bind and shall inure to the benefits of the Released Parties, all of which persons and entities
13 are intended to be beneficiaries of this Settlement Agreement.

14 27. This Settlement Agreement shall be governed by and interpreted in accordance with the
15 laws of the State of California.

16 Dated: 7-6-09

17 By Maria C. Silva
18 Maria Conceicao Silva, individually and on behalf of
19 others similarly situated

20 Dated: 7-6-09

21 CONSUMER LAW CENTER, INC.
22 By [Signature]
23 Fred W. Schwinn
24 Attorney for Maria Conceicao Silva, individually and
25 on behalf of others similarly situated

26 Dated: _____

27 HORWITZ & HORWITZ & ASSOCIATES
28 By _____
O. Randolph Bragg
Attorney for Plaintiff Maria Conceicao Silva,
individually and on behalf of others similarly situated

Dated: _____

By _____
Raymond Alcide Patenaude, Individually and on

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12 and shall bind and shall inure to the benefits of the Released Parties, all of which persons and entities
13 are intended to be beneficiaries of this Settlement Agreement.

14 27. This Settlement Agreement shall be governed by and interpreted in accordance with the
15 laws of the State of California.

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17 By _____
18 Maria Conceicao Silva, individually and on behalf of
19 others similarly situated

20 Dated: _____

21 CONSUMER LAW CENTER, INC.

22 By _____
23 Fred W. Schwinn
24 Attorney for Maria Conceicao Silva, individually and
25 on behalf of others similarly situated

26 Dated: _____

27 HORWITZ & HORWITZ & ASSOCIATES

28 By /s O. Randolph Bragg
O. Randolph Bragg
Attorney for Plaintiff Maria Conceicao Silva,
individually and on behalf of others similarly situated

Dated: _____

By _____
Raymond Alcide Patenaude, Individually and on

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9 of executed copies of this Settlement Agreement may be treated as originals.

10 26. Each and every term of this Settlement Agreement shall be binding upon and inure to
11 the benefit of Plaintiff, the class members, and any of their successors and personal representatives,
12 and shall bind and shall inure to the benefits of the Released Parties, all of which persons and entities
13 are intended to be beneficiaries of this Settlement Agreement.

14 27. This Settlement Agreement shall be governed by and interpreted in accordance with the
15 laws of the State of California.

16 Dated: _____

17 By _____
18 Maria Conceicao Silva, individually and on behalf of
19 others similarly situated

20 Dated: _____

21 CONSUMER LAW CENTER, INC.

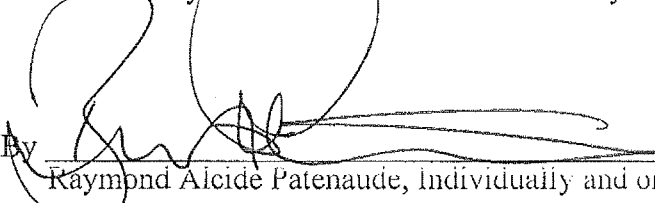
22 By _____
23 Fred W. Schwinn
24 Attorney for Maria Conceicao Silva, individually and
25 on behalf of others similarly situated

26 Dated: _____

27 HORWITZ & HORWITZ & ASSOCIATES

28 By _____
O. Randolph Bragg
Attorney for Plaintiff Maria Conceicao Silva,
individually and on behalf of others similarly situated

29 Dated: 7/6/09

30 By 
Raymond Alcide Patenaude, individually and on
behalf of Patenaude & Felix