



allegations and raising certain affirmative defenses.

- 1.3. Subsequent to the filing of plaintiff's complaint, the parties – through counsel – have engaged in extensive negotiations as part of a good-faith effort to settle the controversy. The negotiations included the informal disclosure by defendant to plaintiff's counsel of certain relevant information pertaining to defendant's business practices and financial status. Prior to the execution of this agreement, defendant responded to certain confirmatory discovery requests propounded by plaintiff, which yielded information consistent with that disclosed informally.
- 1.4. In order to avoid the expense, inconvenience, and interference with business operations associated with the Litigation, defendant has concluded that it is in its best interests to settle the Litigation according to the terms set forth herein. Plaintiff and her attorney have likewise concluded, after due investigation and carefully considering the relevant circumstances, costs, risks, and uncertain length of continued Litigation and the applicable law, that it would be in the best interests of class members to enter into this Agreement. The parties and their respective counsel consider the settlement set forth herein to be fair, reasonable, adequate, and in the best interests of the Class.
- 1.5. The parties and their counsel stipulate that this Agreement and the settlement set forth herein do not constitute an admission by defendant that any claim or fact alleged by plaintiff is true or correct. Nor do they constitute an admission by plaintiff that any claim or fact alleged by her is untrue or incorrect, or that any of defendant's allegations or affirmative defenses have merit. Defendant expressly denies any liability or wrongdoing whatsoever in connection with the matters which are the

subject of the Litigation; therefore, nothing in this Agreement shall be deemed to constitute an admission of liability or shall be used as evidence of liability or wrongdoing.

- 1.6. Each of the terms set forth herein was reached as a result of both informal and confirmatory discovery conducted by the parties as well as arms-length negotiations. It is therefore agreed by and among the undersigned that the Litigation be considered settled, compromised and dismissed on the merits and with prejudice, subject to the approval of the Court, on the following terms and conditions:

## 2. **DEFINED TERMS**

For purposes of this Agreement the following definitions shall apply:

- 2.1. “Agreement” means this Settlement Agreement, including all exhibits attached hereto.
- 2.2. “Class” or “Class Members” means plaintiff and the class of persons defined as “all Massachusetts residents who from August 5, 2005 – June 15, 2006 placed a telephone call to any of the telephone numbers of defendant in connection with an alleged student loan debt.
- 2.3. “Class Counsel” or “Plaintiff’s Counsel” mean Quat Law Offices and Attorney Kenneth D. Quat.
- 2.4. “Class Representative” or “plaintiff” mean Maria Brennan.
- 2.5. “Defendant” or “Progressive” mean Progressive Financial Services, Inc. and all of their respective present or former partners, members, principals, insurers, parents, officers, directors, representatives, employees, agents, servants, predecessors, successors, subsidiaries, parent companies, sister companies, divisions, affiliates,

- joint ventures, shareholders, heirs, executors, administrators, assigns, administrators, receivers, trustees and attorneys.
- 2.6. “Defendant’s Counsel” means Attorney Steven S. Broadley and the firm of Posternak Blankstein & Lund, LLP.
- 2.7. “Effective Date” means the latest of: (i) the date of final affirmance on appeal or the expiration of time for filing a petition for further review, if one is permitted by law; (ii) the date of final dismissal of any appeal or the final dismissal of any proceeding on review; or (iii) if no appeal is filed, the expiration date of the time for the filing or noticing any appeal from the District Court’s judgment approving this Agreement.
- 2.8. “Excluded Class Members” means all persons who timely and validly request exclusion from the Class in compliance with the requirements of Class Notice.
- 2.9. “Final Approval” means entry of judgment granting final approval of this Agreement.
- 2.10. “Litigation” means the case entitled *Maria Brennan v. Progressive Financial Services, Inc.* in the United States District Court, Eastern District of Massachusetts,
- 2.11. “Notice Date” means the date when the “Settlement Notice” is published in accordance with this Agreement.
- 2.12. “Parties” shall mean Maria Brennan and Progressive Financial Services, Inc.
- 2.13. “Preliminary Approval” means the entry of an order by the Court granting preliminary approval to the terms of this Agreement and approving the form of Class Notice.
- 2.14. “Released Claims” means those claims which arise out of, or are based on, the use by defendant of a certain pre-recorded telephone greeting, as more particularly described herein.

2.15. “Released Parties” means the parties and Class Members who do not choose to be excluded from the Class, and all of their heirs, successors, assigns, or legal representatives.

2.16. “Settlement Notice” means the Notice described in Section 5, below.

### 3. CLASS CERTIFICATION

3.1. For settlement purposes only, the parties stipulate to the certification pursuant to Fed.R.Civ.P. 23(b)(3) of a class, under the FDCPA, consisting of all Massachusetts residents who from August 5, 2005 – June 15, 2006 placed a telephone call to any telephone number of defendant in connection with an alleged student loan debt.

3.2. Defendant agrees to the appointment of plaintiff as class representative and Kenneth D. Quat as Class Counsel.

### 4. RELIEF TO THE CLASS MEMBERS

4.1. Defendant shall pay the costs of publishing the class notice and administering the settlement, and in addition will provide the following relief to the Class Members.:

4.1.1. Since (i) the identity of class members cannot be determined from defendant’s records or other practicable means; (ii) the challenged practice is not of the kind likely to cause actual damages, and (iii) the amount of defendant’s net worth would not result in more than nominal payments to individual class members, defendant will pay to the National Consumer Law Center, Boston, Massachusetts, as a *cy pres* award on behalf of the Class, a sum equal to 0.667% of defendant’s net worth as determined by audited financial statements for the 2005 fiscal year. The sum to be paid pursuant to this paragraph is \$5,675.34.

4.1.2. Defendant represents and warrants that it has altered the pre-recorded telephone

greeting in question which was in use prior to June 15, 2006 to remove any reference to the Department of Education or suggestion that defendant is affiliated with the Department or any agency of the United States Government, and agrees that it will not employ any such reference or suggestion in the future in any pre-recorded telephone greeting.

4.2. The Class Members shall have 60 days from the last publication date to opt out or object to the proposed settlement.

4.3. Within fourteen (14) days of the Effective Date, Defendant shall distribute the *cy pres* award and make the payment for counsel fees and costs as approved by the Court.

## 5. NOTICE

5.1. Within 14 days of Preliminary Approval, Defendant will cause to be published, at its own expense, the Summary Settlement Notice attached hereto as Exhibit 1. Said Notice shall be published in one weekday, non-holiday edition of each of the following newspapers: Boston Globe; Worcester Telegram & Gazette; Springfield Republican. Notice shall, to the extent possible, be published on the same date in each newspaper. The Notice shall be no smaller than 1/8 page in size and shall be placed in the business section of each newspaper.

5.2. On or before the first date of publication, the Long-Form Settlement Notice attached hereto as Exhibit 2, along with a copy of this settlement agreement, shall be posted for viewing on the website of Class Counsel. Said documents will remain available on said website until the Effective Date has occurred or such other time as ordered by the Court. The cost for posting and removing said documents shall be included in the notice costs to be paid by defendant.

## 6. CLASS MEMBERS' RIGHTS TO OPT OUT AND OBJECT

- 6.1. Each Class Member has the right to opt out and not be bound by the terms of this Settlement Agreement.
- 6.2. Each person who elects to opt out of the Class will no longer be considered a Class Member and will retain any individual rights he or she may have with respect to the claims asserted in this Litigation.
- 6.3. Any Class Member who elects to opt out of the Class must do so in writing by mailing a request for exclusion to either class counsel or defendant's counsel at the addresses noted below. Each such request for exclusion must be postmarked no later than 14 days prior to the Final Approval Hearing. The request to opt out must be signed by the person seeking to opt out. Mailings should be addressed to either of the following:

Kenneth D. Quat, Esq.  
Quat Law Offices  
9 Damonmill Square, Suite 4A-4  
Concord, MA 01742

Steven S. Broadley, Esq.  
Posternak Blankstein & Lund LLP  
800 Boylston Street  
Boston MA 02199

Counsel for both parties shall notify each other of any opt-outs received at least 5 days prior to the final hearing.

- 6.4 Any Class Member who wishes to object to the settlement must file with the Clerk of Court, no later than 14 days prior to the Final Approval Hearing, a written objection which contains: (i) a statement of each objection being made; (ii) a description of the facts underlying each objection; (iii) a description of legal authorities for each

objection, if any; (iv) a statement of whether the objector intends to appear at the hearing; (v) a list of any witnesses the objector intends to call at the hearing; and (vi) a list of any documents or exhibits which the objector intends to introduce at the hearing. Copies of all objections and related documents must also be concurrently served on Class Counsel and Defendant's Counsel.

## 7. **RELEASES**

Plaintiff and each Class Member not opting out will grant Defendant the following release:

7.1 Defendant is released and discharged from any and all causes of action, suits, claims, demands, liabilities, judgments, debts, charges, and damages whatsoever, including any claim for payment of attorney's fees and costs, relating to or arising out of Defendant's use of the pre-recorded telephone greeting which is the subject of the class action claim asserted in the litigation.

7.2 The above release is condition upon both the approval of this Agreement by the Court and Defendant meeting its obligations herein.

7.3 This Agreement is in no way intended to release or impair any debt which Defendant sought to collect from plaintiff or any Class Member, or to impair any claims or defenses to which plaintiff or any Class Member may be entitled with respect to any such debt and the collection or attempted collection thereof, except as expressly released herein.

7.4 If this Agreement is not approved by the Court or for any reason does not become fully binding or enforceable, it shall be deemed null and void and shall be without prejudice to the rights of the parties hereto and shall not be used in any subsequent proceedings in this or any other litigation, or in any manner whatsoever. The Preliminary Approval Order and the Final

Order and Judgment shall so provide, and shall further provide that all findings therein shall be null and void if, for any reason, the Effective Date does not occur.

**8. PAYMENTS OF COSTS AND FEES.**

- 8.1. Subject to Court approval, Defendant agrees to pay Class Counsel up to \$9,000 in attorney's fees. Defendant agrees that any such amount will be reasonable, and therefore agrees not to contest same. Defendant will also pay plaintiff's costs associated with the Litigation, which as of the date of execution of this Agreement consist only of the filing fee for the Complaint and a maximum of \$150.00 for posting to and removing documents from Class Counsel's website, as set forth in Section 5.2, above. It shall be Class Counsel's obligation to file with the Court, no later than 5 days prior to the final hearing, a properly supported application for fees and costs to be heard at the time of final hearing.
- 8.2. All attorney's fees and costs approved by the Court will be paid within fourteen (14) days of the Effective Date. Said fees and costs will be paid directly to Class Counsel, and shall be reported to federal and state taxing authorities under Class Counsel's tax identification number.
- 8.3. Plaintiff hereby waives any right to receive an incentive award in connection with her service as Class Representative. Plaintiff has asserted individual claims for relief against defendant, which the parties have agreed to settle by way of a separate settlement agreement.

**9. PROCEDURE FOR CLASS CERTIFICATION AND APPROVAL.**

- 9.1. The parties will submit to the Court joint motions for preliminary and final approval.

Class Counsel will submit a motion for an award of attorney's fees consistent with the terms of this Agreement.

- 9.2. The Parties agree to request that the Court enter a Preliminary Approval Order in a form substantially similar to Exhibit No. 3 and a Final Judgment in a form substantially similar to Exhibit 4.
- 9.3. Plaintiff, Defendant, Class Counsel, and Defendant's Counsel agree to support this Agreement in all respects and to recommend approval of same to the Court and Class Members. They further agree to undertake all reasonable steps and efforts that may be necessary or appropriate, by order of the Court or otherwise, to obtain preliminary and final approval and to carry out the terms of this Settlement Agreement. The Parties shall cooperate, assist and undertake all reasonable actions in order to accomplish the above on a timely basis in accordance with any schedule established by the Court.
- 9.4. In the course of communicating with Class Members in the ordinary course of business regarding any alleged debt, Defendant will not suggest, aid, or encourage any objections to this Agreement or to certification of the Class, nor will either party or their Counsel suggest or encourage any Class Member to opt out.

## **10. TERMINATION OF AGREEMENT**

- 10.1. If the Court does not enter a Preliminary Approval Order that is substantially similar to the order attached hereto as Exhibit No. 3, if the Court does not enter a Final Approval Order that is substantially similar to Exhibit No. 4, or if the Court's Final Approval Order does not become final as a result of an appeal or subsequent proceedings, nothing in this Agreement shall be deemed to prejudice the position of

the Parties with respect to the Litigation or otherwise, and neither the existence of this Agreement nor its contents shall be admissible in evidence, or be referred to for any purpose in the Litigation or in any other litigation or proceeding. Notwithstanding the foregoing, the Parties retain any and all rights to assert a breach of this Agreement and to use this Agreement in connection with such a claim.

- 10.2. The certification of the Class shall be effective only with respect to this settlement of the Litigation. In the event that the Agreement is terminated pursuant to its terms or the Effective Date does not occur for any reason, the certification of the Class shall be vacated, and the Litigation shall proceed as though a settlement had not been reached and the Class had never been certified.

#### **11. STAY OF PROCEEDINGS**

All proceedings in the Litigation, except as necessary to consummate the settlement set forth herein, will be stayed unless otherwise ordered by the Court.

#### **12. ADDITIONAL PROVISIONS**

- 12.1. This Agreement contains the entire agreement among the Parties hereto and supersedes any prior agreement or understandings between them. All terms of this Agreement are contractual and not mere recitals. The terms are and shall be binding upon each of the Parties hereto, their agents, attorneys, legal representatives, successors, and assigns, and upon all other persons claiming any interest in the subject matter hereto through any of the Parties, including any Class Member.
- 12.2. The Parties expressly warrant and represents that they have not relied on any statement, claim, contention, or representation of the other, or the other's attorney, except as set forth herein.

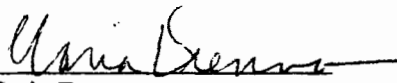
- 12.3. This Agreement may be amended or modified only by a written instrument signed by both Parties. Amendments and modifications shall be effective without notice to Class Members unless the Court orders otherwise..
- 12.4. This Agreement shall be subject to, governed by, and construed and enforced pursuant to the laws of the Commonwealth of Massachusetts.
- 12.5. The exhibits to this Agreement are integral parts of the Agreement and Settlement and are hereby incorporated and made a part of this Agreement.
- 12.6. To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that may be instituted, prosecuted or attempted in breach of this Agreement.
- 12.7. This Agreement shall be deemed executed upon the last date of its execution by all of the undersigned.
- 12.8. This Settlement Agreement may be executed in counterparts, in which case the various counterparts shall be said to constitute one instrument for all purposes. The several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Settlement Agreement may be treated as originals.
- 12.9. All time periods and dates relating to the approval of this Agreement, approval and payment of the *cy pres* award, attorney's fees and costs, and the notification of Class Members are subject to approval and change by the Court.
- 12.10. The parties make the following warranty to each other: Information furnished by any party to any other party in connection with the negotiation of this Agreement is, and

shall remain confidential, and shall not be released or divulged to any other person or entity without the furnishing party's express written permission or by order of a court of competent jurisdiction.

WITNESS OUR HANDS AND SEALS AS OF THE LATEST DAY AND YEAR WRITTEN BELOW.


PLAINTIFF

Dated: March 21, 2007

By:   
Maria Brennan

DEFENDANT

Dated: ~~March~~ <sup>April</sup> 19, 2007

By:   
Barbara Hoerner  
Corporate Counsel