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9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 DANIEL SCHUCHARDT and MICHELLE
13 MUGGLI, *on behalf of themselves and*
14 *others similarly situated,*

15 Plaintiffs,

16 vs.

17 LAW OFFICE OF RORY W. CLARK, A
18 PROFESSIONAL LAW CORPORATION,

19 Defendant.

Case No.: 3:15-cv-01329-JSC

**PLAINTIFFS' UNOPPOSED MOTION
FOR AN AWARD OF ATTORNEYS'
FEES AND REIMBURSEMENT OF
EXPENSES**

Date: April 28, 2016
Time: 9:00 a.m.

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Introduction

1 Daniel Schuchardt and Michelle Muggli (“Plaintiffs”) alleged that the Law Office of Rory
2 W. Clark, A Professional Law Corporation (“Defendant”) violated section 1692g(a)(4) of the Fair
3 Debt Collection Practices Act (“FDCPA”) by failing to provide proper disclosures regarding how
4 consumers can obtain verification of the debts Defendant sought to collect from them. As a result
5 of the settlement reached in this action, not only will California consumers receive a cash benefit
6 in excess of the statutory damages available under the FDCPA—which are capped by law at one
7 percent of a debt collector’s net worth—but Defendant has agreed to change its business practices
8 moving forward to ensure that its initial debt collection letters comply with the FDCPA.

9 What’s more, the claims administrator distributed notice of the settlement to each of the
10 930 members¹ of the settlement class via U.S. Mail. The notice disclosed to class members that
11 class counsel would be seeking an award of up to \$55,000.00 in attorneys’ fees and reimbursement
12 of litigation expenses for their efforts in connection with this matter. To date, not a single class
13 member has lodged any objection to any aspect of the settlement.

14 Given the favorable result reached for the class, in light of the overwhelmingly positive
15 reaction from class members, and with the agreement of Defendant, Plaintiffs’ counsel seek an
16 award of attorneys’ fees and the reimbursement of litigation expenses in the total amount of
17 \$52,500.00. As detailed in the Declaration of Aaron D. Radbil, attached as Exhibit A, this
18 request—which is significantly reduced from the actual lodestar accumulated by Plaintiffs’
19 counsel—is supported by applicable law, unopposed by Defendant, and should be approved.

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26 ¹ At the time the parties entered into their settlement agreement, they believed there to be 1,361 class
27 members. Defendant, however, has since determined that there were actually 1,361 *accounts* for which an
28 allegedly violative letter was mailed to a total of only 930 *persons*. In other words, the class here numbers
only 930 because some members had multiple accounts with Defendant and therefore received multiple
letters.

Procedural History and Summary of the Settlement

1
2 On March 23, 2015, Plaintiffs filed their class action complaint against Defendant,
3 asserting putative class claims arising under the FDCPA. ECF No. 1. Specifically, Plaintiffs
4 alleged that Defendant, as a matter of pattern and practice, failed to properly provide consumers
5 disclosures mandated by the FDCPA at 15 U.S.C. § 1692g(a)(4) regarding how they may dispute
6 the validity of the debts they are alleged to owe, and how they could obtain verification of the
7 legitimacy of those debts. Defendant denied Plaintiffs' allegations. ECF No. 14.

9 Following the filing of the complaint and Defendant's answer, at the parties' scheduling
10 conference before the Court Defendant insisted on staying discovery and immediately moving for
11 summary judgment on Plaintiffs' claims. With no opposition from Plaintiffs, this Court ordered
12 summary judgment briefing to commence in August 2015. ECF No. 26. The parties accordingly
13 fully briefed cross-motions for summary judgment, ECF Nos. 30-32, and were scheduled to appear
14 for oral argument on these motions on September 17, 2015. ECF No. 26.

16 But in advance of the scheduled hearing, the parties engaged in class-wide settlement
17 discussions, which included tailored discovery efforts regarding Defendant's net worth and the
18 makeup of the proposed class. The parties ultimately entered into their class action settlement
19 agreement, ECF No. 44-1, and moved this Court to preliminarily approve the settlement. ECF No.
20 44. This Court granted preliminary approval on January 20, 2016. ECF No. 50.

22 As more specifically set forth in the agreement, the settlement here calls for a non-
23 reversionary settlement fund of \$13,610 for the benefit of the class, to be distributed pro-rata to
24 each participating class member. As a result of there being, at most, 917 participating class
25

1 members, each participating class member will receive at least \$14.84.² Any monies remaining in
 2 the settlement fund from uncashed checks or otherwise will be distributed to Bay Area Legal Aid
 3 as the parties' chosen *cy pres* recipient. In addition, Defendant will pay \$1,000 to Mr. Schuchardt
 4 and \$1,000 to Ms. Muggli as statutory damages pursuant to 15 U.S.C. § 1692k—the maximum
 5 statutory damages available under the FDCPA. As well, Defendant has agreed to change its form
 6 debt collection letter moving forward so that it fully complies with the mandates of the FDCPA.
 7

8 Through this settlement, Plaintiffs and the class have not only secured a recovery above
 9 and beyond the maximum statutory damages allowed under the FDCPA, *see* 15 U.S.C. §
 10 1692k(a)(2)(B); ECF No. 49-2 (declaration from Defendant's President and sole shareholder that
 11 the settlement fund of \$13,610 "exceeds 1% of Defendant's net worth at any time during the
 12 pendency of this action, as well as the present"), but also prospective relief that will benefit any
 13 consumers who may encounter Defendant's debt collection practices in the future.
 14

15 Separately, Defendant has agreed to pay class counsel's reasonable attorneys' fees and
 16 litigation expenses in the amount of \$52,500, which the parties negotiated after this Court
 17 preliminarily approved the settlement, and which falls within the range agreed to by the parties in
 18 their settlement agreement. ECF No. 44-1 at 10, ¶ 17.D. Of course, any award to class counsel "for
 19 attorneys' fees, costs, and expenses will be paid by [Defendant] separate and apart from the
 20 Settlement Fund, costs of Settlement Administration, and the payments to Plaintiffs." *Id.*
 21

22 Argument

23 I. The FDCPA mandates an award of attorneys' fees to a prevailing consumer- 24 plaintiff.

25 The FDCPA at 15 U.S.C. § 1692k(a) provides in pertinent part:

26 ² Given that, thus far, 13 members of the class excluded themselves from the settlement, each of the
 27 917 participating class members is now entitled to approximately \$14.84. This payout figure is subject to
 28 (relatively minor) adjustment in the event more class members exclude themselves between the filing of
 this motion and the deadline for such exclusions (April 18, 2016).

1 [A]ny debt collector who fails to comply with any provision of this
 2 subchapter with respect to any person *is liable* to such person in an amount
 3 equal to the sum of—

4 * * *

5 (3) in the case of any successful action to enforce the foregoing liability, *the*
 6 *costs of the action, together with a reasonable attorney's fee* as determined
 7 by the court.

8 15 U.S.C. § 1692k(a)(3).³

9 Every circuit court of appeals to consider the FDCPA's fee-shifting provision has held that
 10 an award of attorneys' fees to a successful consumer-plaintiff is mandatory. *See Camacho v.*
 11 *Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008) ("The FDCPA's statutory language makes
 12 an award of fees mandatory."); *French v. Corporate Receivables, Inc.*, 489 F.3d 402, 403 (1st Cir.
 13 2007) ("An award of attorney's fees to successful plaintiffs under the FDCPA is obligatory.");
 14 *Tolentino v. Friedman*, 46 F.3d 645, 651 (7th Cir. 1995) ("The [FDCPA's] statutory language
 15 makes an award of fees mandatory."); *Carroll v. Wolpoff & Abramson*, 53 F.3d 626, 628 (4th Cir.
 16 1995) ("[T]he fee award under § 1692k is mandatory in all but the most unusual circumstances.");
 17 *Graziano v. Harrison*, 950 F.2d 107, 113 (3d Cir. 1991) ("Given the structure of [the FDCPA],
 18 attorney's fees should not be construed as a special or discretionary remedy; rather, the Act
 19 mandates an award of attorney's fees as a means of fulfilling Congress's intent that the Act should
 20 be enforced by debtors acting as private attorneys general."); *Pipiles v. Credit Bureau of Lockport,*
 21 *Inc.*, 886 F.2d 22, 28 (2d Cir. 1989) ("Because the FDCPA was violated, however, the statute
 22 requires the award of costs and a reasonable attorney's fee.");
 23
 24

25 Specifically, the Ninth Circuit has explained:

26 "Generally, litigants in the United States pay their own attorneys' fees,
 27 regardless of the outcome of the proceedings." *Staton v. Boeing Co.*, 327

28 ³ Internal citations and quotations are omitted, and emphasis is added, unless noted otherwise.

1 F.3d 938, 965 (9th Cir. 2003). However, “[i]n order to encourage private
 2 enforcement of the law . . . Congress has legislated that in certain cases
 3 prevailing parties may recover their attorneys’ fees from the opposing side.
 4 When a statute provides for such fees, it is termed a ‘fee shifting’ statute.”
 5 *Id.* The FDCPA is one such statute, providing that any debt collector who
 6 fails to comply with its provisions is liable “in the case of any successful
 7 action ... [for] the costs of the action, together with a reasonable attorney’s
 8 fee as determined by the court.” 15 U.S.C. § 1692k(a)(3). The FDCPA’s
 9 statutory language makes an award of fees mandatory. *Tolentino v.*
 10 *Friedman*, 46 F.3d 645, 651 (7th Cir. 1995). “The reason for mandatory fees
 11 is that congress chose a ‘private attorney general’ approach to assume
 12 enforcement of the FDCPA.” *Id.*; *see also Graziano v. Harrison*, 950 F.2d
 13 107, 113 (3d Cir. 1991) (noting that the FDCPA “mandates an award of
 14 attorney’s fees as a means of fulfilling Congress’s intent that the Act should
 15 be enforced by debtors acting as private attorneys general”). Here, pursuant
 16 to the Settlement Agreement, Bridgeport Financial agreed to pay reasonable
 17 and necessary attorneys’ fees and costs.

18 *Camacho*, 523 F.3d at 978.

19 Accordingly, this Court and other California federal district courts have likewise
 20 recognized the mandatory nature of an award of attorneys’ fees award under section 1692k. *See,*
 21 *e.g., Brown v. Mandarich Law Grp., LLC*, No. 13-04703, 2014 WL 1340211, at *1 (N.D. Cal. Apr.
 22 2, 2014) (Corley, J.) (“Under the FDCPA, a successful plaintiff is entitled to receive reasonable
 23 attorneys’ fees and costs as part of the damages from the liable debt collector.”); *Davis v. Hollins*
 24 *Law*, 25 F. Supp. 3d 1292, 1297 (E.D. Cal. 2014) (“The FDCPA’s statutory language makes an
 25 award of fees mandatory. The purpose of the fee-shifting provision is to ensure private
 26 enforcement of the statute.”).

27 **II. An award of attorneys’ fees under the FDCPA is not conditioned upon, and
 28 need not be proportionate to, the amount of damages recovered.**

Awards of reasonable attorneys’ fees under federal statutes that include fee-shifting
 provisions “are not conditioned upon and need not be proportionate to an award of money
 damages.” *City of Riverside v. Rivera*, 477 U.S. 561, 576 (1986); *see also Lewis v. Kendrick*, 944
 F.2d 949, 957 (1st Cir. 1991) (“We believe we made it clear that we were not departing from the

1 recognized principle that the fee is not limited by the size of the recovery, but may, in appropriate
2 instances, greatly exceed it.”).

3 Indeed, a rule limiting an award of attorneys’ fees to an amount proportionate to damages
4 recovered would seriously undermine the mechanism that Congress chose to enforce the FDCPA.
5 Congress included a mandatory fee-shifting provision in the FDCPA because it “chose a ‘private
6 attorney general’ approach to assume enforcement of the FDCPA.” *Tolentino*, 46 F.3d at 651;
7 *Camacho*, 523 F.3d at 978 (“In order to encourage private enforcement of the law . . . Congress
8 has legislated that in certain cases prevailing parties may recover their attorneys’ fees from the
9 opposing side. . . . The FDCPA is one such statute.”). The purpose of the FDCPA’s statutory fee-
10 shifting provision is to benefit a consumer-plaintiff by allowing her to obtain counsel in order to
11 pursue redress for relatively small claims. Noteworthy, by providing the private bar with incentive
12 to involve itself in consumer litigation through fee-shifting, the federal government is relieved of
13 the costs of protecting consumers while ensuring that consumers may still avail themselves of their
14 statutory rights.

15 “In order to encourage able counsel to undertake FDCPA cases, as Congress intended, it is
16 necessary that counsel be awarded fees commensurate with those which they could obtain by
17 taking other types of cases.” *Tolentino*, 46 F.3d at 653. That “commensurate” fee is best measured
18 by “what that attorney could earn from paying clients” at a “standard hourly rate.” *Id.* Paying
19 counsel less—or, in other words, tying an award of attorneys’ fees to the amount of damages
20 awarded—“is inconsistent with the Congressional desire to enforce the FDCPA through private
21 actions, and therefore misapplies the law.” *Id.*

1 **III. Counsel’s requested attorneys’ fees are eminently reasonable and should be**
2 **approved.**

3 As an initial matter, Defendant agreed—as part of the settlement agreement—to pay the
4 reasonable attorneys’ fees and expenses incurred by Plaintiffs’ counsel. ECF No. 44-1 at 10, ¶
5 17.D. Moreover, as outlined above, the FDCPA mandates an award of attorneys’ fees to a
6 prevailing consumer.

7 While Defendant agreed to pay Plaintiffs’ attorneys’ fees as part of the settlement
8 agreement, it is worth noting that Plaintiffs prevailed—completely—in this case. Not only did they
9 recover the full statutory damages allowed under the FDCPA for both themselves and the class,
10 but they also secured an agreement from Defendant to change its collection practices moving
11 forward to ensure that Defendant’s form collection letter complies with the FDCPA. Thus, even if
12 Defendant had not agreed to pay their counsel’s attorneys’ fees, Plaintiffs would be entitled to such
13 payment under the FDCPA. *See Brown*, 2014 WL 1340211, at *1.

14 With respect to a prevailing plaintiff, “[d]istrict courts must calculate awards for attorneys’
15 fees using the ‘lodestar’ method, and the amount of that fee must be determined on the facts of
16 each case. The ‘lodestar’ is calculated by multiplying the number of hours the prevailing party
17 reasonably expended on the litigation by a reasonable hourly rate.” *Camacho*, 523 F.3d at 978.
18 “Although in most cases, the lodestar figure is presumptively a reasonable fee award, the district
19 court may, if circumstances warrant, adjust the lodestar to account for other factors which are not
20 subsumed within it.” *Id.*

21 As set forth in the accompanying Radbil Declaration, Plaintiffs’ counsel seek a total of
22 \$52,500.00 in attorneys’ fees and expenses—an amount unopposed by Defendant, and which is
23 significantly reduced from counsel’s actual lodestar. Counsel incurred the requested fees and
24 expenses for the benefit of Plaintiffs and absent class members by: (a) conducting an investigation
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1 into the underlying facts regarding Plaintiffs' claims; (b) preparing a class action complaint; (c)
2 researching the law pertinent to class members' claims and Defendant's defenses; (d) fully briefing
3 cross-motions for summary judgment and preparing for oral argument on the same; (e) conducting
4 an analysis of Defendant's net worth; (f) negotiating the parameters of the settlement; (g) preparing
5 the parties' class action settlement agreement and the proposed notice to the class; (h) conferring
6 repeatedly with Mr. Schuchardt, Ms. Muggli, and defense counsel; (i) preparing Plaintiffs'
7 unopposed motion for preliminary approval of the class action settlement, along with the
8 accompanying proposed order and subsequent statement of recent decisions supporting the same;
9 (j) preparing for and participating in the hearing on Plaintiffs' unopposed motion for preliminary
10 approval; (k) preparing Plaintiffs' motion for final approval of the class action settlement; (l)
11 preparing class counsel's motion for an award of attorneys' fees and reimbursement of expenses;
12 (m) preparing counsel's declaration in support of the fee and expense award; (n) conferring with
13 the class administrator regarding notice and the claims process; and (o) conferring with class
14 members to answer questions about the settlement. Of note, Plaintiffs' counsel took this case
15 absent any guarantee that they would be compensated for their efforts, and have not received any
16 payment for the work performed in this case to date.

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19
20 Greenwald Davidson Radbil PLLC attorneys—who assisted with the parties' joint case
21 management statement and also exclusively prepared Plaintiffs' cross-motion for summary
22 judgment, the class action settlement agreement, Plaintiffs' motion in support of preliminary
23 approval of the settlement, and the motion in support of final approval—have spent a total of 210.9
24 hours litigating this case to date.⁴ Aaron D. Radbil—the lead attorney on the case—spent a total
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26
27 ⁴ Courts may properly rely on summaries of the total number of hours spent by counsel. *See Norman*
28 *v. Housing Auth. of City of Montgomery*, 836 F.2d 1292, 1303 (11th Cir. 1988) (“It is perfectly proper to

1 of 38.6 hours. Three of the firm’s other attorneys, Michael L. Greenwald, James L. Davidson, and
2 Jesse S. Johnson, spent a total of 172.3 hours, collectively, on this case.

3 Mr. Radbil, Mr. Greenwald, and Mr. Davidson each billed at a rate of \$400 per hour⁵—a
4 rate specifically approved by the Southern District of Florida in a similar FDCPA class action last
5 year. *See Gonzalez v. Dynamic Recovery Solutions, LLC*, Nos. 14-24502, 14-20933, 2015 WL
6 738329, at *4 (S.D. Fla. Feb. 23, 2015) (“Defendant shall pay Class Counsel [Greenwald Davidson
7 Radbil PLLC] \$65,000.00 for attorneys’ fees and expenses, which is based in part upon Class
8 Counsel’s reasonable hourly rate of \$400 per hour.”).

9
10 As well, Mr. Johnson, a senior associate at the firm, billed at a rate of \$350 per hour.
11 Notably, just two years ago, this Court accepted very similar hourly rates in approving an award
12 of attorneys’ fees and costs in a successful FDCPA action. *Brown*, 2014 WL 1340211, at *2
13 (finding reasonable \$450 per hour for a partner and \$350 per hour for his associate, while also
14 noting that the statewide average rate for small consumer law firms in California in 2011 was \$406,
15 and that narrowing the statewide rate to only the Northern District “would likely result in a
16 prevailing market rate *higher* than what” counsel had requested); *see also Rivera v. Portfolio*
17 *Recovery Assocs., LLC*, No. 13-2322, 2013 WL 5311525, at *8 (N.D. Cal. Sept. 23, 2013)
18 (similarly approving rates of \$450 and \$300 per hour for successful prosecution of FDCPA action).
19 Thus, the requested rates here of \$400 for partners and \$350 for their associate are eminently
20 reasonable.
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26 award attorney’s fees based solely on affidavits in the record.”); *Lobatz v. U.S. W. Cellular of Cal., Inc.*,
27 222 F.3d 1142, 1148-49 (9th Cir. 2000).

28 ⁵ Greenwald Davidson Radbil PLLC has been appointed class counsel in over a dozen class actions
in the past 12 months. *See* Ex. A at ¶ 8.

1 Multiplying the hours spent by Greenwald Davidson Radbil PLLC attorneys (210.9 hours)
 2 by their respective hourly rates yields a lodestar, as of today’s date, of \$76,725. In addition, class
 3 counsel conservatively estimates that this case will require an additional 30 hours of work by Mr.
 4 Radbil to complete. That time will be spent preparing for, traveling to, and attending the final
 5 approval hearing set for April 28, 2016, preparing any necessary reply briefs in support of approval
 6 of the settlement and class counsel’s request for attorneys’ fees and expenses, finalizing the
 7 settlement, and other related matters. Thus, given a total of 240.9 hours, multiplied by respective
 8 rates of \$400 and \$350 per hour, class counsel’s total attorneys’ fees are \$88,725. The requested
 9 award here of \$52,500.00—which is inclusive of costs incurred, as outlined below—accordingly
 10 represents a *discount* of 40% compared to class counsel’s anticipated lodestar in this matter. This
 11 further demonstrates the reasonableness of class counsel’s request.⁶
 12
 13

14 Noteworthy, the requested fee award here is further justified in light of the certified class
 15 action, and the fees being lower than those awarded to class counsel in other recent FDCPA class
 16 actions.⁷ *See, e.g., Gonzalez*, 2015 WL 738329, at *4 (S.D. Fla. Feb. 23, 2015) (awarding \$65,000
 17 in attorneys’ fees and expenses to Greenwald Davidson Radbil PLLC for settlement under
 18

19 _____
 20 ⁶ Also worth mentioning, the lodestar submitted here does not include any of the time spent by Ryan
 21 Lee, who acted as local counsel for Plaintiffs and the class. Adding Mr. Lee’s lodestar to class counsel’s
 22 anticipated lodestar further underscores the reasonableness of this request.

23 ⁷ As the Supreme Court has acknowledged, courts in fee-shifting cases courts “regularly recognize[]
 24 the delay factor, either by basing the award on current rates or by adjusting the fee based on historical rates
 25 to reflect its present value.” *Missouri v. Jenkins by Agyei*, 491 U.S. 274, 282 (1989). The Court explained
 26 that upward adjustments are necessary to account for the delay in payment:

27 [C]ompensation received several years after the services were rendered . . . is not
 28 equivalent to the same dollar amount received reasonably promptly as the legal
 services are performed, as would normally be the case with private billings. We
 agree, therefore, that an appropriate adjustment for delay in payment—whether by
 the application of current rather than historic hourly rates or otherwise—is within
 the contemplation of the statute.

Id. at 283.

1 FDCPA); *Weissman v. Gutworth*, No. 14-00666, 2015 WL 3384592, at *7 (D.N.J. May 26, 2015)
2 (awarding fee based on rate of \$575 per hour in FDCPA class action).

3 **IV. Counsel’s requested litigation expenses, which are subsumed in the \$52,500.00**
4 **award herein requested, are reasonable.**

5 The requested fee and expense award includes the reimbursement of the type of expenses
6 routinely charged to paying clients in the marketplace and, therefore, which are properly
7 reimbursed under Rule 23. *See In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177-78
8 (S.D. Cal. 2007) (awarding as reasonable and necessary, reimbursement for “1) meals, hotels, and
9 transportation; 2) photocopies; 3) postage, telephone, and fax; 4) filing fees; 5) messenger and
10 overnight delivery; 6) online legal research; 7) class action notices; 8) experts, consultants, and
11 investigators; and 9) mediation fees”); *see also* Fed. R. Civ. P. 23(h) (“In a certified class action,
12 the court may award reasonable attorney’s fees and *nontaxable* costs that are authorized by law or
13 by the parties’ agreement.”).

14
15
16 In total, class counsel have incurred reimbursable expenses in the amount of \$763.80, as
17 of today’s date. *See* Ex. A at ¶ 23. These expenses include the filing fee for the complaint (\$400)
18 and the application fee for Mr. Radbil’s admission *pro hac vice* (\$305). *Id.* at ¶ 24. Class counsel
19 may incur additional expenses associated with travel to San Francisco, including airport parking
20 in Austin, transportation to and from the San Francisco airport to downtown, and meals. *Id.* at ¶
21 25. Class counsel conservatively estimates that these additional expenses could total
22 approximately \$600, resulting in total expenses of approximately \$1,363.80. *Id.*

23
24 As well, class counsel have incurred additional reimbursable expenses, such as for
25 photocopies, long distance telephone calls, postage, and computerized legal research. Those
26 expenses are not separately itemized, and are subsumed within class counsel’s unopposed request
27 for a fee and expense award of \$52,500.00.
28

Conclusion

1
2 Defendant agreed to pay the reasonable attorneys' fees and expenses incurred by Plaintiffs'
3 counsel in connection with this litigation, in the total amount of \$52,500. Significantly, no class
4 members have objected to this request, and because the fees and expenses requested are reasonable
5 in this certified class action, this Court should approve class counsel's request in its entirety.
6

7
8 Dated: March 21, 2016

Respectfully submitted,

9 /s/ Aaron D. Radbil

10 Aaron D. Radbil (*pro hac vice*)

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18
19 **CERTIFICATE OF SERVICE**

20 I certify that a copy of the foregoing was filed electronically on March 21, 2016, via the
21 Court Clerk's CM/ECF system, which will provide notice to all counsel of record.
22

23 /s/ Aaron D. Radbil

Aaron D. Radbil