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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DANIEL SCHUCHARDT, et al.,  
Plaintiffs,  
v.  
LAW OFFICE OF RORY W. CLARK,  
Defendant.

Case No. [15-cv-01329-JSC](#)

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

Re: Dkt. No. 45

Plaintiffs Daniel Schuchardt (“Schuchardt”) and Michelle Muggli (“Muggli” and, together, “Plaintiffs”) bring this pre-certification class action on behalf of themselves and a putative class of consumers against Defendant Law Office of Rory W. Clark, A Professional Law Corporation (“Defendant”), alleging violations of the Fair Debt Collections Practices Act (“FDCPA”), 15 U.S.C. § 1692, and corresponding sections of the Rosenthal Fair Debt Collection Practices Act (“Rosenthal Act”), Cal. Civ. Code § 1788, arising out of the language in the initial debt collection letters that Defendant sent to Plaintiffs and the rest of the putative class. Specifically, Plaintiffs contend that the initial communication notice misrepresented their rights by failing to notify them that certain statutory rights would be triggered only by the recipients’ disputing the debt in writing, not just orally. Now pending before the Court is Plaintiffs’ unopposed motion for preliminary approval of a class action settlement. (Dkt. No. 44.)<sup>1</sup> After reviewing the proposed settlement, and with the benefit of oral argument and post-hearing submissions, the Court GRANTS the motion as outlined below.

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<sup>1</sup> Record citations are to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

United States District Court  
Northern District of California

**BACKGROUND**

**A. Factual Background**

The following undisputed facts are based on the parties’ recitation of undisputed facts described in their briefing on Defendant’s motion for summary judgment.

Defendant is a law firm that engages in debt collection on behalf of several clients, including Bank of America, N.A. Plaintiffs, who are “consumers” within the meaning of the FDCPA, incurred debts to Bank of America primarily for personal, family, or household purposes. When their debts became delinquent, Bank of America referred them to Defendant to initiate collection litigation. On January 2, 2015, Defendant mailed Plaintiffs collection letters regarding their Bank of America debts. (Dkt. Nos. 1-1, 1-2.) These letters were the initial communication between Plaintiffs and Defendant, and they were the only communication sent to Plaintiffs for the next five days. The letters provide, in relevant part:

If you notify this firm within thirty (30) days after your receipt of this letter, that the debt, or any portion thereof, is disputed, we will obtain verification of the debt or a copy of the judgment, if any, and mail a copy of such verification or judgment to you. Upon your written request within the same thirty-day period mentioned above, we will provide you with the name and address of the original creditor, if different from the current creditor. Unless you dispute the validity of the debt or any portion thereof within thirty (30) days after your receipt of this letter, we will assume that the debt is valid.

(*Id.*) Neither Plaintiff contacted Defendant, either orally or in writing, to lodge a dispute about the debt, request a validation, or otherwise seek more information about the debt within 30 days of receipt of the debt collection letter.

**B. Procedural History**

Plaintiffs filed the instant class action complaint on March 23, 2015 under Section 1692g(a)(4) of the FDCPA and Section 1788.17 Rosenthal Act, alleging that the statement misrepresented the rights of consumers by failing to inform Plaintiffs that their dispute of debt must be in writing. (Dkt. No. 1.) Defendant answered soon after, and the parties commenced limited discovery. At the case management conference on July 16, 2015, they agreed to stay discovery and class certification briefing until after resolution of a discrete, dispositive legal issue:

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1 whether the language in the letter is misleading insofar as it misrepresents Plaintiffs' statutory  
 2 rights to request a debt validation. In accordance with that discussion, the parties fully briefed  
 3 Defendant's motion for summary judgment (Dkt. Nos. 30-32), but prior to the hearing the parties  
 4 submitted a joint notice of class action settlement. (Dkt. No. 34.) Plaintiffs filed the instant  
 5 motion for preliminary approval of the parties' agreement, and the Court held a hearing on the  
 6 motion on January 7, 2016. Plaintiffs subsequently filed a supplemental submission addressing  
 7 concerns the Court raised at the hearing. (Dkt. No. 49.) This submission included a revised  
 8 Settlement Agreement, revised Class Notice, and a declaration of Matthew Kumar, counsel for,  
 9 and president and sole shareholder of, Defendant.<sup>2</sup> (Dkt. Nos. 49-1, 49-2.)

### 10 SETTLEMENT PROPOSAL

11 At some point after the complaint was filed, the parties engaged in settlement discussions.  
 12 The Court presumes these were informal settlement negotiations, as the parties' chosen  
 13 Alternative Dispute Resolution ("ADR") process was not set to begin until later in the year. (*See*  
 14 Dkt. No. 28.) After fully briefing Defendant's summary judgment motion in September 2015, the  
 15 parties apparently engaged in further informal settlement negotiations that led to the instant  
 16 settlement agreement. At that point, this action had been pending for a total of six months. The  
 17 parties had engaged in limited discovery before all discovery was stayed, and their deadline to  
 18 complete Early Neutral Evaluation had been stayed as well. (Dkt. No. 26, 29.) There is no  
 19 information before the Court about the scope of the parties' negotiations or whether a neutral third  
 20 party participated. The parties ultimately agreed to the Settlement Agreement before the Court.  
 21 (Dkt. No. 44-1.) The key provisions are as follows.

#### 22 A. Estimated Class Size

23 The parties define "Class Members" to include:

24 All persons with a California address to whom Law Office of Rory  
 25 W. Clark, A Professional Law Corporation mailed an initial debt  
 26 collection communication that stated: "If you notify this firm within  
 thirty (30) days after your receipt of this letter, that the debt or any  
 portion thereof, is disputed, we will obtain verification of the debt or

27  
 28 <sup>2</sup> In this Order, the Court refers to the revised settlement agreement and revised class notice submitted after the hearing as the Settlement Agreement and Class Notice, respectively.

1 a copy of the judgment, if any, and mail a copy of such verification  
2 or judgment to you,” between June 1, 2014 and June 1, 2015, in  
3 connection with the collection of a consumer debt.

4 (Dkt. No. 49-1 ¶ 1.C.) Excluded from the Class is any person already subject to an existing  
5 agreement about the debt collection communication, any person who is deceased, and any person  
6 who has filed for bankruptcy protection under Title 11 of the United States Code. (*Id.*) In the  
7 Settlement Agreement, Defendant represents that there are 1,361 Class Members, including  
8 Plaintiffs. (*Id.*)

8 **B. Settlement Consideration**

9 The Settlement Agreement provides for a Settlement Fund of \$13,610, which amounts to  
10 \$10 for each of the 1,361 Class Members. (Dkt. No. 49-1 ¶ 17.A.) However, “[s]hould the Parties  
11 discover that there are additional, or fewer, Class Members, the Settlement Fund will be adjusted  
12 accordingly such that the Settlement Fund consists of \$10.00 per Class Member.” (*Id.*) In short,  
13 the Settlement Fund may be adjusted up or down so that each Class Member receives a \$10.00  
14 award. (*See id.*)

15 Separate from the Settlement Fund, the Settlement Agreement provides that Defendant will  
16 pay \$1,000.00 to each named Plaintiff pursuant to 15 U.S.C. § 1692k(a)(2)(B)(i).<sup>3</sup> Apart from this  
17 statutory award, neither Plaintiff seeks an incentive award for their service to the Class. Also  
18 separate from the Settlement Fund, the Settlement Agreement provides that Defendant will pay  
19 Class Counsel’s attorneys’ fees, costs, and expenses, as well as the costs of settlement  
20 administration. (Dkt. No. 49-1 ¶¶ 17.D, E.) With respect to attorneys’ fees and costs, the  
21 Settlement Agreement provides that Class Counsel will not seek more than \$55,000, and that  
22 Defendant will not challenge any requested fees, costs, and expenses up to \$40,000. (*Id.* ¶ 17.D.)  
23 As for settlement administration, the Settlement Agreement itself does not set a maximum amount  
24 for such costs, nor does the Notice include any estimate of administration costs. (*Id.* ¶ 17.E.)

25  
26  
27 <sup>3</sup> Section 1692k(a)(2)(B)(i) provides that “any debt collector who fails to comply with any  
28 provision of this subchapter with respect to any person is liable to such person in an amount equal  
to the sum of . . . in the case of a class action, (i) such amount for each named plaintiff as could be  
recovered under subparagraph (A)[.]” Subparagraph (A), in turn, provides for liability for “such  
additional damages as the court may allow, but not exceeding \$1,000[.]”

1           Lastly, the Settlement Agreement includes a non-monetary term of relief: Defendant will  
2 no longer use the language at issue in this case in its initial debt collection letters. (*Id.* ¶ 17.C.)  
3 Specifically, instead of stating that if recipients “notify this firm within thirty (30) days after your  
4 receipt of this letter, that the debt . . . is disputed” the firm will verify the debt and mail the  
5 verification to the recipient, the letter will notify recipients that they must notify Defendant *in*  
6 *writing* if they dispute all or a portion of the debt in order trigger Defendant’s obligation to verify  
7 the debt and mail the recipient any such verification. (*Id.*)

8       **C.     Claims & Exclusion Procedures**

9           Class Members may request exclusion by mailing an electronic or written request for  
10 exclusion identifying their name, address, telephone number, and email address along with a  
11 statement that he or she wishes to be excluded. (Dkt. No. 49-1 ¶ 9-10.) Any Class Member who  
12 submits a valid and timely exclusion request will not be bound by the Settlement Agreement  
13 terms. (*Id.* ¶ 11.) Any Class Member who does not submit a written claim form within 60 days  
14 from the deadline for dissemination of Class Notice will be bound by the Settlement Agreement.  
15 (*Id.* ¶ 9.)

16           The Settlement Fund will then be distributed to the Class Members who do not opt out of  
17 the Class. Class Members need not submit a claim form; instead, Class Members who do nothing  
18 will become part of the Class, be bound by the Settlement Agreement, and receive their \$10 share.

19           Class Members may object to the Settlement Agreement by filing a written objection  
20 within 90 days of the Court’s grant of Preliminary Approval. (*Id.* ¶ 12.) Within the same time  
21 period Class Members must provide a copy of any objection via mail or email to Class Counsel  
22 and defense counsel. (*Id.*) The written objection must include the name of the case and case  
23 number, the Class Member’s full name and contact information, the reason for the objection,  
24 whether the Class Member intends to appear at the final fairness hearing herself or through  
25 counsel (in which case contact information for counsel must be provided), and a list of any legal  
26 authority she intends to present at the hearing. (*Id.* ¶ 13.) Objectors are part of the Class.

27       **D.     Release of Claims**

28           Class Members agree to release all “Released Claims” against “Released Parties.” The

1 scope of “Released Claims” is defined as follows:

2 [A]ll claims under 15 U.S.C. § 1692g(a)(4), between June 1, 2014  
 3 and June 1, 2015, that arise out of the following language in the  
 4 initial debt collection letters sent by Law Office of Rory W. Clark,  
 5 A Professional Law Corporation[,] to Plaintiffs or Class Members  
 6 on behalf of Bank of America, N.A.: “If you notify this firm within  
 thirty (30) days after your receipt of this letter, that the debt or any  
 portion thereof, is disputed, we will obtain verification of the debt or  
 a copy of the judgment, if any, and mail a copy of such verification  
 or judgment to you.”

7 (Dkt. No. 49-1 ¶ 1.D.) The Settlement Agreement defines “Released Parties” as Defendant and  
 8 “each of its past, present, and future directors, officers, employees, partners, principals, insurers,  
 9 co-insurers, re-insurers, clients (of which includes Bank of America, N.A.), shareholders,  
 10 attorneys, and any related or affiliated company, including any parent, subsidiary, predecessor, or  
 11 successor company.” (*Id.* ¶ 1.E.)

12 **E. Cy Pres Distribution**

13 The Settlement Agreement gives each Class Member 90 days from the date the Class  
 14 Administrator mails settlement checks to cash the checks. (Dkt. No. 44-1 ¶ 17.A.) To the extent  
 15 that any funds remain in the Settlement Fund after the void date—that is, uncashed checks sent to  
 16 Class Members—the amount will be paid to Bay Area Legal Aid as a *cy pres* recipient. (*Id.*)

17 **F. Deadlines**

18 Following Preliminary Approval, the Class Administrator, Kurtzman Carson Consultants,  
 19 LLC, has 60 days to provide notice of the Settlement Agreement to the Class Members in the form  
 20 of written notice. (*Id.* ¶ 7.) Class Counsel’s motion for attorneys’ fees is due no later than 30 days  
 21 after the deadline for dissemination of Class Notice. (*Id.* ¶ 17.D.) Within 60 days of Notice being  
 22 mailed, requests for exclusion and objections are due. (*Id.* ¶¶ 9, 12.) Within 10 days of Final  
 23 Approval, Defendant, in consultation with the Class Administrator, will transfer the appropriate  
 24 amount into the Settlement Fund. (*Id.* ¶ 17.A.) The Class Administrator has 15 days from the  
 25 order granting Final Approval of the Settlement Agreement to mail checks to Class Members.  
 26 (*Id.*) If Class Members do not cash their checks within 90 days after mailing, the check becomes  
 27 void and the amount will be distributed to Bay Area Legal Aid as *cy pres* recipient.  
 28

1 **DISCUSSION**

2 A class action settlement must be fair, adequate, and reasonable. Fed. R. Civ. P. 23(e)(2).  
 3 When, as here, parties reach an agreement before class certification, “courts must peruse the  
 4 proposed compromise to ratify both the propriety of the certification and the fairness of the  
 5 settlement.” *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). If the Court temporarily  
 6 certifies the class and finds the settlement appropriate after “a preliminary fairness evaluation,”  
 7 then the class will be notified and a final “fairness” hearing scheduled to determine if the  
 8 settlement is fair, adequate, and reasonable pursuant to Federal Rule of Civil Procedure 23.  
 9 *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA (EMC), 2012 WL 5878390, at \*5  
 10 (N.D. Cal. Nov. 21, 2012).

11 **A. Conditional Certification of the Settlement Class**

12 Congress has expressly recognized the propriety of a class action under the FDCPA by  
 13 providing special damages provisions and criteria in 15 U.S.C. § 1692(k) and (b) for FDCPA class  
 14 action cases. These sections provide in relevant part:

15 (b) In determining the amount of liability in any action under  
 16 subsection (a), the court shall consider, among other relevant  
 17 factors: (2) in any class action under subsection (a)(2)(B), the  
 18 frequency and persistence of noncompliance by the debt collector,  
 the nature of such noncompliance, the resources of the debt  
 collector, the number of persons adversely affected, and the extent  
 to which the debt collector’s noncompliance was intentional.

19 A plaintiff seeking a remedy under 15 U.S.C. § 1692k must meet the requirements of Rule  
 20 23. Under that rule, class actions must meet the following requirements prior to certification:

21 1) the class is so numerous that joinder of all members is  
 22 impracticable; 2) there are questions of law or fact common to the  
 23 class; 3) the claims or defenses of the representative parties are  
 typical of the claims or defenses of the class; and 4) the  
 representative parties will fairly and adequately protect the interests  
 of the class.

24 Fed. R. Civ. P. 23(a).

25 In addition to meeting the requirements of Rule 23(a), a potential class must also meet one  
 26 of the conditions outlined in Rule 23(b)—of relevance here, the condition that “the court finds that  
 27 the questions of law or fact common to class members predominate over any questions affecting  
 28

1 only individual members, and that a class action is superior to other available methods for fairly  
2 and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). In evaluating the proposed  
3 class, “pertinent” matters include:

4 (A) the class members’ interests in individually controlling the  
5 prosecution or defense of separate actions;

6 (B) the extent and nature of any litigation concerning the  
7 controversy already begun or against the class members;

8 (C) the desirability or undesirability of concentrating the litigation  
9 of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

10 Fed. R. Civ. P. 23(b)(3). Prior to certifying the class, the Court must determine that Lead Plaintiff  
11 has satisfied his burden to demonstrate that the proposed class satisfies each element of Rule 23.

12 1. Rule 23(a)

13 a. *Numerosity*

14 “Under the first Rule 23(a)(1) factor, the class must be ‘so numerous that joinder of all  
15 members is impracticable.’” *Dukes v. Wal-Mart Stores, Inc.*, 222 F.R.D. 137, 144 (N.D. Cal.  
16 2004) (citing Fed. R. Civ. P. 23(a)(1)); *Staton*, 327 F.3d at 953. Here, Defendant admits that it  
17 sent materially similar, if not identical, debt collection letters to approximately 1,361 California  
18 residents within the class period. “Joinder of 1,000 or more co-plaintiffs is clearly impractical.”  
19 *Palmer v. Stassinios*, 233 F.R.D. 546, 549 (N.D. Cal. 2006). The numerosity requirement is  
20 therefore met.

21 b. *Commonality*

22 Second, to certify a class there must be “questions of law or fact common to the class.”  
23 Fed. R. Civ. P. 23(a)(2). “[C]ommonality requires that the class members’ claims ‘depend on a  
24 common contention’ such that ‘determination of its truth or falsity will resolve an issue that is  
25 central to the validity of each [claim] in one stroke.’” *Mazza v. Am. Honda Motor Co.*, 666 F.3d  
26 581, 588 (9th Cir. 2012). Commonality can be satisfied “by even a single common question.”  
27 *Trahan v. U.S. Bank N.A.*, No. C 09-03111 JSW, 2015 WL 75139, at \*5 (N.D. Cal. Jan. 6, 2015).

28 “[A] debt collector’s liability under § 1692e of the FDCPA is an issue of law[.]” *Gonzales*

1 v. *Arrow Fin. Servs., LLC*, 660 F.3d 1055, 1061 (9th Cir. 2011). Thus, commonality is generally  
 2 found in FDCPA cases “where . . . the defendants have engaged in standardized conduct towards  
 3 members of the proposed class by mailing to them allegedly illegal form letters.” *Palmer*, 233  
 4 F.R.D. at 549; *Tourgeman v. Collins Fin. Servs., Inc.*, 755 F.3d 1109, 1124-25 (9th Cir. 2015);  
 5 *see, e.g., Hunt v. Check Recovery Sys., Inc.*, 241 F.R.D. 505, 510 (N.D. Cal. 2007); *Abels v. JBV*  
 6 *Legal Grp., P.C.*, 227 F.R.D. 541, 544-45 (N.D. Cal. 2005). So it is here, where Plaintiffs allege  
 7 that Defendant sent the same purportedly unlawful form debt collection letter to Plaintiffs and the  
 8 other members of the class. The commonality requirement has been satisfied.

9 c. *Typicality*

10 Rule 23(a)(3) requires that “the [legal] claims or defenses of the representative parties [be]  
 11 typical of the claims or defenses of the class.” “Typicality refers to the nature of the claim or  
 12 defense of the class representative and not on facts surrounding the claim or defense.” *Hunt*, 241  
 13 F.R.D. at 510 (citing *Hanon v. Dataprods. Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)). “The test of  
 14 typicality is whether other members have the same or similar injury, whether the action is based  
 15 on conduct which is not unique to the named plaintiffs, and whether other class members have  
 16 been injured by the same course of conduct.” *Evon v. Law Offices of Sidney Mickell*, 688 F.3d  
 17 1015, 1030 (9th Cir. 2012) (internal quotation marks and citation omitted).

18 Here, Plaintiffs allege a pattern of wrongdoing based on Defendant having sent materially  
 19 identical collection letters to the putative class. Plaintiffs’ claims and those of the rest of the Class  
 20 Members are based on the same legal theory—that the text of the letters failed to include certain  
 21 FDCPA disclosures—and seek the same recovery—statutory damages and an end to the allegedly  
 22 unlawful letters. At oral argument, Defendant confirmed that there are no Class Members who  
 23 received Defendant’s letter then disputed the debt orally only but did not receive validation of the  
 24 debt. Thus, none of the Class Members has suffered any harm besides receipt of the unlawful  
 25 letter. Accordingly, the harm to all Class Members is the same. Because the Class Members were  
 26 sent the same letter as Plaintiffs, suffered the same harm, and seek the same recovery, the  
 27 typicality requirement is met. *See Gonzales v. Arrow Fin. Servs., LLC*, 489 F. Supp. 2d 1140,  
 28 1155 (S.D. Cal. 2007) (“[T]his Court is persuaded that typicality is sufficiently established if the

1 class representative received the same collection letters as the class members.”); *Abels*, 227 F.R.D.  
2 at 545 (concluding that typicality was met where “[e]ach of the class members was sent the same  
3 collection letter as [plaintiff] and each was allegedly subjected to the same violations of the  
4 FDCPA”).

5 d. *Adequacy of Representation*

6 Adequacy requires that “the representative parties will fairly and adequately protect the  
7 interests of the class.” Fed. R. Civ. P. 23(a)(4). To answer this question, the Court must ask: “(1)  
8 do the named plaintiffs and their counsel have any conflicts of interest with other class members  
9 and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the  
10 class?” *Evon*, 688 F.3d at 1031 (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir.  
11 1988)); *see also Brown v. Ticor Title Ins.*, 982 F.2d 386, 390 (9th Cir. 1992) (noting that adequacy  
12 of representation “depends on the qualifications of counsel for the representatives, an absence of  
13 antagonism, a sharing of interests between representatives and absentees, and the unlikelihood that  
14 the suit is collusive”); Fed. R. Civ. P. 23(g)(1)(B) (stating that “class counsel must fairly and  
15 adequately represent the interests of the class”).

16 With respect to Plaintiffs’ adequacy, as Defendant confirmed at the hearing, both Plaintiffs  
17 were allegedly harmed in the same manner as the rest of the Class Members and seek the same  
18 relief, which supports their adequacy. There is nothing in the record that gives the Court pause as  
19 to whether Plaintiffs have any conflicts with the Class Members, nor anything that otherwise  
20 causes the Court to question Plaintiffs’ adequacy. The same is true of Plaintiffs’ counsel.  
21 Plaintiffs are represented by Aaron D. Radbil of Greenwald Davidson Radbil PLLC. The firm,  
22 and Mr. Radbil in particular, have been appointed class counsel in class actions around the  
23 country, including FDCPA cases, and including courts within the Ninth Circuit. (Dkt. No. 44-1 ¶  
24 4 (collecting cases).) Thus, it appears that the named representatives are able to prosecute this  
25 action vigorously through qualified counsel.

26 \* \* \*

27 Plaintiffs have shown for the purposes of preliminary approval that they meet all of the  
28 Rule 23(a) requirements.

1           2.       Rule 23(b)

2           Plaintiffs must also meet one of the provisions of Rule 23(b) to succeed on his motion for  
3 class certification of the federal claims. *See* Fed. R. Civ. P. 23(b); *Berger v. Home Depot USA,*  
4 *Inc.*, 741 F.3d 1061, 1067 (9th Cir. 2014). Plaintiffs contend that they have met the requirements  
5 of Rule 23(b)(3), which requires establishing predominance of common questions of law or fact  
6 and the superiority of a class action relative to other available methods for the fair and efficient  
7 adjudication of the controversy.

8           To meet the predominance requirement of Rule 23(b)(3), “the common questions must be  
9 a significant aspect of the case that can be resolved for all members of the class in a single  
10 adjudication.” *Berger*, 741 F.3d at 1068 (internal quotation marks and alterations omitted).  
11 Notably, “the predominance inquiry presumes that there is commonality and entails a more  
12 rigorous analysis[.]” *Gold v. Midland Credit Mgmt., Inc.*, 306 F.R.D. 623, 633 (N.D. Cal. 2014)  
13 (quoting *Hanlon*, 150 F.3d at 1022). While Rule 23(a)(2) asks only whether there is a common  
14 issue, the predominance inquiry considers the common questions, “focuses on the relationship  
15 between the common and individual issues,” *Hanlon*, 150 F.3d at 1022, and requires the court to  
16 weigh the common issues against the individual issues. *See Dukes*, 131 S. Ct. at 2556.  
17 Predominance is found when common questions represent a significant portion of the case and can  
18 be resolved for all class members in a single adjudication. *Hanlon*, 150 F.3d at 1022.

19           Here, the Court has already determined that the legality of the debt collection letters is a  
20 question of law that is common to the class. If the Court were to find that the text violated the  
21 FDCPA, that single adjudication would reach the claims of all Class Members. Other courts in  
22 this District have reached similar conclusions. *See, e.g., Gold*, 306 F.R.D. at 633-34 (“At bottom,  
23 the broad remedial purpose of the FDCPA compels this Court to conclude that the Rule 23(b)(3)  
24 requirement of predominance is satisfied where, as here, statutory damages are sought to deter  
25 debt collectors from engaging in prohibited behavior.”); *Abels*, 227 F.R.D. at 547 (“Here, the  
26 issues common to the class—namely, whether the Defendants’ systematic policy of sending  
27 collection letters, and whether those letters violate the FDCPA—are predominant.”). Defendant  
28 has not offered any argument that any individualized inquiry is necessary that might preclude a

1 finding of predominance, and the Court sees none. Predominance is therefore satisfied.

2 The second prong—that a class action is the superior means to adjudicate the claims  
3 raised—is also easily met. If Plaintiffs and all Class Members each brought individual actions,  
4 they would each be required to prove the same wrongdoing to establish Defendant’s liability.  
5 Every separate action would involve the same evidence—the debt collection letter—and the same  
6 legal theory. Different courts could interpret the claims differently, resulting in inconsistent  
7 rulings or unfair results. The Settlement Agreement efficiently resolves the claims of all Class  
8 Members at once. Thus, classwide resolution is superior to other methods and will avoid the  
9 possibility of repetitious litigation.

10 **B. Preliminary Approval of the Class Action Settlement**

11 In determining whether a settlement agreement is fair, adequate, and reasonable to all  
12 concerned, a court typically considers the following factors: “(1) the strength of the plaintiff’s  
13 case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of  
14 maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the  
15 extent of discovery completed and the stage of the proceedings; (6) the experience and views of  
16 counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members  
17 to the proposed settlement.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th  
18 Cir. 2011) (quoting *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)).

19 However, when “a settlement agreement is negotiated *prior* to formal class certification,  
20 consideration of these eight . . . factors alone is” insufficient. *Id.* In these cases, courts must show  
21 not only a comprehensive analysis of the above factors, but also that the settlement did not result  
22 from collusion among the parties. *Id.* at 947. Because collusion “may not always be evident on  
23 the face of the settlement, . . . [courts] must be particularly vigilant not only for explicit collusion,  
24 but also for more subtle signs that class counsel have allowed pursuit of their own self-interests  
25 and that of certain class members to infect the negotiations.” *Id.* In *Bluetooth*, the court identified  
26 three such signs:

- 27 (1) when class counsel receives a disproportionate distribution of the  
28 settlement, or when the class receives no monetary distribution but  
counsel is amply rewarded;

1 (2) when the parties negotiate a “clear sailing” arrangement  
 2 providing for the payment of attorney’s fees separate and apart from  
 3 class funds without objection by the defendant (which carries the  
 4 potential of enabling a defendant to pay class counsel excessive fees  
 and costs in exchange for counsel accepting an unfair settlement);  
 and

5 (3) when the parties arrange for fees not awarded to revert to  
 6 defendants rather than be added to the class fund.

7 *Id.* The Ninth Circuit noted that this list is not exclusive, but offered it as guidance to district  
 8 courts regarding types of provisions that require “greater scrutiny than ordinarily demanded” when  
 assessing the overall fairness of a settlement. *Id.* at 949.

9 The Court cannot fully assess all of these fairness factors until after the final approval  
 10 hearing; thus, “a full fairness analysis is unnecessary at this stage.” *Alberto v. GMRI, Inc.*, 252  
 11 F.R.D. 652, 665 (E.D. Cal. 2008) (internal quotation marks and citation omitted). Instead, “the  
 12 settlement need only be *potentially* fair, as the Court will make a final determination of its  
 13 adequacy at the hearing on Final Approval, after such time as any party has had a chance to object  
 14 and/or opt out.” *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007). At this  
 15 juncture, “[p]reliminary approval of a settlement and notice to the class is appropriate if [1] the  
 16 proposed settlement appears to be the product of serious, informed, noncollusive negotiations, [2]  
 17 has no obvious deficiencies, [3] does not improperly grant preferential treatment to class  
 18 representatives or segments of the class, and [4] falls within the range of possible approval.” *Cruz*  
 19 *v. Sky Chefs, Inc.*, No. 12-02705, 2014 WL 2089938, at \*7 (N.D. Cal. May 19, 2014) (quoting *In*  
 20 *re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)). Ultimately, “[t]he  
 21 initial decision to approve or reject a settlement proposal is committed to the sound discretion of  
 22 the trial judge.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625-26 (9th Cir. 1982).

23 1. The Fairness Factors

24 a. *Means at Which Parties Arrived at Settlement*

25 The first factor concerns “the means by which the parties arrived at settlement.” *Harris v.*  
 26 *Vector Mktg. Corp.*, No. 08-5198, 2011 WL 1627973, at \*8 (N.D. Cal. Apr. 29, 2011). For the  
 27 parties “to have brokered a fair settlement, they must have been armed with sufficient information  
 28 about the case to have been able to reasonably assess its strengths and value.” *Acosta*, 243 F.R.D.

1 at 396. Particularly with pre-certification settlements, enough information must exist for the court  
2 to assess “the strengths and weaknesses of the parties’ claims and defenses, determine the  
3 appropriate membership of the class, and consider how class members will benefit from  
4 settlement” to determine if it is fair and adequate. *Id.* at 397 (internal quotation marks omitted).

5 The use of a mediator and the presence of discovery “support the conclusion that the  
6 Plaintiff was appropriately informed in negotiating a settlement.” *Villegas*, 2012 WL 5878390, at  
7 \*6; *Harris*, 2011 WL 1627973, at \*8 (noting that the parties’ use of a mediator “further suggests  
8 that the parties reached the settlement in a procedurally sound manner and that it was not the result  
9 of collusion or bad faith by the parties or counsel”). However, the use of a neutral mediator “is  
10 not on its own dispositive of whether the end product is a fair, adequate, and reasonable settlement  
11 agreement.” *Bluetooth*, 654 F.3d at 948. And indeed, courts in this District have approved  
12 settlement agreements reached through information negotiations. *See, e.g., Perez v. Tilton*, No. C  
13 05-05241 JSW, 2008 WL 686723, at \*1 (N.D. Cal. Mar. 10, 2008) (noting that the court granted  
14 the parties’ motion for preliminary approval of settlement reached through information  
15 negotiations).

16 Here, prior to reaching the Settlement Agreement, the parties engaged in only limited,  
17 informal discovery before all discovery was stayed so that the parties could brief a dispositive  
18 legal issue on summary judgment. The parties have not made any representations about what  
19 exactly was exchanged, which ordinarily would help the Court determine whether the Settlement  
20 Agreement was the result of arm’s length negotiations. But discovery beyond the number of letter  
21 recipients, which the parties appear to have exchanged, may be of limited importance in a case like  
22 this that turns on the legal issue of identical form letters.

23 Nor have the parties described the scope of their settlement negotiations. The Court has no  
24 information about how long the parties spent negotiating, whether any statements were exchanged  
25 before the parties began negotiating, and whether the parties used a neutral third party in  
26 connection with their negotiations. Given the absence of this type of information, it appears that  
27 the parties merely engaged in informal settlement discussions on their own without the use of a  
28 mediator. Still, Courts have approved settlements reached through informal settlement

1 negotiations. *See, e.g., Perez*, 2008 WL 686723, at \*1.

2 On the other hand, the parties had fully briefed Defendant’s motion for summary judgment  
3 on that dispositive legal issue, which was whether the language of Defendant’s initial collection  
4 letters violated the FDCPA, but settled before the Court held oral argument or ruled on the motion.  
5 In that briefing, Defendant contended that the letters accurately informed Plaintiffs and other  
6 putative class members of their FDCPA rights and, if anything, provided Plaintiffs with more  
7 expansive rights than the FDCPA requires. Plaintiffs, for their part, urged that the language of the  
8 letters flatly violated the FDCPA. Through this briefing, the parties gained a fulsome  
9 understanding of their respective positions on the primary legal issue in this case before reaching  
10 the Settlement Agreement, which suggests that it was the product of arm’s length negotiation.  
11 Further, both parties were represented by experienced counsel during the course of settlement  
12 negotiations, which supports the fairness of the settlement. *See Hanlon*, 150 F.3d at 1026.

13 On balance, while the parties only engaged in limited discovery and appeared to reach the  
14 Settlement Agreement only through informal negotiations, given their familiarity with each  
15 other’s positions and representation by experienced counsel, the Settlement Agreement appears to  
16 be the product of serious, informed, non-collusive negotiation, which weighs in favor of  
17 preliminary approval.

18 b. *Obvious Deficiencies*

19 The Court next considers “whether there are obvious deficiencies in the Settlement  
20 Agreement.” *Harris*, 2011 WL 1627973, at \*8.

21 The first *Bluetooth* red flag is whether class counsel receives a disproportionate  
22 distribution of the settlement, or the class receives no monetary distribution but counsel is amply  
23 rewarded. 654 F.3d at 947. So it is here. The Settlement Agreement provides for a Settlement  
24 Fund of \$13,610. (Dkt. No. 49-1 ¶ 17.A.) In contrast, Class Counsel will seek between \$40,000  
25 and \$55,000. (*Id.* ¶ 17.D.) This amount is between three and over four times as large as the  
26 recovery that all 1,361 Class Members stand to receive, which, taken alone, may be a sign of  
27 collusion. On the other hand, the attorneys’ fees and Class Members’ recovery are not coming  
28 from a common fund. And the amount Class Members stand to recover—\$10.00 each—is

1 reasonable compared to the attorneys' fees sought given that it is a greater recovery than the  
2 FDCPA itself would allow. *See infra*, Subsection d., Range of Possible Approval (explaining that  
3 the total Settlement Fund exceeds one percent of Defendant's net worth, the cap that the FDCPA  
4 imposes). Thus, this *Bluetooth* warning sign, though initially a red flag, is not a sign of collusion.

5 The second sign of collusion is whether the parties' agreement contains a "clear sailing"  
6 agreement, which "is one where the party paying the fee agrees not to contest the amount to be  
7 awarded by the fee-setting court so long as the award falls beneath a negotiated ceiling." *In re*  
8 *Toys R Us-Del., Inc.—Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438,  
9 458 (C.D. Cal. Jan. 17, 2014) (quotation marks and citation omitted). A version of a clear sailing  
10 agreement is present here: the Settlement Agreement provides that Defendant "will not challenge  
11 any requested fees, costs, and expenses that do not exceed \$40,000, and Class Counsel will not  
12 seek more than \$55,000 for attorneys' fees, costs, and expenses." (Dkt. No. 49-1 ¶ 17.D.) But  
13 Defendant will pay the attorneys' fees, costs, and expenses "separate and apart from the  
14 Settlement Fund, costs of Settlement Administration, and the payments to Plaintiffs." (*Id.*) Courts  
15 consistently have found that clear sailing provisions do not signal collusion where the attorneys'  
16 fees award does not involve a common fund apportioned between relief for the class and  
17 attorneys' fees. *See, e.g., Roberts v. Electrolux Home Prods., Inc.*, No. SACV12-1644-  
18 CAS(VBKx), 2014 WL 4568632, at \*14 (C.D. Cal. Sept. 11, 2014) ("[T]he Court notes that this  
19 Settlement does not involve a common fund apportioned between relief and fees—and the  
20 attorneys' fee award will not reduce any benefits received by the Class. Thus, any objection  
21 regarding a so-called 'clear-sailing' provision is also overruled.") (citations omitted); *Eisen v.*  
22 *Porsche Cars N. Am., Inc.*, No. 2:11-cv-09405-CAS-FFMx, 2014 WL 4390006, at \*10 (C.D. Cal.  
23 Jan. 30, 2014) ("The Settlement Agreement merely provides that [defendant] will not object to a  
24 fee petition by plaintiffs' counsel so long as the requested fees and costs do not exceed \$950,000.  
25 This type of provision is appropriate when, as here, it does not impact the substantive benefits  
26 offered to the class."); *Calloway v. Cash Am. Net of Cal. LLC*, No. 09-CV-04858 RS, 2011 WL  
27 1467356, at \*2 (N.D. Cal. Apr. 12, 2011) (noting that where no common fund exists, no  
28 adversarial relationship exists between class counsel and the class concerning fees). So it is here.

1 Thus, the clear sailing provision, though a *Bluetooth* warning sign, does not signal collusion under  
2 the circumstances presented here.

3 The third warning sign—whether the parties have arranged for fees not awarded to the  
4 class to revert to defendants rather than be added to the Settlement Fund, *see Bluetooth*, 654 F.3d  
5 at 948—is not present here, where the non-reversionary Settlement Agreement provides that any  
6 remaining funds be distributed to Bay Area Legal Aid. *See infra*, Subsection e, Cy Pres  
7 Distribution.

8 Despite the existence of two of the three *Bluetooth* factors, the Settlement Agreement does  
9 not appear to be the result of, nor influenced by, collusion. At least for the purposes of  
10 preliminary approval, the Settlement Agreement appears to satisfy the Class Members' claims.  
11 Class Members, most of whom are otherwise unaware of their FDCPA claim, stand to receive \$10  
12 for having received Defendant's debt collection letter. Moreover, the injunctive relief provided  
13 for in the Settlement Agreement ensures that no more consumers will receive Defendant's letter in  
14 the future. Thus, the three *Bluetooth* factors for the Court to consider at this stage of the approval  
15 process do not represent a sign of collusion.

16 In short, though two of the three *Bluetooth* red flags are present, they do not appear to be  
17 signs of collusion under the circumstances presented here. Provided that counsel can address the  
18 other matters discussed in this section by amending the Settlement Agreement, the Court should  
19 grant preliminary approval.

20 c. *Lack of Preferential Treatment*

21 Under this factor, "the Court examines whether the Settlement [Agreement] provides  
22 preferential treatment to any class member." *Villegas*, 2012 WL 5878390, at \*7. Here, each  
23 proposed class member stands to receive \$10 based on their receipt of Defendant's debt collection  
24 letter. Plaintiffs also stand to receive payments of \$1,000 each pursuant 15 U.S.C.  
25 § 1692k(a)(2)(B)(i), which provides for an additional recovery for each named plaintiff of up to  
26 \$1,000 per plaintiff. Besides their additional statutory payments, the Settlement Agreement does  
27 not provide that either named Plaintiff will receive an incentive award or any additional payment  
28 in exchange for their release of claims against Defendant. While the \$1,000 additional statutory

1 payment to each named Plaintiff might have otherwise reduced the per-Class-Member recovery,  
 2 the inclusion of additional fees for named Plaintiffs in the FDCPA suggests that such awards are  
 3 proper, and the absence of an incentive award supports this conclusion. Accordingly, the Court is  
 4 satisfied that there is no preferential treatment for the named Plaintiffs that rises to the level of  
 5 jeopardizing the fairness and reasonableness of the Settlement Agreement.

6 d. *Range of Possible Approval*

7 To determine whether a settlement “falls within the range of possible approval,” courts  
 8 focus on “substantive fairness and adequacy” and “consider plaintiffs’ expected recovery balanced  
 9 against the value of the settlement offer.” *Tableware*, 484 F. Supp. 2d at 1080. Here, each Class  
 10 Member will receive \$10 in damages for the FDCPA violation. The FDCPA limits the recovery  
 11 for Class Members to the lesser of \$500,000 or one percent of the defendant’s net worth. 15  
 12 U.S.C. § 1692k(a)(2)(B)(ii). “Net worth” for the purposes of the FDCPA means balance sheet net  
 13 worth, not fair market net worth including goodwill. *Sanders v. Jackson*, 209 F.3d 998, 1000 (7th  
 14 Cir. 2000) (cited with approval by *Gonzales*, 660 F.3d at 1068). Defendant has submitted the  
 15 declaration of Matthew Kumar, its president and sole shareholder, who avers that the proposed  
 16 Settlement Fund exceeds one percent of Defendant’s net worth. (Dkt. No. 49-2 ¶ 2.) Thus, the  
 17 Settlement Fund represents more monetary relief to each Class Member than the FDPCA itself  
 18 would allow, which suggests that the Settlement Agreement is fair and reasonable.<sup>4</sup>

19 In addition to the per-Class Member recovery apparently exceeding the statutory  
 20 maximum, Plaintiffs contend that the \$10 that each Class Member stands to recover compares  
 21 favorably with other FDCPA cases, citing FDCPA class actions from around the country where  
 22 the per-class member recovery ranged between \$1.24 and \$15. (*See* Dkt. No. 44 at 20-21  
 23 (citations omitted); Dkt. No. 47 ¶¶ 2-4.) None of the cases Plaintiffs cite were from the Ninth

24 \_\_\_\_\_  
 25 <sup>4</sup> The Settlement Agreement provides that the Settlement Fund may be reduced if the total number  
 26 of Class Members is less than the 1,361 currently anticipated as each Class Member stands to  
 27 receive exactly \$10.00. (*See* Dkt. No. 49-1 ¶ 17.A.) If there are fewer Class Members and the  
 28 Settlement Fund is reduced, Defendant will need to submit another declaration informing the  
 Court whether the adjusted total Settlement Fund still exceeds one percent of Defendant’s net  
 worth. However, as the Court is satisfied that the Settlement Fund does so given the Class  
 Members now anticipated, the Settlement Fund appears to be fair and reasonable for the purposes  
 of Preliminary Approval.

1 Circuit, and the amount compares less favorably with recoveries here. *See, e.g., Durham v.*  
 2 *Continental Cent. Credit, Inc.*, No. 07cv1763 BTM (WMc), 2011 WL 2173769, at \*2 (S.D. Cal.  
 3 June 2, 2011) (approving a \$17,750 settlement fund for 97 class members, totaling \$186 per class  
 4 member); *Holman v. Experian Fabiani v. Oreck Corp.*, No. C 05-2140 JSW, 2006 WL 1390458,  
 5 at \*1-2 (N.D. Cal. May 19, 2006) & Dkt. No. 51 (approving a \$45,000 settlement fund for 195  
 6 class members, totaling \$230 per class member). However, because the statutory limit on  
 7 recovery varies by the defendant's net worth, the higher recovery in other actions does not mean  
 8 the recovery is inadequate here, where Plaintiffs' potential recovery is limited by Defendant's  
 9 more modest net worth.

10 In short, because Defendant's net worth limits the scope of the Class Members' possible  
 11 recovery, and the Settlement Fund provides for recovery exceeding that limit, the value of the  
 12 settlement offer exceeds the value of potential recovery in proceeding with litigation. This is  
 13 particular true given that proceeding with litigation comes with its own costs, including the costs  
 14 of briefing a motion for class certification, motions for summary judgment, and potentially trial.

15 e. *Cy Pres Distribution*

16 A *cy pres* award must qualify as "the next best distribution" to giving the funds directly to  
 17 class members. *Dennis v. Kellogg Co.*, 697 F.3d 858, 865 (9th Cir. 2012). As a result, "[n]ot just  
 18 any worthy recipient can qualify as an appropriate *cy pres* beneficiary." *Id.* The Ninth Circuit  
 19 "require[s] that there be a driving nexus between the plaintiff class and the *cy pres* beneficiaries."  
 20 *Id.* (citation omitted). A *cy pres* award must be "guided by (1) the objectives of the underlying  
 21 statute(s) and (2) the interests of the silent class members, and must not benefit a group too remote  
 22 from the plaintiff class[.]" *Id.* (internal quotation marks and citations omitted).

23 Here, the *cy pres* distribution, which consists of the amount of any uncashed settlement  
 24 checks issued to Class Members, is to Bay Area Legal Aid. (Dkt. No. 49-1 ¶ 17.A.) This  
 25 organization provides services to low-income Bay Area residents, including among other things,  
 26 consumer law and debtor's rights assistance.<sup>5</sup> Accordingly, the Court is satisfied that the chosen

27 \_\_\_\_\_  
 28 <sup>5</sup> *See* Bay Area Legal Aid, What We Do, <https://www.baylegal.org/what-we-do/> (last visited Jan. 19, 2016).

1 *cy pres* recipient has a close enough nexus to the plaintiff class here.

2 \* \* \*

3 In consideration of these factors, the Court concludes that the proposed Settlement  
4 Agreement is fair, adequate, and reasonable and in the best interest of the Class Members given  
5 the uncertainty of continued litigation.

6 **C. Proposed Class Notice**

7 Affected natural persons are entitled to due process, so they must be given notice of the  
8 proposed settlement and their rights, including the right to exclude themselves and the opportunity  
9 to be heard. *Phillips v. Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985). For any class  
10 certified under Rule 23(b)(3), class members must be afforded the best notice practicable under  
11 the circumstances, which includes individual notice to all members who can be identified through  
12 reasonable effort. The notice must clearly and concisely state in plain, easily understood  
13 language:

- 14 (i) the nature of the action;
- 15 (ii) the definition of the class certified;
- 16 (iii) the class claims, issues, or defenses;
- 17 (iv) that a class member may enter an appearance through an  
18 attorney if the member so desires;
- 19 (v) that the court will exclude from the class any member who  
20 requests exclusion;
- 21 (vi) the time and manner for requesting exclusion; and(vii) the  
22 binding effect of a class judgment on members under Rule 23(c)(3).

23 Fed. R. Civ. P. 23(c)(2)(B). “Notice is satisfactory if it generally describes the terms of the  
24 settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come  
25 forward and be heard.” *Churchill Vill.*, 361 F.3d at 575 (internal quotations omitted).

26 Here, Plaintiff submitted a 6-page Notice, which adequately informs each Class Member  
27 that he or she stands to receive \$10 by participating in the Class, and participation will be deemed  
28 unless the Class Member opts out. The Notice indicates that all relevant pleadings in the case will  
be available online at Class Counsel’s website. (Dkt. No. 44-1 at 31.) The Settlement Agreement

1 provides that Defendant is to provide a list of Class Members to the Claims Administrator, which  
2 will disseminate notice via U.S. mail within 60 days of Preliminary Approval. *See Chao v.*  
3 *Aurora Loan Servs., LLC*, No. C 10-3118 SBA, 2014 WL 4421308, at \*6 (N.D. Cal. Sept. 5,  
4 2014) (noting that service by mail has been found to be “clearly adequate”) (citation omitted).  
5 Similarly, the Notice explains that Class Members need not take any action to receive a monetary  
6 recovery (and, relatedly, to waive their related claims against Defendant), a procedure which is  
7 often approved. *See, e.g., id.* Nevertheless, this memo identifies three minor deficiencies in the  
8 Notice.

9 The Notice Plan itself is likewise adequate. *See supra* Settlement Proposal, Section F.  
10 Plaintiffs’ motion for final approval and motion for attorneys’ fees are due 30 days before the  
11 deadline to object to the Settlement Agreement. (*See* Dkt. No. 49-1 ¶¶ 12, 17.D.) Thus, Class  
12 Members have sufficient time to object to the fee motion in advance of the Final Approval  
13 hearing. *See In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 993 (9th Cir. 2010)  
14 (requiring the “court to set the deadline for objections to counsel’s fee request on a date after the  
15 motion and documents supporting it have been filed”).

16 In addition, Class Counsel will keep “relevant pleadings” on its website for Class Members  
17 to review. (Dkt. No. 49-1 at 32.) The Notice does not specify what documents will be made  
18 available online. At a minimum, however, Class Counsel should ensure that the website has a  
19 complete copy of the Settlement Agreement, the Notice, the Motion for Preliminary Approval, the  
20 Court’s eventual Order granting Preliminary Approval, Class Counsel’s Motion for Attorneys’  
21 Fees and Costs, and the Motion for Final Approval of the Class Action Settlement.

## 22 CONCLUSION

23 The Court preliminarily finds that the proposed Settlement Class meets the requisite  
24 certification standards and GRANTS conditional certification of the Class for settlement purposes.  
25 The proffered Settlement Agreement, as amended by the parties’ revised Settlement Agreement  
26 and Class Notice filed January 19, 2016 (Dkt. No. 49-1), meets the requisite requirements for fair,  
27 adequate, and reasonable settlement at this juncture of the settlement process.

28 The Court finds further oral argument unnecessary, *see* N.D. Cal. Civ. L.R. 7-1(b), and

United States District Court  
Northern District of California

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VACATES the hearing previously set for January 21, 2016.

For the reasons stated above, the Court therefore GRANTS the motion for preliminary approval of the class action settlement as follows:

1. Notice shall be provided in accordance with the Notice Plan and this Order—that is, by February 18, 2016.

2. Plaintiffs’ counsel shall file a motion for final approval and motion for approval of attorneys’ fees and costs by March 21, 2016.

3. Class Members shall submit their exclusion requests or objections by April 18, 2016.

4. Counsel shall return before this Court for a final fairness hearing, at which the Court shall finally determine whether the settlement is fair, reasonable, and adequate, on April 28, 2016 at 9:00 a.m. in Courtroom F, 450 Golden Gate Ave., San Francisco, California.

**IT IS SO ORDERED.**

Dated: January 20, 2016

  
JACQUELINE SCOTT CORLEY  
United States Magistrate Judge