

1 THE CONSUMER LAW GROUP
Alan M. Mansfield (SBN 125998)
2 alan@clgca.com
10200 Willow Creek Road, Suite 160
3 San Diego, CA 92131
Tel: (619) 308-5034
4 Fax (888) 341-5048

5 WHATLEY KALLAS, LLC
Joe Whatley, Jr. (Admitted *Pro Hac Vice*)
6 jwhatley@wdklaw.com
380 Madison Avenue, 23rd Floor
7 New York, NY 10017
Tel: (212) 447-7060
8 Fax: (800) 922-4851

9 PENN & SEABORN
Myron C. Penn
10 myron@pennandseaborn.com
L. Shane Seaborn
11 shane@pennandseaborn.com
53 Highway 110
12 P. O. Box 5335
Union Spring, AL 36089
13 Tel: (334) 738-4486
Fax: (334) 738-4432

14 Attorneys for Plaintiffs

15 [Additional Counsel on Signature Page]

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CENTRAL DIST. OF CALIF.
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FILED

17 UNITED STATES DISTRICT COURT

18 CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

19 FREDDIE LEE SMITH and LUE
20 VAIL SMITH, individually and on
behalf of all others similarly situated,

21 Plaintiffs,

22 v.

23 PATHWAY FINANCIAL
24 MANAGEMENT, INC.; CHAU
PHAN, aka PETER POON; and
25 PATHWAY MARKETING, INC.,

26 Defendants.

CASE NO.: SACV 11-1573-JVS (MLGx)

CLASS ACTION

SECOND AMENDED CLASS ACTION
COMPLAINT FOR:

- 1) VIOLATION OF §17200, *et seq.* OF THE CAL. BUS. & PROF. CODE;
- 2) COMMON COUNTS, ASSUMPSIT, UNJUST ENRICHMENT AND/OR RESTITUTION;
- 3) DECLARATORY RELIEF;
- 4) BREACH OF CONTRACT;
- 5) VIOLATION OF CREDIT REPAIR ORGANIZATIONS ACT;

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- 6) VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT;
- 7) VIOLATION OF CALIFORNIA CREDIT SERVICES ACT

JURY TRIAL DEMANDED

Plaintiffs FREDDIE LEE SMITH and LUE VAIL SMITH, on behalf of themselves and all others similarly situated, bring this action against Defendants PATHWAY FINANCIAL MANAGEMENT, INC., CHAU PHAN aka PETER POON, and PATHWAY MARKETING, INC., and in support thereof allege as follows upon both personal knowledge where specifically so identified and otherwise on information and belief, based upon an investigation by counsel:

NATURE OF THE ACTION

1. Defendant PATHWAY FINANCIAL MANAGEMENT, INC. (“Pathway Financial”) charges fees and represents that it provides debt relief, debt negotiation, and debt management services to Plaintiffs and other consumers to reduce their debts and, either expressly or impliedly, ultimately improve their credit scores. Pathway preys on people like the Plaintiffs who find themselves deeply in debt and therefore are especially susceptible to Pathway’s deceptive practices.

2. Pathway Financial carries out its business through deceptive and improper means. Pathway Financial represented that Plaintiffs’ “account will be handled by our legal counsel during the entire length of your payment term.” Pathway arranged for Plaintiffs to be represented by Richard A. Lenard (“Lenard”), a now-disbarred California attorney. As discussed below, Lenard has never been authorized to practice law in the State of Alabama and yet, as Pathway’s agent, was claiming to practice law in the State of Alabama. Pathway Financial and Lenard falsely presented Lenard as an employee/agent of Pathway Financial. Lenard since has been disbarred in California as a result of conduct involving other customers of

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1 also of various affiliated companies which also purportedly provide debt
2 negotiation and reduction services. Poon on information and belief is the owner
3 and/or principal of Defendant Pathway Marketing, Inc.

4 8. Defendant Pathway Marketing, Inc. (“Pathway Marketing”) is a
5 Nevada corporation that, until July 24, 2012, has shared its principal place of
6 business with that of Pathway Financial at 12661 Hoover Street, Garden Grove,
7 California 92841. Its agents and employees include persons identified in this
8 Complaint. Its owner and/or principal is Defendant Poon, who also is the owner
9 and/or principal of Pathway Financial.

10 9. By engaging in the conduct set forth below, and by participating in a
11 scheme to profit economically from each others’ individual and collective efforts to
12 mislead consumers, Defendants acted as aiders, abettors and co-conspirators of
13 such other persons, or are obligated by law to be financially responsible for such
14 conduct. In engaging in the conduct alleged herein, Defendants acted as the agents,
15 employees, representatives, partners or joint venturers of such other persons in the
16 commission of the acts alleged herein, and acted within the course and scope of
17 their duties as such agents, employees, representatives, partners or joint venturers.
18 The acts of Defendants through their representatives were authorized or ratified by
19 such persons, and together constitute a single and continuing course of conduct.
20 The true scope of this conspiracy has never been disclosed, and has been
21 fraudulently concealed by Defendants’ acts and practices as detailed herein, tolling
22 any applicable statutes of limitation.

23 10. At all times relevant hereto there was such a unity of interest and
24 ownership between Defendant Pathway Financial and Defendant Poon, its owner
25 and principal, such that the separate personalities of Defendant Pathway Financial
26 and Defendant Poon, do not in reality exist. There would be an inequitable result if
27 the wrongdoing alleged herein attributed to Pathway Financial and its employees
28 and agents were treated as those of that entity alone.

1 11. At all times relevant hereto there was such a unity of interest and
2 ownership between Defendant Pathway Marketing and Defendant Poon, its owner
3 and/or principal, such that the separate personalities of Defendant Pathway
4 Marketing and Defendant Peter Poon do not in reality exist. There would be an
5 inequitable result if the wrongdoing alleged herein attributed to Pathway Marketing
6 and its employees and agents were treated as those of that entity alone.

7 **JURISDICTION AND VENUE**

8 12. This Court has jurisdiction over the parties to this action. The named
9 Plaintiffs are residents of Alabama, Defendant's principal place of business is
10 located in California, and the members of the Class are all resident citizens of the
11 State of California and other states throughout the United States.

12 13. Venue is proper in this District under 28 U.S.C. § 1391 because
13 Defendant Pathway Financial resides in and is a citizen of this District and has its
14 principal place of business in Orange County, California; Defendant Poon resides in
15 and conducts substantial business in Orange County, California; and Defendant
16 Pathway Marketing has its principal place of business in Orange County, California
17 or conducts substantial business in Orange County, California.

18 14. This Court also has venue over these claims because a substantial part
19 of the events or omissions giving rise to these claims occurred in this District and
20 because under the relevant agreements provided by Pathway Financial entered into
21 between it and the Plaintiffs, all disputes over Pathway Financial's conduct are to
22 be filed in Orange County, California and are subject to California law.

23 15. This Court has subject matter jurisdiction based on diversity of
24 citizenship, and the amount in controversy exceeds \$75,000. Alternatively,
25 Plaintiffs allege subject matter jurisdiction based on the Class Action Fairness Act
26 (28 U.S.C. §1332(d)).

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1 **FACTUAL BACKGROUND**

2 A. Pathway's Misleading Advertising and Representations

3 16. Freddie and Lue Vail Smith originally discovered Pathway Financial
4 through television commercials that aired in November 2008 in their home state of
5 Alabama, in which Pathway Financial claimed that it could help Plaintiffs eliminate
6 their personal consumer debts, end further calls from bill collectors, and become
7 stress-free.

8 17. After viewing the television ad, the Smiths contacted Pathway
9 Financial because they had extensive credit card debts and medical bills resulting
10 from Freddie Smith's disability. Pathway Financial's customer service
11 representative told the Smiths that they did not have to file for bankruptcy and that
12 Pathway Financial could prepare a plan to get them out of debt faster and pay their
13 bills. Based on these and other statements, the Smiths reasonably believed that
14 Pathway Financial would help them with reduce their debts and, ultimately,
15 improve their credit.

16 18. On November 17, 2008, Plaintiffs entered into an agreement with
17 Pathway Financial to reduce their credit card and medical bill balances. Attached
18 within **Exhibit A** is a true and correct copy of their Customer Information Form.
19 According to that agreement, the Smiths were required to pay \$408.00 in November
20 2008 and were required to pay \$431.00 per month thereafter. Under the agreement,
21 the Smiths were to be charged an initial fee of 12% of their outstanding debt
22 balance, as well as an 8% contingency fee for debt balance reduction, and a
23 monthly \$25.00 "maintenance fee."

24 19. To date, the Smiths have paid well over \$5,000.00 to Pathway.
25 Plaintiffs believed that Pathway was acting in accordance with its promises, until
26 they continued to receive statements reflecting that all their bills were not being
27 satisfied, despite the representations by Pathway Financial's representatives that it
28 would arrange to do so.

1 representations to Plaintiffs and other similarly affected consumers throughout the
2 class period. Those representations included that Pathway Financial would reduce
3 all of these consumers' total debts and that Pathway Financial would, either
4 expressly or impliedly, improve Plaintiffs' credit, credit history and credit scores.
5 Plaintiffs and other affected consumers have lost money or property as a result of
6 such conduct, for which they are entitled to be compensated.

7 B. Pathway Financial's Unlawful Agreement with Plaintiffs and Failure to
8 Provide Services

9 31. Plaintiffs signed an agreement with Pathway Financial on
10 November 17, 2008. Under that agreement, Pathway Financial advised the Smiths
11 to stop paying their credit card bills.

12 32. The agreement required the Smiths to pay \$408.00 per month
13 beginning in November 2008. The agreement also charged the Smiths 12% of the
14 full amount of their outstanding debt balance at the beginning of Pathway
15 Financial's representation. Pathway Financial would not make any attempt to
16 resolve any of their debts or make any payments to creditors until that percentage
17 was paid -- which took over a year. Finally, the agreement paid Pathway Financial
18 an 8% contingency fee for any debt balance reduction -- including the late fees that
19 would inevitably result from following Pathway's advice to not pay any credit cards
20 -- and close to \$800 in "maintenance fees." Pathway ultimately kept nearly
21 \$5,000.00 of the money that the Smiths paid to Pathway -- *over 40% of the total*
22 *amount they provided to Pathway.*

23 33. Despite obtaining these significant and unlawful fees, Pathway
24 provided little or no services. Plaintiffs' bills were not being satisfied, despite the
25 representations by Pathway Financial's representatives that the debts would be
26 reduced. After hiring Pathway Financial, Plaintiffs were sued by Discover Bank
27 for collections, based on Pathway Financial's advice to not pay them.

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1 34. Pathway Financial’s inability to reduce Plaintiffs’ and Class members’
2 debts appears to be largely due to the fact that each of Pathway’s customer service
3 representatives has between 250 and 500 clients at any one time and is required by
4 Pathway to spend 40% of their time talking to clients. That would leave less than
5 25 hours a week for those representatives to address Plaintiffs’ and Class members’
6 debt-related issues, or *less than five minutes per client per week*. The situation is
7 now worse, since Pathway Financial in recent months claims to be down to less
8 than ten employees (down from 150 at one time) and yet has over 3,300 active
9 clients (now down to 1,500 active clients).

10 35. Representing that Pathway Financial would assist with Plaintiffs’
11 MasterCard and Discover Card bills, a Pathway representative told Plaintiffs that
12 Pathway Financial had worked out a deal with Mastercard to settle that debt and
13 needed to apply approximately \$3,000 of their future monthly payments to settle
14 the Mastercard debt, but later said that it would require an *additional \$600.00 per*
15 *month* (on top of the initial \$431.00 per month) to apply toward the Discover Card
16 debt -- almost their entire monthly income. Pathway Financial never resolved that
17 debt, and it appears from the Smiths’ customer notes that Pathway Financial never
18 even attempted to resolve that debt until after the Smiths had been sued by Discover
19 Bank and retained counsel in 2011 -- well over two years after the Smiths signed up
20 with Pathway.

21 36. Similarly, none of the Smiths’ payments to Pathway Financial were
22 applied to their hospital bills and it appears that, other than an initial form letter
23 from Pathway Financial, Pathway Financial never even tried to resolve the Smiths’
24 medical bills.

25 C. *Pathway’s Business Model Centered Around the Unauthorized Practice of*
26 *Law and Attorney Misconduct*

27 37. Pathway Financial represented to Plaintiffs that their “account will be
28 handled by our legal counsel during the entire length of your payment term.” (*see*

1 **Exhibit A** attached hereto). That representation was false.

2 38. Lenard was the attorney that Pathway Financial represented was the
3 attorney who would represent Plaintiffs. Lenard is not licensed to practice law in
4 Alabama and therefore could not legally or ethically serve as Plaintiffs' attorney
5 with respect to Plaintiffs' debts, which arose in Alabama, nor could he legally
6 represent Class members who reside in other states and whose debts arose in those
7 states.

8 39. Further, Lenard was previously suspended, and recently became
9 disbarred by the State of California for engaging in such conduct on behalf of
10 Pathway and other similar companies. Lenard is also no longer licensed to practice
11 law in California, and therefore could not serve as an attorney on these matters in
12 California.

13 40. Pathway Financial failed to disclose to Plaintiffs and to the Class
14 members the material fact that Lenard was not licensed to practice law.

15 41. Pathway Financial also failed to disclose to Plaintiffs and to the Class
16 members the actual and potential conflicts that Lenard had in purportedly advising
17 Pathway Financial's customers while also representing Pathway Financial.

18 42. Pathway Financial also failed to disclose, as required by the applicable
19 attorney rules of professional responsibility, that Pathway Financial, a third party,
20 was paying the legal fees of Lenard for his purported representation of Pathway
21 Financial's customers. Nor did Pathway Financial or Lenard take steps to ensure
22 that, or disclose to its customers that, Pathway Financial's payment of Lenard's fees
23 for his purported legal services to Pathway Financial's customers would not have
24 any adverse impact on the purported representation. In fact, it did have an adverse
25 impact on the purported representation.

26 43. Because Lenard has never been authorized to practice law in the State of
27 Alabama, if he took any actions to represent the Plaintiffs, then he engaged in the
28 unauthorized practice of law, and did so at Pathway Financial's direction. In that

1 case, Plaintiffs are entitled to a full refund of all fees that they paid to Pathway
2 Financial for that purpose, as the contract would be unenforceable and void.

3 44. If Lenard did not take any action to represent Plaintiffs, then Pathway
4 Financial misrepresented or failed to disclose material facts to Plaintiffs. In that
5 case, Pathway Financial is obligated to refund all fees Plaintiffs paid to Pathway
6 Financial based upon its deceptive and misleading conduct.

7 45. Although Pathway Financial's employees wrote letters to Plaintiffs
8 and Class Members identifying themselves as clerks for Lenard or members of his
9 office staff, he did not in fact employ or supervise such persons. These Pathway
10 Financial employees were providing advice to consumers (such as not to pay their
11 credit card bills) and sending letters saying they worked for Lenard, when in fact
12 they did not (another violation of Cal. Fin. Code § 12327(b)(3)). Thus, Pathway
13 Financial routinely engaged in the unauthorized and unlawful practice of law, in
14 violation of Cal. Bus. & Prof. Code § 6145 and Cal. Fin. Code § 12327.

15 46. Although Lenard was employed and paid by Pathway, Pathway did not
16 disclose to its customers the conflicts of interest between Pathway and Mr. Lenard,
17 or that Pathway and Mr. Lenard were engaging in illegal conduct prohibited by
18 California law.

19 47. Since Mr. Lenard has never been authorized to practice law in any
20 state other than California, if he took any actions to represent Plaintiffs and Class
21 members, then as the State Bar of California has already found he engaged in the
22 unauthorized practice of law as the appointed agent and representative of
23 Defendants. Thus, Plaintiffs and Class members are entitled to a full refund of all
24 fees that they paid to Pathway for that purpose and, based on the above
25 representation, a contract that requires performance of illegal conduct is
26 unenforceable and void. *McIntosh v Mills*, 121 Cal.App.4th 333, 344 (2004); Cal.
27 Civ. Code § 1608.

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1 48. Mr. Lenard did not take any action to represent Plaintiffs, as he did
2 nothing other than review a customer file for less than 15 minutes per customer.
3 Thus, Pathway Financial's representations to Plaintiffs and the Class Members that
4 the customers were being represented by legal counsel throughout the entire
5 payment term was false, and Pathway Financial illegally practiced law on its own
6 or misrepresented or failed to disclose material facts to Plaintiffs about the "legal
7 representation" it was allegedly providing, and is similarly obligated to refund all
8 fees Plaintiffs paid to Pathway Financial based upon such deceptive and illegal
9 conduct.

10 49. More than 30 days before the filing of this action, counsel for Plaintiffs
11 mailed a pre-suit demand to Pathway Financial, a true and correct copy of which is
12 attached hereto as **Exhibit B**. After Pathway Financial received the attached notice
13 and thus knew that Plaintiffs were represented by their own counsel, Pathway
14 Financial illegally and improperly communicated directly with Plaintiffs, and even
15 requested that Plaintiffs retain new counsel who apparently acts or acted as an agent
16 for Pathway. This attorney, like Lenard, is unlicensed in Alabama, where Plaintiffs
17 reside, and at the time also was unlicensed in California, where Pathway Financial
18 is headquartered.

19 D. Pathway Financial Operates Without a Legally Required Prorater's License

20 50. Pathway Financial also is operating without a license required by the
21 State of California, and it and its prior affiliate company have been disciplined by
22 California and other States' agencies for such and similar misconduct. California
23 Financial Code § 12200 states:

24 *No person shall engage in the business, for compensation, of selling*
25 *checks, drafts, money orders, or other commercial paper serving the*
26 *same purpose, or of receiving money as agent of an obligor for the*
27 *purpose of paying bills, invoices, or accounts of such obligor, or*
28 *acting as a prorater, nor shall any person, without direct*

1 compensation and not as an authorized agent for a utility company,
2 accept money for the purpose of forwarding it to others in payment of
3 utility bills, without first obtaining a license from the commissioner.
4 (Emphasis added.)

5 51. Financial Code § 12002.1 defines “prorater” as follows:

6 A prorater is a person who, *for compensation, engages in whole or in*
7 *part in the business of receiving money or evidences thereof for the*
8 *purpose of distributing the money or evidences thereof among*
9 *creditors in payment or partial payment of the obligations of the*
10 *debtor.* (Emphasis added.)

11 52. Pathway Financial falls within this description of its business
12 practices, based on its own descriptions. Yet Pathway is admittedly not licensed by
13 the California Corporations Commissioner to act as a bill payer or prorater.
14 <http://www.corp.ca.gov/FSD/licensees/default.asp> (last accessed August 3, 2012).
15 Thus, Pathway has been illegally engaging in business as an unlicensed bill payer
16 or prorater as defined in the Check Sellers, Bill Payers and Proraters Law, Cal. Fin.
17 Code § 12200, *et seq.*

18 53. Pathway Financial must be aware of the requirements of the Check
19 Sellers, Bill Payers and Proraters Law, Cal. Fin. Code § 12200, *et seq.*, since on
20 July 7, 2011, Pathway Financial’s prior affiliated company, Beacon Debt Solutions,
21 also owned in part by Defendant Poon, was enjoined from engaging in the same
22 type of business under similar terms without a license by the California Department
23 of Corporations. [http://www.corp.ca.gov/ENF/pdf/2011/
24 BeaconDebtSolutions.dr.pdf](http://www.corp.ca.gov/ENF/pdf/2011/BeaconDebtSolutions.dr.pdf) (last accessed August 3, 2012).

25 54. Pathway Financial itself has been the subject of similar cease and
26 desist orders issued by at least the States of Maine and Connecticut.

27 55. If Pathway is found to be a “prorater,” then the fees it uniformly
28 charges all Class members violated California law. Cal. Fin. Code §§ 12314 and

1 12315 limit all such fees to approximately 10% of the total outstanding loan
2 balance -- four times less than what the Smiths paid -- and requires the majority of
3 creditors to approve such fees before any fees are taken. Because Pathway took
4 fees without the consent of creditors and above these limits and without complying
5 with these requirements, all contracts with Pathway are, by statute, void, “and the
6 prorater shall return to the debtor all charges received from the debtor.” Cal. Fin.
7 Code § 12316.

8 56. As it apparently knowingly operated without a prorater’s license and
9 imposed fees in violation of California law (which it claims in its contracts applies
10 to all Class members), Pathway illegally engaged in such business from California
11 and accepted money from Plaintiffs and the Class. If established either through
12 summary judgment or trial, all Class members would be entitled to full restitution
13 of all moneys illegally collected based on these per se unlawful business practices.
14 *See Sanders v. Fidelity Mortg. Co.*, 2009 WL 1246686 (N.D. Cal. 2009); *Cortez v.*
15 *Purolator Air Filtration Prods. Co.*, 23 Cal.4th 163, 178 (2000).

16 57. Operating without a prorater’s or bill payer’s license, Pathway
17 Financial illegally engaged in business and accepted money from Plaintiffs and the
18 Class. Had all these material facts been disclosed or not misrepresented, Plaintiffs
19 would not have entered into such agreements with Pathway Financial or paid the
20 amounts they did to them.

21 E. *Pathway Financial Has Been Disciplined By Multiple States for the Same*
22 *Type of Misconduct Misconduct*

23 58. Pathway Financial has been the subject of numerous similar consumer
24 complaints, inquiries and cease and desist orders or judgments issued by at least the
25 States of Maine, Minnesota, Colorado and Connecticut.

26 59. In fact, such inquiries became so pervasive that Pathway Financial felt
27 it expedient to create its own internal form labeled “Attorney General Complaint
28 Detail,” which it used to process such complaints.

1 60. Pathway Financial was required by the State of Minnesota to refund
2 over \$127,000 -- all the fees it collected -- to Minnesota residents, and return the
3 monies it was holding in trust for violating a similar Minnesota law.

4 F. Pathway Has Violated the Credit Repair Organizations Act

5 61. Finally, Pathway Financial is operating as a “credit repair
6 organization,” as defined by the Credit Repair Organizations Act, 15 U.S.C. § 1679,
7 *et seq.* (“CROA”). It uses instrumentalities of interstate commerce (television,
8 radio, and direct mail) to sell, provide, or perform a service, in return for the
9 payment of money or other valuable consideration, for the express or implied
10 purpose of (1) improving any consumer’s credit record, credit history, or credit
11 rating; or (2) providing advice or assistance to any consumer with regard to any
12 activity or service described in (1).

13 62. Plaintiffs reasonably believed, based on their communications with
14 Pathway Financial’s representatives, that their credit history and rating would
15 ultimately improve if they engaged Pathway Financial’s services, even if their
16 scores would initially go down, and Pathway Financial both implied this result and
17 also expressly stated as such on its own website.

18 63. If Pathway Financial were found to have operated as a credit repair
19 organization, it would be legally barred from making any untrue or misleading
20 representation of its services, or from engaging, directly or indirectly, in any act,
21 practice, or course of business that constitutes or results in the commission of, or an
22 attempt to commit, a fraud or deception on any person in connection with the offer
23 or sale of its services. 15 U.S.C.A. § 1679b(a)(4).

24 64. In addition, if prior to the full performance of the services it allegedly
25 provided, Pathway Financial charged and received from Plaintiffs and Class
26 members’ an up-front 12% fee for the services it claimed it would perform on their
27 behalf on a Class-wide basis, such conduct violates Section 1679b(b) of the CROA,
28 which prohibits such up-front fees.

1 65. To the extent Pathway Financial's form consumer contracts and
2 disclosure documents can be shown not to comply with the relevant provisions of
3 the CROA (which, if they were in a form similar to the agreement Pathway
4 Financial provided to the Smiths, do not comply with numerous of the enumerated
5 provisions set forth in Sections 1679C, 1679D and 1679E of that Act), such
6 contracts (1) shall be treated as void; and (2) may not be enforced by any federal
7 court or any other person. 15 U.S.C.A. § 1679f(a). If such contracts are void, all
8 payments either made or to be made to Pathway Financial pursuant to those
9 contracts could be ordered returned to Plaintiffs and members of the Class.

10 66. If Pathway Financial is found to have failed to comply with the
11 provisions of the CROA, a Court or jury can find it liable for the greater of: (1) the
12 amount of any actual damage sustained by such persons as a result of such failure;
13 or (2) any amount paid by Plaintiffs and the Class members to Pathway Financial.
14 In addition, as the above conduct was directed at close to 4,500 persons, was
15 frequent in terms of the nature of such noncompliance, was intentional based on
16 Pathway's illegal conduct (since Pathway was not licensed to provide such
17 services), and violating numerous basic provisions of the law, common evidence
18 can also be used to find Pathway liable on a class-wide basis under the CROA for
19 punitive damages. 15 U.S.C.A. § 1679g(a)(2)(B).

20 G. Poon is the Alter Ego of Pathway Financial and of Pathway Marketing

21 67. Defendant Poon is the sole owner and principal of Pathway Financial.
22 Plaintiffs are informed and believe that Poon solely controls and directs Pathway
23 Financial, that Pathway Financial does not observe the requisite corporate
24 formalities, and that the separate personalities of Defendant Pathway Financial and
25 Defendant Poon do not in reality exist.

26 68. Defendant Poon is the sole legal owner and principal of Pathway
27 Marketing. Poon solely controls and directs Pathway Marketing, Pathway
28 Marketing does not observe the requisite corporate formalities, and the separate

1 personalities of Defendant Pathway Marketing and Defendant Poon do not in reality
2 exist.

3 69. At Defendant Poon’s direction and control, Pathway Financial has
4 been diverting, and continues to divert, settlement funds belonging to its clients and
5 members of the putative Class herein, to its Nevada-based affiliate company and
6 co-Defendant, Pathway Marketing, in order to convert those funds, secret them
7 from Pathway Financial’s clients and others, and prevent Plaintiffs and the Class
8 herein from recovering such funds as may be owed to them, such that both Poon
9 and Pathway Marketing are alter egos of Pathway Financial.

10 **CLASS ACTION ALLEGATIONS**

11 70. Pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3), Plaintiffs bring this
12 action on behalf of themselves and others similarly situated, as representatives of
13 the following class (the “Class”):

14 Each and every resident citizen of the United States of America
15 who has had an agreement in effect with Defendant Pathway Financial
16 Management, Inc. at any time since January 1, 2008 (or such earlier
17 date as discovery establishes) to provide debt relief services.

18 Excluded from the Class are Defendants, as well as all
19 employees of the judges assigned to this action in this Court, their
20 spouses and any minor children living in their households, and other
21 persons within a third degree relationship to any such federal judge;
22 and finally, the entire jury venire called to for jury service in relation
23 to this lawsuit. Also excluded from the Class are any attorneys or
24 other employees of any law firms hired, retained and/or appointed by
25 or on behalf of the named Plaintiffs to represent the named Plaintiffs
26 and/or any proposed Class members or proposed Class in this lawsuit.

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1 71. The requirements of Fed. R. Civ. P. 23 are met in this case. The Class,
2 as defined, is so numerous that joinder of all members is impracticable. Although
3 discovery will be necessary to establish the exact size of the class, based on the
4 nature of Defendant Pathway Financial's business, it appears the Class numbers in
5 the range of 5,000 persons.

6 72. There are questions of fact and law common to the Class as defined,
7 which common questions predominate over any questions affecting only individual
8 members. The common questions include whether Defendants violated California
9 and federal law with respect to each Class member and the extent of their injuries.

10 73. Plaintiffs can and will fairly and adequately represent and protect the
11 interests of the Class as defined and have no interests that materially conflict with
12 the interests of the Class. This is so because:

13 (a) All of the questions of law and fact regarding the liability of the
14 Defendant Pathway Financial as set forth herein are common to the Class and
15 predominate over any individual issues that may exist, such that by
16 prevailing on their own claims, Plaintiffs will necessarily establish the
17 liability of the Defendant to all Class members;

18 (b) Without the legal representation provided by Plaintiffs, it is
19 unlikely that any Class members would receive legal representation to obtain
20 the remedies specified by relevant statutes and the common law; and

21 (c) Plaintiffs have retained competent attorneys who are
22 experienced in the conduct of class actions. Plaintiffs and their counsel have
23 the necessary resources to adequately and vigorously litigate this class action,
24 and Plaintiffs and their counsel are aware of their fiduciary responsibility to
25 the Class members and are determined to diligently discharge those duties to
26 obtain the best possible recovery for the Class.

27 74. Defendants' actions have affected numerous consumers in a similar
28 way. This class action is manageable and superior to any other method for

1 remedying Defendants' actions given that the common questions of fact and law as
2 set forth above predominate over any individual issues. Class treatment is likewise
3 superior and, indeed, necessary to ensure optimal compensation for the Class and
4 limiting the expense and judicial resources associated with thousands of potential
5 claims.

6 **CAUSES OF ACTION**

7 **COUNT I**

8 **Unlawful, Unfair and Fraudulent Business Practices, California**
9 **Business and Professions Code § 17200, et seq.**
10 **(Against all Defendants)**

11 75. Plaintiffs repeat and reallege each and every allegation set forth above
12 as if fully set forth herein.

13 76. Defendants' acts and practices as alleged in this Complaint constitute
14 unlawful, unfair, and fraudulent business practices under the UCL, Bus. & Prof.
15 Code § 17200, et seq. Such conduct also violates other comparable state consumer
16 protection laws.

17 77. Defendants committed unlawful business practices by engaging in
18 conduct that violates Bus. & Prof. Code § 17500, et seq.; the California Consumers
19 Legal Remedies Act (Cal. Civ. Code § 1750, et seq.); the California Credit Services
20 Act (Cal. Civ. Code § 1789.19, et seq.); any applicable federal or state regulations
21 prohibiting illegal telemarketing practices, including federal requirements relating
22 to debt relief services such as those set forth in 16 C.F.R. Part 310, including, but
23 not limited to 16 C.F.R. §§ 310.3 and 310.4; Cal. Fin. Code § 12000, et seq., and
24 other similar state laws for doing business as a prorater or bill payer without a
25 license; violation of the Credit Repair Organizations Act, 15 U.S.C. § 1679; by
26 claiming that their employees or agents were legal counsel authorized to practice
27 law when they were not licensed to practice law in the relevant jurisdiction and
28 without providing written notice of conflicts, in violation of both California's and
other states' prohibitions against practicing or claiming to be authorized to practice

1 law without a license to do so in the relevant jurisdiction and failing to provide
2 appropriate notice of any conflicts; and systematically breaching contracts such as
3 attached hereto as **Exhibit A**. Plaintiffs reserve the right to identify additional
4 violations of law as further investigation warrants.

5 78. Defendants committed unfair business practices by engaging in
6 conduct where the utility of such conduct, if any, is outweighed by the gravity of
7 the consequences to Plaintiffs and the Class; engaging in conduct that is immoral,
8 unethical, oppressive, unscrupulous, or substantially injurious to Plaintiffs and the
9 Class; and engaging in conduct that undermines the actual language, spirit or intent
10 of the laws detailed herein. Disclosure of material facts relating to deceptive debt
11 relief practices is tethered to a legislatively declared policy as set forth in the above
12 consumer protection laws and statutes directed at such conduct.

13 79. Defendants committed fraudulent business practices by engaging in
14 conduct that was and is likely to deceive customers acting reasonably under the
15 circumstances, as set forth above.

16 80. As a result of Defendants' unlawful, unfair, or fraudulent business
17 practices, Plaintiffs have suffered injury in fact and have lost money or property as
18 detailed above. Had the true facts been properly and timely disclosed to them,
19 Plaintiffs and/or the Class members would not have entered into the transactions in
20 question or paid the amounts that they did to Pathway and its agents.

21 81. The above-described unlawful, unfair or fraudulent business acts and
22 practices engaged in by Defendants continue to this day and present a threat to the
23 Class in that Defendants have failed to publicly acknowledge the wrongfulness of
24 their actions and provide the complete relief required by the statute, and are still
25 engaging in a conspiracy not to disclose all relevant facts to Class members.

26 82. Pursuant to California Bus. & Prof. Code § 17203 (and any other
27 comparable statutes the Court may find applicable), Plaintiffs, individually and on
28 behalf of the Class, seek an order from the Court prohibiting Defendants from

1 continuing to engage in the unlawful, unfair, or fraudulent business acts or practices
2 set forth in this Complaint, from failing to fully disclose the true facts as set forth
3 herein and/or ordering Defendants engage in a corrective informational campaign
4 or appropriate declaratory or injunctive relief.

5 83. Plaintiffs also seek an order from the Court requiring Defendants to
6 provide complete equitable monetary relief, including the disgorgement and return
7 of Defendants' ill-gotten gains and such other monies as the trier of fact may deem
8 necessary to deter such conduct or prevent the use or enjoyment of all monies
9 wrongfully obtained, and/or pay restitution, including the return of any monies paid
10 either directly or indirectly to Defendants that would not otherwise have been paid
11 had the true facts been disclosed by Defendants or if they had complied with their
12 legal obligations, plus interest thereon. Plaintiffs also request the Court order that
13 an asset freeze or constructive trust be imposed over all monies that rightfully
14 belong to Plaintiffs and the Class.

15 **COUNT II**

16 **Common Counts, Assumpsit, Unjust Enrichment and/or Restitution**

17 **(Against all Defendants)**

18 84. Plaintiffs repeat and reallege each and every allegation set forth above
19 as if fully set forth herein.

20 85. Defendants by their conduct entered into a series of contracts with
21 Plaintiffs and the Class that resulted in money being had and received by
22 Defendants at the expense of Plaintiffs and members of the Class, either expressly
23 or under agreements in *assumpsit*. In addition, by law each of these agreements
24 have within them an implied covenant of good faith and fair dealing. Defendants
25 engaged in conscious and deliberate conduct, as set forth above, that disappoints or
26 frustrates Plaintiffs' and Class members' reasonable expectations that are implied in
27 such agreements. Defendants have been unjustly enriched by the resulting profits
28 enjoyed by Defendants as a result of such agreements. Plaintiffs' detriment and

1 Defendants' enrichment were related to and flowed from the conduct challenged in
2 this Complaint.

3 86. Under common law principles recognized in claims of common
4 counts, restitution and/or *assumpsit*, Defendants should not be permitted to retain
5 the benefits conferred upon them from Plaintiffs and Class members and converting
6 it into revenues and profits.

7 87. Under principles of equity and good conscience, Defendants should
8 not be permitted to retain the benefits they have acquired through the unlawful
9 conduct described above, and as between the two, Plaintiffs and Class members
10 have a superior right to some or all of such monies over Defendants.

11 88. Plaintiffs and members of the Class seek damages and restitutionary
12 disgorgement of all profits or monies generated from such illegal acts, and the
13 establishment of an asset freeze and a constructive trust from which Plaintiffs and
14 Class members may seek restitution as to all such funds, revenues and benefits that
15 Defendants have unjustly received as a result of their actions that rightfully belong
16 to Plaintiffs and the Class.

17 **COUNT III**

18 **Declaratory Relief**

19 **(Against All Defendants)**

20 89. Plaintiffs repeat and reallege each and every allegation set forth above
21 as if fully set forth herein.

22 90. An actual controversy over which this Court has jurisdiction now
23 exists between Plaintiffs and the Class and Defendants concerning their respective
24 rights, duties and obligations for which Plaintiffs desire a declaration of rights
25 under the applicable claims asserted herein.

26 91. Plaintiffs contend Defendants were obligated to disclose to Plaintiffs
27 and the Class that they could not guarantee all of a consumer's debts would be
28 reduced, that Pathway Financial was not licensed to engage in such conduct, that

1 Defendants' conduct violated state and federal law, and that Defendants were
2 recommending consumers retain unlicensed attorneys to act on consumers' behalf.

3 92. Plaintiffs further contend Defendants are obligated to immediately
4 provide notice to Plaintiffs and the Class concerning the limitations on Defendants'
5 conduct.

6 93. Plaintiffs request a judicial determination and declaration of the
7 parties' respective rights, duties and obligations.

8 94. A judicial declaration is necessary and appropriate at this time under
9 the circumstances in order that the parties may ascertain their respective rights and
10 duties.

11 **COUNT IV**

12 **Breach of Contract**

13 **(Against All Defendants)**

14 95. Plaintiffs repeat and reallege each and every allegation set forth above
15 as if fully set forth herein.

16 96. Defendant Pathway Financial sold debt relief services to Plaintiffs and
17 members of the Class pursuant to the terms and conditions of an agreement. An
18 exemplar of such an agreement is attached hereto as **Exhibit A**.

19 97. Mr. Lenard, in conjunction with Defendant Pathway Financial, held
20 himself out as legal counsel to Plaintiffs and the Class and purported to provide
21 legal services to Plaintiffs and the Class, but *inter alia*: provided no legal services;
22 provided inadequate and grossly negligent legal services; provided legal services
23 tainted by unwaivable conflicts of interest; provided legal services while not
24 licensed to practice law in the States of residence of his purported clients; and
25 provided legal services not pursuant to written engagement agreement as required
26 by attorney ethical rules for which Defendants are jointly and severally liable. All
27 of the Defendants were third party beneficiaries of these agreements.

28 ///

1 98. Plaintiffs and Class members provided good and valuable
2 consideration pursuant to those agreements.

3 99. Systematic form agreements were created between Defendant Pathway
4 Financial and Plaintiffs and Class members, which also contained an implied
5 covenant of good faith and fair dealing.

6 100. Defendants breached these contracts with Plaintiffs and the Class
7 through the conduct described above and by inserting illegal and unconscionable
8 provisions in such agreements that violated state and federal law, and thus are void.
9 Notice to resolve this issue has been given and refused.

10 101. As a result of Defendants' breach of contract, Plaintiffs and members
11 of the Class have been damaged in an amount to be determined at trial, and are
12 entitled to compensatory damages plus interest, costs, and other such additional
13 monetary or equitable relief as is deemed proper by the Court.

14 **COUNT V**

15 **Violation of Credit Repair Organizations Act**

16 **(Against All Defendants)**

17 102. Plaintiffs repeat and reallege each and every allegation set forth above
18 as if fully set forth herein.

19 103. Pathway Financial is a "credit repair organization" as defined by the
20 Credit Repair Organizations Act, 15 U.S.C. § 1679, *et seq.*, as it uses an
21 instrumentality of interstate commerce (television and radio) or the mails to sell,
22 provide, or perform (or represent that such person can or will sell, provide, or
23 perform) any service, in return for the payment of money or other valuable
24 consideration, for the express or implied purpose of (1) improving any consumer's
25 credit record, credit history, or credit rating; or (2) providing advice or assistance to
26 any consumer with regard to any activity or service described in (1). Plaintiffs
27 believed based on their communications with Pathway Financial representatives
28 that their credit history and rating would improve if they engaged Pathway's

1 services, and Pathway Financial's conduct at least implied that would be the result
2 of such efforts.

3 104. As a credit repair organization, it is unlawful for Pathway Financial to
4 make or use any untrue or misleading representation of its services, or engage,
5 directly or indirectly, in any act, practice, or course of business that constitutes or
6 results in the commission of, or an attempt to commit, a fraud or deception on any
7 person in connection with the offer or sale of its services.

8 105. As set forth in detail above, Pathway Financial has engaged in such
9 untrue or misleading misrepresentations, and has attempted to commit a fraud or
10 deception on consumers who use their services by claiming they will provide
11 services they do not, using legal counsel who are not licensed or admitted to
12 practice on their behalf.

13 106. In addition, prior to the full performance of the services it allegedly
14 provided, Pathway Financial charged and received from Plaintiffs and Class
15 members' money for the performance of the services it claimed it would perform on
16 their behalf. Such conduct also violates provisions of the Credit Repair
17 Organizations Act.

18 107. In addition, to the extent Pathway Financial's form consumer contracts
19 and disclosure documents do not comply with the relevant provisions of the Credit
20 Repair Organizations Act as set forth in that Act (which, if they were in form
21 similar to the agreement Pathway Financial provided to the Smiths attached hereto
22 as **Exhibit A**, they do not comply with many of the enumerated provisions set forth
23 in Sections 1679C, 1679D and 1679E of that Act), such contracts (1) shall be
24 treated as void; and (2) may not be enforced by any federal court or any other
25 person. In addition, if such contracts are void, all payments made pursuant to those
26 contracts either must or should be returned to Plaintiffs and members of the Class.

27 108. As Pathway Financial has failed to comply with the provisions of the
28 Credit Repair Organizations Act, both in terms of the statements it made to Class

1 members, the monies it charged, and the failure to provide form contracts and
2 disclosure documents in conformance with the relevant provisions of that Act, and
3 as the other Defendants are alter egos of Pathway Financial, they are liable for the
4 greater of: (1) the amount of any actual damage sustained by such persons as a
5 result of such failure; or (2) any amount paid by Plaintiffs and the Class members to
6 Pathway Financial or Pathway Marketing or transferred to Mr. Poon. In addition,
7 as the above conduct was directed at potentially tens of thousands of persons, was
8 frequent in terms of the nature of such noncompliance, was intentional based on the
9 fact Pathway Financial has been the subject of at least two cease and desist orders
10 for not being licensed to provide such services, and has violated numerous basic
11 provisions of the statutes, among other relevant factors, Defendants are also liable
12 under the Credit Repair Organizations Act for punitive damages. If this action is
13 certified to proceed as a class action, Plaintiffs and the Class members would be
14 entitled to the sum of: (1) the aggregate of the amount which the Court may allow
15 for each named plaintiff; and (2) the aggregate of the amount which the Court may
16 allow for each other class member, without regard to any minimum individual
17 recovery.

18 109. Plaintiffs' counsel are also entitled to the costs of the action, together
19 with reasonable attorneys' fees.

20 **COUNT VI**

21 **Violation of the California Consumers Legal Remedies Act**

22 **(Against All Defendants)**

23 110. Plaintiffs repeat and reallege each and every allegation set forth above
24 as if fully set forth herein.

25 111. The California Consumers Legal Remedies Act, Cal. Civ. Code §
26 1750, *et seq.* ("CLRA"), has adopted a comprehensive statutory scheme prohibiting
27 various deceptive practices in connection with the conduct of a business providing
28 goods, property or services to consumers primarily for personal, family or

1 household purposes. This cause of action is asserted by both Plaintiffs in their
2 capacity as a consumer on behalf of all Class members who are consumers as
3 defined under the CLRA.

4 112. The transactions, policies, acts and practices engaged in by Defendants
5 and alleged herein were intended to and/or did result in the continued sale of the
6 services here at issue to a members of the Class, who use such services primarily
7 for personal, family or household purposes.

8 113. Pathway Financial uniformly represented the nature of its services and
9 failed to disclose or misrepresented consumers' rights and obligations under the
10 law. Plaintiffs and the Class members responded positively thereto as evidenced by
11 entering into agreements to provide such services. In so doing, Defendants
12 violated, and continued to violate, the CLRA in at least the following respects:

13 a. In violation of California Civil Code § 1770(a)(2),
14 Defendants misrepresented the approval or certification of services;

15 b. In violation of California Civil Code § 1770(a)(5),
16 Defendants' acts and practices constitute misrepresentations that the
17 services in question have characteristics, benefits or uses that they do
18 not have;

19 c. In violation of California Civil Code § 1770(a)(9),
20 Defendants advertised the services at issue with the intent not to sell
21 them as advertised or represented;

22 d. In violation of California Civil Code § 1770(a)(14),
23 Defendants have misrepresented that a transaction confers or involves
24 legal rights, obligations, or remedies of certain members of the Class
25 concerning the services at issue when it does not or which are
26 prohibited by law;

27 ///

28 ///

1 e. In violation of California Civil Code § 1770(a)(16),
2 Defendants represented that the services were supplied in accordance
3 with previous representations when they were not; and

4 f. In violation of California Civil Code § 1770(a)(19),
5 Defendants attempted to insert an unconscionable provision in an
6 agreement by imposing provisions in agreements that are void under
7 both federal and state law.

8 114. Members of the Class who are entitled to relief under the CLRA have
9 suffered irreparable harm.

10 115. In compliance with the provisions of California Civil Code § 1782,
11 Plaintiffs gave written notice to Pathway Financial of the intention to seek damages
12 under California Civil Code § 1750, *et seq.*, unless it timely provided an appropriate
13 correction or refund plus interest and other appropriate relief to all Class members
14 entitled to relief under the CLRA.

15 116. Pathway Financial failed within 30 days of receipt of such notice to
16 provide such relief and adequately respond to Plaintiffs' demand to pay refunds
17 plus interest, and otherwise rectify the wrongful conduct described above on behalf
18 of all Class members who may be entitled to relief under the CLRA. The Class
19 members are thus entitled to and Plaintiffs seek, pursuant to California Civil Code §
20 1780(a)(2), an order enjoining the above-described wrongful acts and practices of
21 Defendants, providing restitution to all members of the Class who are so entitled,
22 ordering the payment of costs and attorneys' fees, and such other relief as deemed
23 appropriate and proper by the Court under California Civil Code § 1780. Based on
24 Defendants' failure to properly respond to Plaintiffs' CLRA demand, Plaintiffs also
25 seek an award of all actual damages permitted for violation of the CLRA, including
26 for statutory damages of \$1,000 and/or up to \$5,000 per consumer who qualifies as
27 a "senior citizen" under the CLRA.

28 ///

1 services; or engage, directly or indirectly, in any act, practice, or course of business
2 that constitutes or results in the commission of, or an attempt to commit, a fraud or
3 deception on any person in connection with the offer or sale of its services, or
4 advertise its services without being registered with the California Department of
5 Justice.

6 121. As set forth in detail above, Pathway Financial has engaged in such
7 untrue or misleading misrepresentations, and has attempted to commit a fraud or
8 deception on consumers who use their services by claiming they will provide
9 services they do not, using legal counsel who are not licensed or admitted to
10 practice on their behalf, and being unlicensed to engage in such practices.

11 122. In addition, prior to the full and complete performance of the services
12 it allegedly agreed to provide, Pathway Financial charged and received from
13 Plaintiffs and Class members' money prior to the full performance of the services it
14 claimed it would perform on their behalf, and failed to fully do so within six
15 months following the date the agreements were executed. Such conduct also
16 violates relevant provisions of the Credit Services Act.

17 123. In addition, to the extent Pathway Financial's form consumer contracts
18 and disclosure documents do not comply with the relevant provisions of the Credit
19 Services Act as set forth in that Act (which, if they were in form similar to the
20 agreement Pathway Financial provided to the Smiths attached hereto as **Exhibit A**,
21 they do not comply with many of the enumerated provisions set forth in Sections
22 1789.14, 1789.15, and 1789.16 of that Act), such contracts shall void and
23 unenforceable. In addition, if such contracts are void, all payments made pursuant
24 to those contracts either must or should be returned to Plaintiffs and members of the
25 Class. In addition, Pathway must comply with certain bond requirements, as set
26 forth in Civil Code § 1789.18.

27 124. As Pathway Financial has failed to comply with numerous relevant
28 provisions of the Credit Services Act, both in terms of the statements it made to

1 Class members, the monies it charged, and the failure to provide contracts and
2 disclosure documents in conformance with the relevant provisions of that Act, it is
3 liable for injunctive relief, actual damage sustained by such persons, and no less
4 than the amounts paid by Plaintiffs and the Class members to Pathway Financial.
5 In addition, as the above conduct was directed at potentially thousands of persons,
6 was frequent in terms of the nature of the noncompliance, was fraudulent and
7 intentional based on fact Pathway Financial has been the subject of at least two
8 cease and desist orders for not being licensed for providing such services, and has
9 violated numerous basic provisions of the statute, among other relevant factors,
10 Defendants are also liable under the Credit Services Act for punitive damages.

11 125. Plaintiffs are also entitled to their litigation costs, including reasonable
12 attorneys' fees.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs, individually and on behalf of the Class, pray for
15 judgment against Defendants, jointly and severally, as follows as applicable to the
16 appropriate cause of action:

17 1. That this action be certified as a class action under Federal Rule of
18 Civil Procedure 23, designating Plaintiffs as class representatives and their counsel
19 as class counsel;

20 2. Awarding declaratory, equitable and injunctive relief consistent with
21 applicable law and as detailed above, including enjoining Defendants from
22 continuing the acts and practices set forth above, and ordering Defendants to pay
23 restitution and disgorgement of all monies wrongfully acquired as a result of the
24 acts and practices detailed herein, and requiring it to engage in a corrective
25 information campaign and imposing an asset freeze and constructive trust;

26 3. Awarding actual, compensatory, statutory and/or punitive damages in
27 an amount to be proven at trial;

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1 4. Awarding all costs and expenses incurred in prosecuting this action,
2 including reasonable attorneys' fees and costs;

3 5. Awarding pre-judgment and post-judgment interest; and

4 6. Any other relief the Court deems appropriate.

5
6 **JURY DEMAND**

7 Plaintiffs demand a trial by jury on all causes of action so triable.

8 Dated: November 9, 2012

THE CONSUMER LAW GROUP

9 By: 

ALAN M. MANSFIELD

alan@clgca.com

10 10200 Willow Creek Road, Suite 160

11 San Diego, CA 92131

12 Tel: (619) 308-5034

13 Fax: (888) 341-5048

14 WHATLEY KALLAS, LLC

Joe Whatley, Jr. (Admitted *pro hac vice*)

jwhatley@wdklaw.com

15 380 Madison Avenue, 23rd Floor

16 New York, NY 10017

Tel: (212) 447-7060

17 Fax: (800) 922-4851

18 MAURIELLO LAW FIRM, APC

Thomas D. Mauriello (SBN: 144811)

tomm@maurlaw.com

19 1181 Puerta Del Sol, Suite 120

20 San Clemente, CA 92673

Tel: (949) 542-3555

21 Fax: (949) 606-9690

22 PENN & SEABORN

Myron C. Penn (Admitted *pro hac vice*)

myron@pennandseaborn.com

23 L. Shane Seaborn (Admitted *pro hac vice*)

shane@pennandseaborn.com

24 53 Highway 110

P. O. Box 5335

25 Union Spring, AL 36089

26 Tel: (334) 738-4486

Fax: (334) 738-4432

27 *Attorneys for Plaintiffs*

28



FRED SMITH

PATHWAY

FINANCIAL MANAGEMENT

12635 Hoover Street / Stanton / California / 92841
Phone: (888) 896-8188 ext. 805 Fax: (714) 230-3427

Dear Freddie Smith,

11/11/2008

Please find the program documentation I had discussed with you over the phone enclosed. I look forward to speaking with you in order to answer any further questions you might have and to go over the program in further detail step by step with you.

Remember at the rate you are going now it will take you approximately
56.75 YEARS to pay back your current debt of

You will be paying back your creditors over **\$128,318.07** in principal & interest!

It's time to choose a different path.

(based on 19.0% interest rate on 2% minimum payment)

Please keep in mind all the benefits of this Debt Reduction Program:

1. Your Total Debt is negotiated down significantly!
- 2. You are paying a Fixed Flat payment of \$431.00 a month (ALL fees are included in your monthly payment) for approximately 36 months.**
3. Your account will be handled by our legal counsel during the entire term of your payment plan.
4. You can settle your account in full at any time.
5. You can always deposit more money into your account to shorten the length of your payment term.
6. If you are dealing with any harassing calls from creditors or collection agencies we can work to have them stopped!

I am excited for you: this is a great step towards unloading this tremendous burden! Please feel free to contact me directly anytime.

Please FAX back the following pages with the "STAR" on the right hand corner of the page (total of 8 pages), copies of your credit card statements and your "voided" check so I can get your program immediately reviewed and approved by our legal counsel...thank you!

Best regards...

Ernie Schuerman
Pathway Financial Management
www.pathwayfm.com
Phone: (888) 896-8188 ext. 805
Fax: (714) 230-3427
eschuerman@pathwayfm.com



ATTORNEY-CLIENT LEGAL SERVICE AGREEMENT

This agreement is made by and between the Law Office of Richard A. Lenard, hereafter referred to as "Law Firm" or "Attorney", and the undersigned, hereafter referred to as "Client(s)".

1. Conditions. This Agreement will not take effect, and Law Firm will have no obligation to provide legal services until Client signs and returns this Agreement.

2. Scope of Services.

a. Client is hiring Law Firm for the purpose of negotiating the settlement of certain unsecured debts that Client chooses to include within the scope of Law Firm's representation. Law Firm will contact the unsecured creditors included in this representation, in writing and/or by telephone as Law Firm deems appropriate, to advise them that Law Firm is representing Client and that all communications related to the debt(s) in question should be directed to Law Firm. Law Firm and Client acknowledge and agree that no legal services other than those specifically described in this Agreement are included in this representation and that any additional legal services requested by Client will be provided under a separate agreement (or amendment to this Agreement) signed by Client and may require payment of an additional fee.

b. Client acknowledges that the attorneys that comprise Law Firm are not licensed to practice in all states. Therefore, any legal services rendered by Law Firm in states where its attorneys are not licensed may involve the association of attorneys licensed in those states.

c. Law Firm will use its best efforts to obtain the greatest reduction possible of each creditor's claim. Law Firm reserves the right to remove any of Client's accounts from this representation.

d. Law Firm will use its best efforts to respond to and prevent creditors from unlawfully contacting or harassing Client. Client acknowledges that Law Firm cannot guarantee that certain creditors will stop collection efforts or harassment of Client, however, in that event, Law Firm will recommend a course of action to Client, including but not limited to, assisting Client in locating an attorney licensed to practice law in the appropriate state to address creditor's actions.

3. Law Firm's Obligations.

a. Law Firm shall competently perform the legal services described above and otherwise required under this Agreement, promptly respond to Client's inquiries regarding his/her matter and will take steps to keep Client reasonably informed as to the progress of the matter.

4. Client's Obligations.

a. Client agrees to cooperate with Law Firm and promptly provide accurate information regarding his/her accounts, debts, income, employment, assets and any other information reasonably required by Law Firm in connection with this representation. Client also agrees to update Law Firm with any changes to his/her address, telephone number, email address and employment status.

5. The Debt Reduction Process.

a. Client acknowledges that while Law Firm will use its best efforts to try and secure a substantial reduction in Client's debts included in this representation, Law Firm cannot guarantee a specific outcome or that a specific percentage of Client's debts will be eliminated. While Law Firm will use its best efforts to prevent it, Law Firm cannot guarantee that certain creditors will not file suit against Client and thereafter obtain a judgment and garnish Client's wages and/or seize other of Client's assets. Client agrees to hold Law Firm harmless as a result of any actions, legal or otherwise, instituted by creditors.

b. Client authorizes Law Firm to take appropriate and legal actions as Law Firm deems necessary to settle Client's accounts included in this representation, including without limitation, discussing creditors Client's debts, income, employment, overall financial situation and other factors that may be affecting Client's ability to fully pay his/her debts. As part of this representation, Law Firm may communicate with Client and his/her creditors by telephone, facsimile, email, regular mail and overnight mail.

c. Client acknowledges that his/her credit rating will be reduced while in the debt reduction program.

d. Client understands that his/her creditors are not paid monthly. They are paid off in individual lump sums and that late fees & interest may continue to accrue on these accounts until the point that an offer of settlement is agreed upon & the account is closed & paid. As sufficient funds build up in client's trust account the Law Firm will make offers of settlement based on the original principal balance enrolled initially in the program & that the order in which creditors are paid is in the Law Firm's discretion.

Having Read Please Initial Here (LRL/FS)



e. BY PLACING THEIR INITIALS HERE LS/JS:

- 1. Client authorizes Law Firm to receive all billing statements on accounts made a part of this representation and will notify (or authorizes Law Firm to notify) his/her creditors that such billing statements should be sent to an address to be provided by Law Firm.
- 2. That they have been advised that the shorter the duration of a debt reduction plan, the greater the likelihood that the plan will be successfully completed.
- 3. That debt reductions plan in excess of 36 months will be permitted only if the client(s) represents they will be able to contribute additional sums in the future.
- f. Law Firm will not settle any of Client's debts without his/her prior approval. Settlement payments shall be made in a manner determined between Law Firm and Client's creditors.
- g. If, necessary, Client agrees to sign a Power of Attorney authorizing his/her creditors to discuss Client's accounts with Law Firm for the purpose of negotiating a settlement of such accounts as set forth herein.

6. Legal Fees. Client acknowledges that Law Firm is not billing for its Services on an hourly basis. Given the nature of this fee arrangement, Law Firm is not required to detail or keep a record of how much time is spent on Client's matter.

7. Termination of Agreement. Client and/or Law Firm may terminate this Agreement for any reason immediately upon giving the other party written notice by any method authorized under this Agreement. Law Firm shall also return, upon written request by Client, a copy of Client's file whether said information is held electronically and/or in a paper file.

8. Miscellaneous Terms.

- a. Client and Law Firm agree that Facsimile and/or electronic signatures and copies of documents may be accepted by either party in lieu of original signatures and/or original documents and such non-original signatures and documents shall have the same legal force and effect as if they were originals.
- b. Client and Law Firm agree that this Agreement shall be governed by and interpreted under the laws of the State of California. Venue for all disputes between Client and Law Firm shall lie in the Superior Court of the State of California for the County of Orange.
- c. This Agreement constitutes the entire Agreement between Client and Law Firm and supersedes all prior oral and written agreements, discussions, and negotiations.
- d. This Agreement may be signed in counterparts, and when each party has delivered at least one such counterpart, such counterparts shall constitute one agreement.
- e. If any provision in this Agreement shall be deemed invalid, such invalidity shall not affect the other provisions, and to this extent, the provisions of this Agreement are intended to be and shall be deemed severable.

Power of Attorney: I, as principal on the above referenced account, hereby authorize you, the creditor, to discuss any request that you may receive in writing or by telephone from Lenard Law Firm, Inc., pertaining to the account.

The foregoing is agreed to by:

Client (Print Name)	Signature	Date
Freddie Smith	X <i>Freddie Smith</i>	11-17-2008
Client (Print Name)	Signature	Date
Luevall Smith	X <i>Lue Vall Smith</i>	11-17-2008

Law Office of Richard A. Lenard

By: Richard Lenard, Attorney at Law

Date



Law Office of Richard A. Lenard

CLIENT AUTHORIZATION

I / we Freddie Smith & Luevail Smith,

Hereby acknowledge that we have retained the Law Office of Richard A. Lenard ("the firm") as our attorney in order to resolve the outstanding indebtedness I/we owe to certain creditors. We hereby authorize the creditors (and their representatives) listed in the attached Creditor Info Log to discuss my/our account with representatives of the firm for all purposes necessary to resolve the amount owing to each such creditor. A copy will have the same force and effect as the original.

Client (Print Name)	Signature	Date
Freddie Smith	X <i>Freddie Smith</i>	11-17-2008
Client (Print Name)	Signature	Date
Luevail Smith	X <i>Luevail Smith</i>	11-17-2008
Client (Print Name)	Signature	Date
	X	

Pathway Financial Management CLIENT AGREEMENT



THIS AGREEMENT is made by and between Pathway Financial Management, Inc., ("Pathway") and the person(s) named below.

Client hereby retains Pathway to analyze his/her financial situation in order to determine whether Client is eligible for participation in a debt reduction program. In order that Pathway may make an appropriate recommendation, Client agrees to provide accurate information regarding their income, debts, and assets.

AS

(Please Initial Here If Client is a Homeowner) Client acknowledges being advised that refinancing their real property may be an alternative method to paying off debt but has chosen not to pursue this alternative.

Client agrees that they will not make additional charges on any credit card or other account placed into the debt reduction program. Client understands that creditors will close and/or decide not to extend additional credit on Client's account(s). Client understands that his/her credit score and/or ability to obtain credit will be reduced while enrolled in a debt reduction program.

Client agrees that making a payment, equal to the first program payment, to Pathway constitutes an agreement to use their service(s). Client understands that Pathway and its debt reduction partners and associates will use their best efforts to reduce Client's debts to the fullest extent possible. Although payments are based on historical and industry standards, Pathway cannot guarantee that the Client's debts will be reduced by a specific amount or percentage.

Accordingly, Client agrees to pay the following fees to Pathway Financial Management:

a. Enrollment. A one-time non-refundable fee equal to 12 % of the total balance of accounts included by Client in this representation and any subsequent accounts added after the program has been initiated. Client acknowledges that this fee is due at the beginning of Pathway's representation, that initial monthly payments made by Client will be used to pay the enrollment, and that no part of the enrollment will be used to pay creditors of Client. Client may not add any additional accounts after our Legal Counsel begins its representation under this Agreement, constituted by client's first payment. If Client elects to delete any accounts after our Legal Counsel begins its representation, Client shall nevertheless be obligated to pay the enrollment fee on the original debt amount unless our Legal Counsel, in its sole discretion, agrees to waive the fee applicable to the deleted accounts.

b. Settlement Fee. A contingency fee equal to 8 % of the amount by which Pathway reduces the balance due on each account that is part of this representation. The balance due is determined at the time the account is settled, not when the account is initially placed with Pathway. By way of example, if an account had a balance of \$1,000.00 at the beginning of Pathway's representation but has increased to \$1,200.00 and Pathway subsequently settles the account for \$600.00 Pathway has in fact saved Client \$600.00. Therefore, the fee due to Pathway would be 8 % of \$600.00 or \$48.00.

c. Maintenance Fee. A monthly maintenance fee of \$25.00 will be included in Client's regular monthly payment to Pathway. This fee will be deducted from Client's funds held in trust by Pathway and is intended to cover Pathway's additional expenses in administering Client's debt reduction program, including, postage, copy costs, and other associated costs.

Payment Method & Terms. Client agrees to make monthly deposits into Pathway's client trust account for the purposes so specified in this Agreement. Client agrees to make equal and consecutive deposits of **\$431.00 on the 28th day of each month for approximately 36 months.**

As consideration for the receipt of credit from Pathway, Client authorizes Pathway to collect all payments due under this Agreement via automated bank account debit. The number of months has been approximated because Pathway cannot say with certainty at this early stage of representation precisely the amount of funds that will be required to satisfactorily settle Client's debts included in this representation; other than based on historical and industry standards.

Having Read Please Initial Here (JVS/AS)



Pathway agrees that such charges **WILL NEVER** exceed those specified in this Agreement, unless otherwise authorized by Client. Client shall make all required monthly payments until this representation is concluded or the Agreement is terminated. Client hereby authorizes Pathway and its sister companies to obtain Client's personal credit reports, if necessary and to release Client's personal information, including information obtained from Client's credit reports, to third parties for the purpose of facilitating Client's successful participation in a debt reduction program. Third parties will be limited to those other persons or entities working with Pathway in connection with Pathway's debt reduction program. Pathway will provide monthly statements to Client that reflects the current balance of all funds for Client as well as all monies deposited by Client and/or paid on Client's behalf.

Non-Sufficient Funds:

a. If an electronic funds transfer authorized by Client or check payable to Pathway on Client's behalf is returned unpaid, Law Firm may charge a fee of \$25.00.

b. Please remember if you need to change the date of your monthly payment you can do so. You must provide us with a minimum of 48 hours notice (2 Business Days) prior to the original date the payment was scheduled to be pulled. Please remember many of these policies and rules are set forth by the bank in order to process in the correct amount of time. You can also change your date anytime however please keep in mind you are require to make one full monthly payment once a month (every 30 days). Non-sufficient fund fees are not included in your monthly payment program.

c. Grace Period: We understand that emergencies happen. We allow our clients to skip their month's payment in the event of an emergency. However, we only allow this ONCE during the length of your program term. Also, a client is only offered the ability to skip the month's payment if they show a solid track record of 3 consecutive complete monthly payments that have cleared successfully. The skipped payment will be made up at the end of the term. Please keep in mind, you are building your payments into a trust account as quickly as possible so we can begin to start settling down your debts. If we allow our customers to consistently skip monthly payments it shows that they are not motivated to eliminate their debt, it makes the settlement process more difficult with their creditors and ultimately makes the situation even worse for the client. We hope you never need to use this grace period, if you have to, please again keep in mind it is only offered once.

d. Clients that NSF for 2 months straight: Clients that consistently NSF payment where no monthly payments have been collected for 2 months (60 days) will be terminated from the program immediately. Any money/funds the client has built up in his/her trust will be credited back to them as well; minus any fees due to the attorneys as stated in the client agreement.

Client authorizes Pathway to electronically debit the bank account(s) I have provided for the agreed upon fees for their services. Client understands and agrees that the fee paid to Pathway is non-refundable.

Client and Pathway agree that facsimile and/or electronic signatures and copies of documents may be accepted by either party in lieu of original signatures and/or original documents and such non-original signatures and documents shall have the same legal force and effect as if they were originals.

This Agreement will not be valid until Client has signed it and Client has made the required first payment. The specified payment and debt reduction program terms agreed to by Client and Pathway are set forth in a letter from Pathway that accompanies this Agreement and are expressly incorporated into and made a part hereof.

Termination of Agreement. Client and/or Pathway may terminate this Agreement for any reason immediately upon giving the other party written notice by any method authorized under this Agreement. Pathway may also terminate this Agreement if Client fails to make any of the payments required under this Agreement or otherwise breaches his/her obligations hereunder. Client acknowledges and agrees that any legal fees earned by Pathway on the date of termination shall remain the property of Pathway and need not be refunded to Client. Upon termination of this Agreement, Pathway shall promptly return to Client ALL funds held in trust that are not due and payable to Pathway within 30 days. Any refunds made will be made via check only, sent certified mail requiring the client to sign off that said funds were indeed received. Pathway shall also return, upon written request by Client, a copy of Client's file whether said information is held electronically and/or in a paper file.

Having Read Please Initial Here (LSVES)



Client and Pathway agree that this Agreement shall be governed by and interpreted under the laws of the State of California. Venue for all disputes between Client and Pathway exclusively shall lie in the Superior Court of the State of California for the County of Orange without regard to any choice of law statutes, or if a Federal matter, venue shall be exclusively within the Central District of California. This Agreement constitutes the entire Agreement between Client and Pathway and supersedes all prior oral and written agreements, discussions and negotiations. This Agreement may be signed in counterparts, and when each party has delivered at least on such counterpart, such counterparts shall constitute one agreement. If any provision in this Agreement shall be deemed invalid, such invalidity shall not affect the other provisions, and to this extent, the provisions of this Agreement are intended to be and shall be deemed severable.

Client (Print Name)	Signature	Date
Freddie Smith	x <i>Freddie Smith</i>	11-17-2008
Client (Print Name)	Signature	Date
Luevail Smith	x <i>Luevail Smith</i>	11-17-2008

EXHIBIT B



Whatley Drake & Kallas

Writer's e-mail: jwhatley@wdklaw.com

March 9, 2011

CERTIFIED AND FIRST CLASS MAIL

Mr. Ernie Shuerman
Pathway Financial Management
12635 Hoover Street
Stanton, CA 92841

Mr. Richard A. Lenard
P. O. Box 27733
Anaheim, CA 92809-0124

Re: Freddie and Lue Vail Smith

Dear Mr. Shuerman and Mr. Lenard:

Pursuant to Code of Alabama §8-19-10(e), we are writing on behalf of our clients Freddie and Lue Vail Smith to demand that within fifteen (15) you refund all money that you have received from them plus interest at the legal rate. The agreements you had them sign, and the payments you received from them were in violation of the Alabama Deceptive Trade Practices Act. Among other things, the agreements were unconscionable, misleading and deceptive. Moreover, any legal services provided to them were performed without legal authorization to practice law in the State of Alabama.

Please respond to us within 15 days of the date of this letter.

Yours truly,

Joe R. Whatley, Jr.

JRWjr:mee

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <input type="checkbox"/> Date of Delivery</p> <p>C. <i>Angela Vankoth 3/14/11</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>	
<p>1. Article addressed to:</p> <p><i>Ernie Shuerman</i> <i>Pathway Financial Management</i> <i>14235 Hoover St.</i> <i>Stanton, CA 92841</i> <i>(266) → G.G.</i></p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mktg <input type="checkbox"/> C.O.D.</p>	
<p>2. Article Number (Transfer from address label)</p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>7008 0150 0003 5487 7914</p>		
<p>PS Form 3811, February 2004</p>	<p>Domestic Return Receipt</p>	<p>100509-02-04-1040</p>