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10 Attorneys for Plaintiff
11 HARRIET GATCHALIAN

12 **UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15 HARRIET GATCHALIAN, on behalf of herself
16 and all others similarly situated,

Case No. 3:22-cv-04108-JSC

17 Plaintiff,

**CLASS ACTION SETTLEMENT
AGREEMENT**

18 v.

19 ATLANTIC RECOVERY SOLUTIONS, LLC,
20 a New York limited liability company;
21 ZACHARIAH YAHIA AGA, individually and
22 in his official capacity; DNF ASSOCIATES,
23 LLC, a Delaware limited liability company; and
24 DOES 1 through 10, inclusive,

25 Defendants.



26 HARRIET GATCHALIAN (“Plaintiff”) on the one hand, and ATLANTIC RECOVERY
27 SOLUTIONS, LLC; ZACHARIAH YAHIA AGA; and DNF ASSOCIATES, LLC (collectively
28 “Defendants”) on the other hand, enter into this arms-length agreement after Mediation as follows:

1. RECITALS

1.1. On June 6, 2022, Plaintiff filed a class action complaint against Defendants in the Superior Court of California, County of Santa Clara. Thereafter, on July 13, 2022, Defendants removed the case to the United States District Court for the Northern District of California.

1.2. Plaintiff’s Class Action Complaint for Statutory Damages (“Complaint”) alleges that Defendants violated the California Rosenthal Fair Debt Collection Practices Act, California Civil Code

1 §§ 1788-1788.33, and the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p.

2 1.3. Plaintiff and Defendants now intend to settle and finally resolve all claims that Plaintiff
3 and the proposed Class Members asserted against Defendants through the class action complaint.
4 Defendants dispute Plaintiff's and the proposed Class Members' claims and make no admission of
5 liability. However, Plaintiff (on behalf of herself and the proposed Class Members) and Defendants
6 consider it desirable that the action and the claims therein be settled upon the terms and conditions set
7 forth in this Class Action Settlement Agreement, in order to avoid further expense as well as
8 burdensome and protracted litigation.
9

10 1.4. By resolving this matter, the parties intend to avoid the expense and inconvenience of
11 further litigation, and to buy peace. Plaintiff and the proposed Class Members desire to settle their
12 claims against Defendants, having taken into account, through Plaintiff and proposed Class Counsel,
13 the risks, delay and difficulties involved in further litigation. Based on the foregoing, and upon an
14 analysis of the benefits which this Class Action Settlement Agreement affords the proposed Class
15 Members, Plaintiff and proposed Class Counsel consider it in the best interest of the proposed Class to
16 enter into this Settlement Agreement, and that the Settlement Agreement is fair, reasonable, adequate,
17 and in the best interests of the proposed Class.
18

19 1.5. Aware of the substantial expense and delay likely associated with further litigation,
20 mindful of the limitations on any possible class-wide recovery, and given the inherent risks of litigation,
21 Plaintiff and proposed Class Counsel recognize that further litigation is not in the best interests of the
22 members of the proposed Class.
23

24 1.6. Proposed Class Counsel additionally believe, based on a significant amount of
25 experience, that the proposed class action settlement is fair, adequate, and reasonable, and Plaintiff
26 agrees.
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1 1.7. Plaintiff and Defendants, prior to entering into this Agreement, engaged in a Mediation
2 with the Court’s appointed Mediator, Celia McGuinness, which included extensive arms-length
3 negotiations and exchanges of information. The Mediation resulted in an agreement on the principal
4 terms of this Class Action Settlement Agreement, and it is the desire and intent of the parties by
5 entering into this Class Action Settlement Agreement to effectuate the settlement, and to secure the
6 Court’s approval of same.
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8 **2. DEFINITIONS**

9 2.1. “Agreement” means this settlement agreement.

10 2.2. “Business day” means any day on which national banks are open for the conduct of
11 general business.
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13 2.3. “Class” means the class that the Court conditionally certifies for settlement purposes
14 only, and in accordance with the terms of this Agreement, which the parties define as:

15 All persons with addresses in California to whom ATLANTIC RECOVERY
16 SOLUTIONS, LLC, sent voicemail messages, and/or cellular telephone text messages,
17 in an attempt to collect a defaulted consumer debt on behalf of DNF ASSOCIATES,
18 LLC, which was originally owed to SALLIE MAE BANK, during the period beginning
19 June 6, 2021, through the date of class certification

20 2.4. Excluded from the Class are:

21 a) Any officers, directors or legal representatives of Defendants, and any judge,
22 justice, or judicial officer presiding over this matter and the members of their immediate families and
23 judicial staff; and

24 b) Any Class Member who timely mails a request for exclusion.

25 2.5. “Class Counsel” means Fred W. Schwinn, Raeon R. Roulston, and Matthew C.
26 Salmonsens, of Consumer Law Center, Inc.

27 2.6. “Class Member(s)” mean persons who are part of the Class and who do not fall within a
28

1 relevant exception.

2 2.7. “Class Notice” means notice approved by the Court in form substantially similar to
3 Exhibit “1” attached hereto.

4 2.8. “Class Settlement Period” means the period of time from June 6, 2021, through the date
5 of class certification.

6 2.9. “Order preliminarily approving the class action settlement agreement” means the order
7 preliminarily approving the class action settlement agreement, as entered by the Court.

8 2.10. “Consummation Date” means the date on which the parties satisfy all of the obligations
9 and duties imposed by this Agreement.

10 2.11. “Court” means the United States District Court for the Northern District of California,
11 San Francisco Division.

12 2.12. “Finality Date” means the business day after which the Court enters final judgment, and
13 the time to appeal the final judgment expires without appeal, or any appeal is finally dismissed, or the
14 final judgment is affirmed and not subject to review by any court.

15 2.13. “Fairness Hearing” means the hearing the Court conducts to consider the fairness,
16 adequacy, and reasonableness of this Agreement.

17 2.14. “Final Order and Judgment” means the final order and judgment the Court enters
18 approving this Agreement as fair, adequate, and reasonable.

19 2.15. “Initial Notice Date” means the deadline to mail the Class Notice, which must not be
20 more than thirty-five days after the Preliminary Approval Date.

21 2.16. “Preliminary Approval Date” means the date that the Court enters the Order
22 preliminarily approving the class action settlement agreement.

23 2.17. “Released Claims” means all claims alleging violation of California Civil Code §§ 1788-
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1 1788.33, and/or 15 U.S.C. §§ 1692-1692p, or similar or related claims or causes of action under state or
2 federal law, arising from or relating to voicemail messages, and/or cellular telephone text messages,
3 sent by, or on behalf of, Defendants in the form described in Plaintiff's Complaint herein, which were
4 sent within the Class Settlement Period.

5
6 **3. CERTIFICATION AND NOTICE**

7 3.1. Within 30 days of full execution of this Agreement, the parties will file a joint motion to
8 preliminarily approve the class action settlement agreement.

9 3.2. The parties will also file along with that motion a proposed Class Notice, in form
10 substantially similar to Exhibit "1" attached hereto.

11 3.3. The parties will not take any action inconsistent with the joint motion to preliminarily
12 approve the class action settlement agreement.

13
14 3.4. Within five (5) business days after full execution of this Agreement by all parties,
15 Defendants shall provide a complete list of the Class members to the designated settlement
16 administrator with a copy to Plaintiff. Not later than twenty-five (25) days following the Preliminary
17 Approval Date, the settlement administrator will mail the Class Notice to each Class Member. Prior to
18 mailing the notice, the settlement administrator shall obtain a current address for the Class Members by
19 running the last known address reflected in Defendants' records for each Class Member through the
20 U.S. Postal Service National Change of Address database. The envelopes in which the settlement
21 administrator mails the class notice to the Class Members must include a notation requesting address
22 correction. If any notice is returned with a new address, the settlement administrator must resend the
23 class notice to the new address. The settlement administrator is not responsible for the postal service's
24 failure to timely deliver the class notice to a particular Class Member, and the settlement administrator
25 will not have any obligation to resend a notice that is not returned by the postal service before the final
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1 Fairness Hearing.

2 3.5. Defendants will bear the cost of distributing the Class Notice, and related expenses (*e.g.*,
3 those associated with work necessary to identify current contact information for the Class Members),
4 subject to the terms and scope as set forth in paragraph 3.4, above.

5 3.6. Prior to the final Fairness Hearing, Defendants, by way of the settlement administrator,
6 will provide a sworn declaration attesting to proper service of the Class Notice.

7 3.7. Prior to the final Fairness Hearing, the parties will file a joint motion to finally approve
8 the class action settlement agreement.

9
10 **4. CONSIDERATION**

11 4.1. Defendants will pay a class fund of \$51,975.00 as a *pro rata* distribution to the Class
12 Members pursuant to 15 U.S.C. § 1692k(a)(2)(B)(ii) and California Civil Code § 1788.17. Specifically,
13 Defendants agree to pay no less than \$175.00 to each member of the Class.

14 4.2. Defendants shall pay Plaintiff \$2,000 in statutory damages, pursuant to 15 U.S.C. §
15 1692k(a)(2)(A) and California Civil Code § 1788.17.

16 4.3. The settlement checks by which Defendants will pay a *pro rata* distribution of the class
17 fund to each Class Member expire and become void 90 days after they are mailed.

18 4.4. If any settlement checks remain uncashed after 90 days from the date on which they
19 were mailed, the uncashed amount will be paid to the Katharine & George Alexander Community Law
20 Center in San Jose, California, as a *cy pres* recipient.

21 4.5. Defendants shall cease collecting from Plaintiff the debt originally owed to Sallie Mae
22 Bank.

23 4.6. Defendants shall pay Plaintiff \$2,000 as a service award for her services to the Class, as
24 authorized by the Court.

1 4.7. Defendants shall select an appropriate class action administrator with approval from
2 Plaintiff, which will not be unreasonably withheld, and pay for all costs associated with Class Notice
3 and class administration; and

4 4.8. Defendants shall pay attorneys' fees and costs to Class Counsel pursuant to 15 U.S.C. §
5 1692k(a)(3) and California Civil Code § 1788.17, in an amount agreed by the parties or to be decided
6 by the Court upon noticed motion if the parties cannot agree. The application for approval of such
7 attorneys' fees and costs will be made separately, upon noticed motion, and determined at the Final
8 Fairness Hearing, or at the Court's discretion.

9
10 **5. OPT-OUTS**

11 5.1. Any Class Member who wishes to exclude himself or herself from the class action
12 settlement embodied in this Agreement must mail a written request for exclusion to Class Counsel, or
13 the settlement administrator, postmarked no later than sixty (60) days after the preliminary approval
14 date.

15 5.2. Through his or her request, a Class Member must include the case name and case
16 number for this action, along with his or her (a) full name, (b) address, (c) telephone number, and (d) a
17 statement that he or she wishes to be excluded from the class action settlement.

18 5.3. Any Class Member who submits a valid request for exclusion will neither be bound by
19 the terms of this Agreement, nor receive any of the benefits of this Agreement.

20 5.4. The parties, by way of the settlement administrator, will provide a list of the names of
21 each Class Member who submitted a timely exclusion, after the deadline for exclusions passes.

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23 **6. OBJECTIONS**

24 6.1. Any Class Member who wishes to object to the class action settlement set forth in this
25 Agreement must mail a written notice of objection to the Court, postmarked no more than sixty (60)
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1 days after the Initial Notice Date. Alternatively, any Class Member may appear at the final approval
2 hearing and object orally without providing any written objection.

3 6.2. Through his or her notice, and subject to the Court’s approval, a Class Member must
4 include the case name and case number for this action, along with his or her (a) full name, (b) address,
5 (c) telephone number, (d) a statement of each objection, (e) a description of the facts and law
6 underlying each objection, (f) a statement noting whether the Class Member intends to appear at the
7 Fairness Hearing, (g) a list of all witnesses that the Class Member intends to call by live testimony,
8 deposition testimony, or affidavit or declaration testimony, and (h) a list of exhibits that the Class
9 Member intends to present at the final Fairness Hearing.

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11 6.3. Class Members who do not submit a timely objection will be barred from seeking review
12 of the proposed class action settlement by appeal, or otherwise.

13
14 **7. RELEASE**

15 7.1. Upon the Court’s entry of Final Order and Judgment, each Class Member, and Plaintiff,
16 will release and forever discharge Defendants and all of Defendants’ respective principals, members,
17 subsidiaries, partners, officers, directors, shareholders, managers, employees, agents, representatives,
18 successors, assigns, attorneys, and vendors, and insurance carriers (hereinafter collectively “the
19 Released Parties”), from the Released Claims. This release includes “unknown claims” which
20 encompass any and all claims alleging violation of California Civil Code §§ 1788-1788.33, and 15
21 U.S.C. §§ 1692-1692p, or similar or related claims or causes of action under state or federal law, arising
22 from or relating to voicemail messages, and/or cellular telephone text messages, sent by, or on behalf
23 of, Defendants in the form described in Plaintiff’s Complaint herein, that Plaintiff or any Class Member
24 does not know or even suspect to exist against any of the Released Parties, which, if known, might have
25 affected his or her decision regarding the settlement of this matter. Plaintiff further acknowledges, and
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1 the Class Members shall be deemed to acknowledge, that they may hereafter discover facts in addition
2 to or different from those that they now know or believe to be true concerning the subject matter of this
3 release, but nevertheless fully, finally, and forever settle and release any and all Released Claims,
4 known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or have
5 existed, or could have existed, through the effective date of this Agreement, based upon actions or
6 conduct occurring on or before the date of this Agreement, without regard to subsequent discovery or
7 existence of such different or additional facts concerning each of the Released Parties. Without limiting
8 the scope of the foregoing, Plaintiff and Class Members intend this release to be broad enough to
9 include a waiver of all their rights under section 1542 of the California Civil Code with respect to any
10 alleged violation of California Civil Code §§ 1788-1788.33, and 15 U.S.C. §§ 1692-1692p, or similar or
11 related claims or causes of action under state or federal law, arising from or relating to voicemail
12 messages, and/or cellular telephone text messages, sent by, or on behalf of, Defendants in the form
13 described in Plaintiff's Complaint herein.
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16 **8. EXCLUSIVE REMEDY**

17 8.1. The relief included in this Agreement is the exclusive remedy of recovery for the
18 Released Claims.
19

20 **9. ATTORNEYS' FEES, COSTS, AND EXPENSES**

21 9.1. Class Counsel will seek an award of attorneys' fees, costs, and expenses, as well as a
22 service award for Plaintiff. The application for approval of such reasonable attorneys' fees, costs, and
23 expenses will be made separately, and determined at the Fairness Hearing, or at the Court's discretion.
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25 9.2. Any Class Member may choose to obtain representation by counsel of his or her
26 choosing, but such Class Member is solely responsible for attorneys' fees, costs, and expenses incurred
27 or accrued by such counsel.
28

1 9.3. The Court's order regarding an award of attorneys' fees, costs, and expenses to Class
2 Counsel will not, in any event, affect the finality of the settlement of this matter.

3 **10. NO ADMISSION OF LIABILITY**

4 10.1. Plaintiff and Defendants agree that this Agreement does not constitute an admission by
5 Defendants that Plaintiff's claims or allegations are true or correct.

6
7 10.2. In the event this settlement is not approved, Defendants retain any and all rights to object
8 to the maintenance of this action, or any other action, as a class action and to contest this action, or any
9 other action, on any other grounds.

10 **11. REPRESENTATIONS AND WARRANTIES**

11 11.1. Class Counsel believes that the class action settlement embodied by this Agreement is in
12 the best interests of the Class Members.

13 11.2. Plaintiff warrants that:

14
15 On the date that this Agreement is executed, she owns the claims that she asserts in
16 connection with this matter, and that she has not assigned, pledged (except to her
17 attorneys), sold or otherwise transferred her claims (or an interest in such claims), and
18 that on the Finality Date, she will own her claims free and clear of any and all liens,
19 claims, charges, security interests or other encumbrances of any nature whatsoever,
20 except for any contingent legal fees and expenses. Plaintiff agrees and covenants, and
21 each Class Member will be deemed to have agreed and covenanted, not to sue any
22 released party with respect to any of the Released Claims, or otherwise to assist others in
23 doing so, and agree to be forever barred from doing so, in any court of law or equity, or
24 any other forum.

25 **12. APPEALS**

26 12.1. If a Class Member appeals the Final Order and Judgment, the parties will not take any
27 position inconsistent with this Agreement on appeal.

28 12.2. Nothing contained in this Agreement is intended to preclude Plaintiff, Defendants, or
Class Counsel, from appealing any order inconsistent with this Agreement.

///

1 **13. TERMINATION**

2 13.1. After completing a good faith negotiation, the parties will each have the right to
3 terminate this Agreement by providing written notice to any other party within twenty (20) days any of
4 the of following events: (a) the Court’s refusal to enter an Order preliminarily approving the Class
5 Action Settlement Agreement, (b) receipt of requests for exclusion from more than 10% (i.e., 30) of the
6 approximately 297 Class members, or (c) the Court’s refusal to approve the settlement following notice
7 to the Class Members and the Fairness Hearing.
8

9 13.2. If any party terminates this Agreement, Plaintiff, the Class Members, and Defendants
10 will be returned to the position they were in prior to execution of this Agreement, with the same rights
11 and interests as they had prior to execution of this Agreement.
12

13 **14. DISTRIBUTION OF SETTLEMENT FUNDS**

14 14.1. Within 30 days of the Finality Date, Defendants will distribute to Plaintiff and Class
15 Counsel funds due them pursuant to the Court’s approval orders.
16

17 14.2. Within 30 days of the Finality Date, Defendants, through the settlement administrator,
18 will distribute funds due the Class Members.
19

20 **15. MISCELLANEOUS PROVISIONS**

21 15.1. This Agreement is the entire agreement between Plaintiff and Defendants. All
22 antecedent and contemporaneous extrinsic representations, warranties, or collateral provisions
23 concerning the negotiation and preparation of this Agreement are intended to be discharged and
24 nullified.

25 15.2. Neither Plaintiff nor Defendants may modify this Agreement, except by a writing, that
26 Plaintiff and Defendants execute, and that the Court approves.

27 15.3. All notices required by this Agreement, between Plaintiff, Defendants, Class Counsel,
28

1 and Defendants' counsel, must be sent by first class U.S. mail, by hand delivery, facsimile, or e-mail to:

2 Fred W. Schwinn (SBN 225575)
3 Raeon R. Roulston (SBN 255622)
4 Matthew C. Salmonsén (SBN 302854)
5 CONSUMER LAW CENTER, INC.
6 38 West Santa Clara Street
7 San Jose, California 95113-1806
8 Telephone: (408) 294-6100
9 Facsimile: (408) 294-6190
10 Email: fred.schwinn@sjconsumerlaw.com

11 Brett B. Goodman (SBN 260899)
12 GOODMAN LAW FIRM, APC
13 11440 W. Bernardo Ct., Suite 300
14 San Diego, CA 92127
15 Telephone: (858) 757-7262
16 Facsimile: (858) 757-7270
17 E-Mail: brett@goodmanlawapc.com

18 Brendan H. Little (Pro Hac Vice)
19 LIPPES MATHIAS, LLP
20 50 Fountain Plaza, Suite 1700
21 Buffalo, New York 14202-2216
22 Telephone: (716) 218-7570
23 Facsimile: (716) 853-5199
24 Email: blittle@lippes.com

25 15.4. Section headings in this Agreement are for convenience and reference only, and not to
26 be taken to be a part of the provisions of this Agreement, and do not control or affect meanings,
27 constructions or the provisions of this Agreement.

28 15.5. Plaintiff and Defendants will exercise their best efforts to take all steps and expend all
efforts that may become necessary to effectuate this Agreement.

15.6. Plaintiff and Defendants will be deemed to have drafted this Agreement equally, and
neither it, nor any related documents, will be construed strictly against Plaintiff or Defendants.

15.7. Plaintiff and Defendants, and their counsel, may sign this Agreement in counterparts,
and the separate signature pages may be combined to create a binding document, which constitutes one
instrument.


1 **Signatures follow below:**

2
3
4 Dated: 7/21/2023

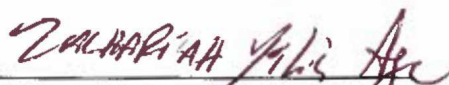

ID 3igt8zt2RMrGktZBoz9DkAuM

Harriet Gatchalian
individually and on behalf of the Class

6
7 Dated: July 20, 2023


Fred W. Schwinn (SBN 225575)
Class Counsel

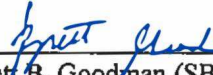
9
10 Dated: 7/19/2023


Atlantic Recovery Solutions, LLC
By: President 7/19/2023

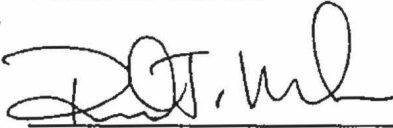
12
13 Dated: _____


Zachariah Yahia Aga


15
16 Dated: July 20, 2023


Brett B. Goodman (SBN 260899)
Defendants' Counsel

18
19 Dated: 7/18/2023


DNF Associates, LLC
By: DAVID J. MACZUGA - CCO

21
22
23 Dated: 7/18/2023


Brendan H. Little (Pro Hac Vice)
Defendant's Counsel - DNF ASSOCIATES, LLC

eSignature Details

Signer ID:	3igt8zt2RMrGktZBoZ9DkAuM
Signed by:	Harriet Gatchalian
Sent to email:	yhet88@yahoo.com
IP Address:	76.102.163.91
Signed at:	Jul 21 2023, 7:49 pm PDT