UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case Nos. 14-CIV-20933-BLOOM/Valle
14-CIV-24502-BLOOM/Valle

LUIS RODRIGUEZ, on behalf of himself and others similarly situated,

Plaintiffs,

v.

DYNAMIC RECOVERY SOLUTIONS, LLC,

Defendant.
_____/

ALEXANDER GONZALEZ, on behalf of himself and others similarly situated,

Plaintiff,

v.

DYNAMIC RECOVERY SOLUTIONS, LLC,

Defendant.
_____/

ORDER OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

WHEREAS, the Court has been advised that the parties to this consolidated class action pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et. seq*. ("FDCPA"), Luis Rodriguez, Alexander Gonzalez (hereinafter referred to as "Plaintiffs" or "Class Representatives"), and Dynamic Recovery Solutions, LLC (hereinafter referred to as "Defendant"), through their respective counsel, have agreed, subject to Court approval, to settle the above-captioned lawsuit (hereinafter referred to as the "Lawsuit") upon the terms and conditions set forth in the Class Action Settlement Agreement (hereinafter referred to as the

"Settlement Agreement"), which has been filed with the Court, see ECF No. [56-1], and the Court deeming that the definitions set forth in the Settlement Agreement are hereby incorporated by reference herein (with capitalized terms as set forth in the Settlement Agreement);

NOW, THEREFORE, based upon the Settlement Agreement and all of the files, records, and proceedings herein, and it appearing to the Court that, upon preliminary examination, the proposed settlement appears fair, reasonable, and adequate, and that a Hearing should and will be held on **February 20, 2015**, **at 4:30 p.m. at the United States District Court for the Southern District of Florida, Courtroom 207A, 299 E. Broward Boulevard, Fort Lauderdale, Florida**, to confirm that the proposed settlement is fair, reasonable, and adequate, and to determine whether a Final Order and Judgment should be entered in this Lawsuit:

IT IS HEREBY ORDERED:

1. The Court has jurisdiction over the subject matter of the Lawsuit and over all settling parties hereto.

2. Defendant will take all steps necessary to comply with the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(D), 1453, and 1711-1715.

3. **Class Members** – Pursuant to Fed. R. Civ. P. 23(b)(2), the Lawsuit is hereby preliminarily certified, for settlement purposes only, as a class action on behalf of the following class of plaintiffs (hereinafter referred to as the "Class Members") with respect to the claims asserted in the Lawsuit:

> All persons throughout the United States for whom, between March 12, 2013 and April 28, 2014, Dynamic Recovery Solutions, LLC left a voice message/voice recording, in connection with an attempt to collect any purported consumer debt, where the caller failed to state that she/he was a debt collector.

4. The Parties believe that there are in excess of 180,700 Class Members.

5. **Class Representative and Class Counsel Appointment** – Pursuant to Fed. R. Civ. P. 23, the Court preliminarily certifies Plaintiffs Luis Rodriguez and Alexander Gonzalez as the Class Representatives and James L. Davidson, Michael L. Greenwald, and Aaron D. Radbil of Greenwald Davidson PLLC as Class Counsel.

6. **Preliminary Class Certification** – The Court preliminarily finds that the Lawsuit satisfies the applicable prerequisites for class action treatment under Fed. R. Civ. P. 23(b)(2), namely:

   A. The Class Members are so numerous that joinder of all of them in the Lawsuit is impracticable;

   B. There are questions of law and fact common to the Class Members, which predominate over any individual questions;

   C. The claims of the Plaintiffs are typical of the claims of the Class Members;

   D. The Plaintiffs and Class Counsel have fairly and adequately represented and protected the interests of all of the Class Members;

   E. Class treatment of these claims will be efficient and manageable, thereby achieving an appreciable measure of judicial economy, and a class action is superior to other available methods for a fair and efficient adjudication of this controversy; and

   F. Defendant is alleged to have acted or refused to act on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole.

7. The Court preliminarily finds that the settlement of the Lawsuit, on the terms and conditions set forth in the Settlement Agreement is in all respects fundamentally fair, reasonable, adequate, and in the best interest of the Class Members, especially in light of the net worth of the Defendant; the strength of the Plaintiffs' case; the complexity, expense, and probable duration of further litigation; the risk and delay inherent in possible appeals; the risk of collecting any judgment obtained on behalf of the Class; and, the limited amount of any potential total recovery for the Class.

8. Defendant has made certain admissions during the discovery phase of this Action to Class Counsel concerning the number of class members, and its net worth. Given the cap on statutory damages for class actions brought pursuant to the FDCPA, discovery has demonstrated that the maximum amount of statutory damages available under 15 U.S.C. §1692k for each unnamed class member would have been less than fifteen cents, if Plaintiffs were to prevail on the merits at trial and on appeal.

9. Had this matter proceeded as a contested matter and had Plaintiffs prevailed on all issues, the following relief could have been awarded: (a) up to but no more than $1,000 in statutory damages to each named Plaintiff; (b) a discretionary incentive award to each named Plaintiff; (c) less than fifteen cents per putative class member in statutory damages; and (d) Plaintiffs' reasonable attorneys' fees and costs. Such relief would have only been obtained if Plaintiffs proved liability.

10. By settling, Plaintiffs secured prospective relief by way of an injunction, brought about an early resolution to the litigation, limited attorneys' fees and costs, and

obtained nationwide injunctive relief prohibiting Defendant from engaging in the complained of practice in the future.

11. Were the Class to recover the maximum statutory damages allowable under the FDCPA, such recovery would not be sufficient to justify a class wide distribution, especially when taking into account the costs of administering such a settlement. Consequently, in lieu of a class wide settlement, Defendant has agreed to make a *cy pres* payment in the amount of $15,000.00 to the Legal Aid Society of Palm Beach County, Inc., which is approximately the maximum statutory damages for which Defendant could have been liable to the Class if Plaintiffs were to prevail on the merits at trial and on appeal.

12. **Notice** – Rule 23(b)(2) of the Federal Rules of Civil Procedure does not require notice to the Class. *See Jefferson v. Ingersoll Int'l. Inc.*, 195 F.3d 894, 897 (7th Cir.1999) ("Rule 23(b)(2) authorizes a no-notice and no-opt-out class for 'final injunctive relief ... [that operates] with respect to the class a whole."); *Crawford v. Honig*, 37 F.3d 485, 487 n. 2 (9th Cir. 1995) (observing that the right to notice does not apply to class actions brought under Rule 23(b)(2)); *Kincade v. Gen. Tire & Rubber Co.*, 635 F.2d 501, 506 (5th Cir. 1981) (same); *see also Doe v. Bush*, 261 F.3d 1037 (11th Cir. 2001), cert denied, 534 U.S. 1104, 122 S.Ct. 903, 151 L.Ed.2d 872 (2002). "*Bolton* reaffirmed the holding in *Bing* and also recognized that, as a general matter, a Rule 23(b)(2) class does not require class-wide notice as a precondition for its existence."). Here, a no-notice class is appropriate. By the express terms of the Settlement Agreement, Defendant will only receive releases from the named Plaintiffs in this litigation. None of the absent Class

members will be releasing any claims that they may have against Defendant, and those absent Class members' claims are tolled through any final judgment in this case. As absent Class members' claims are not being compromised by the settlement, and in light of the circumstances, sending notice to over 180,000 persons is neither warranted nor practicable.

13. **Incentive Award to Plaintiffs** – Plaintiffs Luis Rodriguez and Alexander Gonzalez will petition the Court to receive the sum of $1,000.00 each as an incentive award for their work in pursuing this case on behalf of the Class. Any incentive award shall be separate and apart from the damages paid by Defendant to each Plaintiff and separate and apart from any award of attorney's fees and expenses.

14. **Final Approval** – The Court shall conduct a hearing (hereinafter referred to as the "final approval hearing") on February 20, 2015 at 4:30 p.m. at the United States District Court for the Southern District of Florida, 299 East Broward Blvd., Courtroom 207A, Fort Lauderdale, Florida 33301, to review and rule upon the following issues:

A. Whether this action satisfies the applicable prerequisites for class action treatment for settlement purposes under Fed. R. Civ. P. 23;

B. Whether the proposed settlement is fundamentally fair, reasonable, adequate, and in the best interest of the Class Members and should be approved by the Court;

C. Whether the Final Order and Judgment, as provided under the Settlement Agreement, should be entered, dismissing the Lawsuit with prejudice and

releasing the Released Claims against the Released Parties; and

D. To discuss and review other issues as the Court deems appropriate.

15. Submissions by the Parties, including memoranda in support of the proposed settlement, petitions for attorney's fees and reimbursement of costs and expenses by Class Counsel, shall be filed with the Court no later than 14 days prior to the Final Approval Hearing, *i.e.*, **no later than February 6, 2015**.

16. The Settlement Agreement and this Order shall be null and void if any of the following occur:

A. The Settlement Agreement is terminated by any of the Parties for cause, or any specified material condition to the settlement set forth in the Settlement Agreement is not satisfied and the satisfaction of such condition is not waived in writing by the Parties;

B. The Court rejects, in any material respect, the Final Order and Judgment substantially in the form and content attached to the Settlement Agreement and/or the Parties fail to consent to the entry of another form of order in lieu thereof;

C. The Court rejects any material component of the Settlement Agreement, including any amendment thereto approved by the Parties; or

D. The Court approves the Settlement Agreement, including any amendment thereto approved by the Parties, but such approval is reversed on appeal and such reversal becomes final by lapse of time or otherwise.

17. If the Settlement Agreement and/or this order are voided per ¶ 16 of this order, then the Settlement Agreement shall be of no force and effect and the Parties'

rights and defenses shall be restored, without prejudice, to their respective positions as if the Settlement Agreement had never been executed and this order never entered.

18. The Court retains continuing and exclusive jurisdiction over the action to consider all further matters arising out of or connected with the settlement, including the administration and enforcement of the Settlement Agreement.

19. The Court sets the following schedule:

Date	**Event**
January 13, 2015	Preliminary Approval Order Entered
February 6, 2015	Motion for Final Approval and Attorney Fees Papers Filed
February 20, 2015	Final Approval Hearing to be Held

DONE AND ORDERED in Fort Lauderdale, Florida, this 13th day of January, 2015.

BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies to:
Counsel of Record