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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

vs.

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

Defendant.

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

PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Date: January 7, 2015
Time: 9:00 a.m.

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Introduction

Daniel Schuchardt and Michelle Muggli ("Plaintiffs") filed their class action complaint against the Law Office of Rory W. Clark, A Professional Law Corporation ("Defendant"), alleging violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.* Specifically, Plaintiffs asserted that Defendant, as a matter of pattern and practice, failed to properly provide consumers disclosures mandated by the FDCPA. Defendant denies any liability or that it violated the FDCPA.

Notwithstanding Defendant's denial, and having fully briefed dueling summary judgment motions, Plaintiffs and Defendant recently entered into a class action settlement agreement that requires Defendant to create a common fund for the benefit of the settlement class in the amount of approximately $13,610—a figure that not only exceeds the FDCPA's statutory cap on class-wide damages, but also compares favorably with awards that courts have approved in other FDCPA class actions. Defendant has also agreed to fundamentally change its debt collection practices moving forward by altering the language included in its initial form debt collection letter—the form letter that gave rise to the instant action. This will benefit not only Plaintiffs and the settlement class members, but all consumers who come into contact with Defendant's collection practices in the future.

Separately, Defendant will pay full statutory damages to Plaintiffs, class counsel's attorneys' fees and expenses, and the cost of administering the settlement and providing direct mail notice to each class member.

Against this backdrop, and in line with the terms of the parties' settlement agreement, Plaintiffs now move to certify the following proposed settlement class, which includes approximately 1,361 members:

> All persons with a California address to whom Law Office of Rory W. Clark, A Professional Law Corporation mailed an initial debt 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 a copy of the judgment, if any, and mail a copy of such verification or judgment to you," between June 1, 2014 and June 1, 2015, in connection with the collection of a consumer debt.

Plaintiffs also ask this Court to preliminarily approve the parties' proposed settlement, to approve their proposed class notice and direct its distribution, to appoint Plaintiffs as class representatives, and to appoint Plaintiffs' counsel as class counsel.[1]

Standard

A district court's review of a class action settlement is a two-step process. The first step is a preliminary fairness determination. *See* MANUAL FOR COMPLEX LITIGATION § 21.632 (4th ed. 2004) ("The judge must [first] make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing.");[2] *see also* 4 ALBA CONTE & HERBERT B. NEWBERG, NEWBERG ON CLASS ACTIONS, § 11.25 (4th ed. 2002).

The second step is a final fairness determination. *See* MANUAL FOR COMPLEX LITIGATION, § 21.633-34; NEWBERG ON CLASS ACTIONS, § 11.25; *see also Armstrong v. Bd. of Sch. Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980) (explaining that once a district court finds a settlement proposal "within the range of possible approval," the second step in the review process

[1] In connection with their motion and related requests, Plaintiffs submit the Declaration of Aaron D. Radbil, which includes as an attachment the parties' class action settlement agreement and related exhibits—a proposed order preliminarily approving the class action settlement, and a proposed notice of class action settlement.

[2] Internal citations and quotations are omitted, and emphasis is added, unless otherwise noted.

is to conduct a fairness hearing"), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998).

Of note, a preliminary fairness determination requires only that a district court evaluate whether the class action settlement was negotiated at arm's-length, and whether it is within the range of possible litigation outcomes such that "probable cause" exists to disseminate notice and begin the formal fairness process. *See* MANUAL FOR COMPLEX LITIGATION, §21.632; *see also Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693 (D. Colo. 2006) ("The purpose of the preliminary approval process is to determine whether there is any reason not to notify the class members of the proposed settlement and to proceed with a fairness hearing.").

Importantly, this evaluation is not to be conflated with an analysis of what the settlement at issue could have been: "Settlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).

Nor does the evaluation necessarily made in connection with a preliminary fairness determination include an inquiry regarding the law or facts underlying the claims at issue:

> The district court's role in evaluating a proposed settlement must be tailored to fulfill the objectives outlined above. In other words, the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned. Therefore, the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits. Neither the trial court nor this court is to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.

Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of San Francisco, 688 F.2d 615, 625 (9th Cir. 1982); *accord Grady v. de Ville Motor Hotel, Inc.*, 415 F.2d 449, 451 (10th Cir. 1969)

("It is well settled, as a matter of sound policy, that the law should favor the settlement of controversies, and should not discourage settlement by subjecting a person who has compromised a claim to the hazard of having the settlement proved in a subsequent trial . . . .").

What's more, as the Supreme Court made clear: "Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, *see* Fed. Rule Civ. Proc. 23(b)(3)(D), for the proposal is that there be no trial." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

Argument

I. Class actions are fundamental to the FDCPA's statutory structure.

The FDCPA is a comprehensive statute that prohibits a catalog of activities in connection with the collection of debts by third parties. *See* 15 U.S.C. § 1692 *et seq*. It correspondingly imposes civil liability on any person or entity that violates its provisions. 15 U.S.C. § 1692k.

Congress outlined the FDCPA's purpose as follows: "[T]o eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C. § 1692(e).

To effectuate this purpose, Congress specifically contemplated the use of class actions for appropriate cases, *see* 15 U.S.C. § 1692k(a)(B), the significance of which courts across the country have recognized. For example, the Third Circuit stated:

> Representative actions, therefore, appear to be fundamental to the statutory structure of the FDCPA. Lacking this procedural mechanism, meritorious FDCPA claims might go unredressed because the awards in an individual case might be too small to prosecute an individual action.

Weiss v. Regal Collections, 385 F.3d 337, 345 (3d Cir. 2004).

II. The proposed settlement class is well suited for class treatment.

Federal Rule of Civil Procedure 23 governs class certification. Under Rule 23, the party seeking certification must first demonstrate that: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative plaintiff are typical of the claims or defenses of the class; and (4) the representative plaintiff will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a).

The party seeking certification must then show that at least one of the following three conditions is satisfied: (1) the prosecution of separate actions would create a risk of inconsistent or varying adjudications, or individual adjudications would be dispositive of the interests of other members not a party to those adjudications or would substantially impair or impede their ability to protect their interests; (2) the party opposing the class has acted or refused to act on grounds generally applicable to the class; or (3) the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Fed. R. Civ. P. 23(b)

A. The members of the proposed settlement class are so numerous that joinder of all of them is impracticable.

"The prerequisite of numerosity is discharged if 'the class is so large that joinder of all members is impracticable.'" *Hanlon,* 150 F.3d at 1019. "'[I]mpracticability' [however] does not mean 'impossibility,' but only the difficulty or inconvenience of joining all members of the class." *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964). "The requirement is met if, due to class size, it would be extremely difficult or inconvenient to join all class members." *Brink v. First Credit Res.*, 185 F.R.D. 567, 569 (D. Ariz. 1999). In particular, "the

difficulty inherent in joining as few as 40 class members should raise a presumption that joinder is impracticable, and the plaintiff whose class is that large or larger should meet the test of Rule 23(a)(1) on that fact alone." *Amone v. Aveiro*, 226 F.R.D. 677, 684 (D. Haw. 2005) (citing *Newberg & Conte, 1 Newberg on Class Actions* § 3.6 (4th ed. 2002)).

Consequently, while "there is no 'magic number'" necessary to satisfy numerosity, *McCluskey v. Trs. of Red Dot Corp. Emp. Stock Ownership Plan & Trust*, 268 F.R.D. 670, 673 (W.D. Wash. 2010) (collecting cases in which federal courts certified classes of 7, 14, 16, 17, 18, 21 and 35 members), "courts [generally] find the numerosity requirement satisfied when a class includes at least 40 members." *Rannis v. Recchia*, 380 F. App'x 646, 651 (9th Cir. 2010).

Here, Defendant sent materially similar, if not identical, debt collection letters to approximately 1,361 California residents within the class period—June 1, 2014 through June 1, 2015. Plaintiffs accordingly have satisfied the numerosity element of Rule 23(a)(1).

B. Questions of law and fact are common to the members of the settlement class.

The commonality requirement of Rule 23 demands only that there be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Significantly, "[a]ll questions of fact and law need not be common to satisfy the commonality requirement." *Meyer v. Portfolio Recovery Assocs., LLC*, 707 F.3d 1036, 1041 (9th Cir. 2012) *cert. denied*, 133 S. Ct. 2361 (2013). "The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." *Id*.

Here, Plaintiffs alleged that Defendant's initial debt collection letters failed to properly provide consumers disclosures regarding how they must dispute the validity of the debts they were alleged to owe, and how they could obtain verification of those debts from Defendant. More specifically, Defendant failed to disclose that consumers must dispute their debts "in writing" in

order to invoke particular rights under the FDCPA. And without so apprising consumers of the need to dispute their alleged debts *in writing*, Defendant's initial debt collection letters would likely cause consumers to waive various protections afforded by the statute. *See* ECF No. 31 at 5-9.

Considering this, because the letters that Defendant sent to the members of the settlement class differ only with respect to each alleged debtor's contact information, balance due, and other particular account information, questions of fact and law related to the settlement class are entirely common. To be sure, "by definition, each putative class member received a dunning letter containing the same Verification Notice. The sole and dispositive legal question is whether that Verification Notice violates the FDCPA." *Bicking v. Mitchell Rubenstein & Assocs., P.C.*, No. 11-78, 2011 WL 5325674, at *2 (E.D. Va. Nov. 3, 2011).

So as each class member here has the same claim against Defendant, Rule 23(a)(2) commonality requirement is satisfied. *See Bogner v. Masari Invs., LLC*, 257 F.R.D. 529, 532 (D. Ariz. 2009) (granting the plaintiff's motion for class certification of claims under the FDCPA, and holding that "the commonality requirement has been met because Plaintiffs allege that 'a standard letter sent by Defendants, to each member of the proposed class, was unfair and deceptive, in violation of the FDCPA'"); *Hunt v. Check Recovery Sys., Inc.*, 241 F.R.D. 505, 510 (N.D. Cal. 2007) ("Based on Defendant's alleged standardized conduct, this Court concludes that common questions exist as to whether Defendant's conduct was unlawful.").

C. Plaintiffs' claims are typical of the claims of the members of the proposed settlement class.

"To demonstrate typicality, the putative class must show that the named parties' claims are typical of the class." *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1030 (9th Cir. 2012). "The test of typicality is whether other members have the same or similar injury, whether the action

is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992).

Here, typicality is satisfied as Defendant sent materially identical debt collection letters to hundreds of California residents within the class period, all of whom have FDCPA claims identical to Plaintiffs, and which are based solely on the text of the debt collection letters they received. *See Santoro v. Aargon Agency, Inc.*, 252 F.R.D. 675, 682 (D. Nev. 2008) ("Given the commonality of the letter in question, the general similarity of Plaintiff's claims and those of the putative class, and the permissive nature of the typicality requirement, the Court concludes the requirement has been satisfied."); *Gonzales v. Arrow Fin. Servs., LLC*, 489 F. Supp. 2d 1140, 1155 (S.D. Cal. 2007) ("[T]his Court is persuaded that typicality is sufficiently established if the class representative received the same collection letters as the class members."); *Abels v. JBC Legal Grp. P.C.*, 227 F.R.D. 541, 545 (N.D. Cal. 2005) (typicality met where "[e]ach of the class members was sent the same collection letter as Abels and each was allegedly subjected to the same violations of the FDCPA").

D. Plaintiffs, and their counsel, will fairly and adequately protect the interests of the members of the proposed settlement class.

To adequately represent a class, a named plaintiff must show that she has no interests antagonistic to the interests of the class. *Hanlon*, 150 F.3d at 1020. Here, Plaintiffs have demonstrated as much. Indeed, they have pursued this case from the outset with the goals of obtaining relief for the members of the class, and forcing Defendant to change its debt collection practices moving forward. Through the settlement now at bar, Plaintiffs have succeeded on both fronts.

As well, "the representative parties must appear able to prosecute the action vigorously through qualified counsel." *Smith v. Univ. of Wash. Law Sch.*, 2 F. Supp. 2d 1324, 1343 (W.D. Wash. 1998). Plaintiffs have retained the services of counsel who are well-versed in class action litigation. The attorneys at Greenwald Davidson Radbil PLLC are well-equipped to handle the instant litigation and have ample experience representing plaintiffs in class actions, and numerous courts have noted as much. *See, e.g.*, *McWilliams v. Advanced Recovery Sys., Inc.*, --- F.R.D. ----, 2015 WL 6686211, at *2 (S.D. Miss. Nov. 3, 2015) (appointing Greenwald Davidson Radbil PLLC class counsel); *Jones v. I.Q. Data Int'l, Inc*., No. 1:14-cv-00130-PJK-GBW, 2015 WL 5704016, at *2 (D.N.M. Sept. 23, 2015) (same); *Prater v. Medicredit, Inc.*, Case No. 4:14-cv-00159-ERW, 2015 WL 4385682 (E.D. Mo. July 13, 2015); *Rhodes v. Olson Assocs., P.C. d/b/a Olson Shaner*, 83 F. Supp. 3d 1096, 1115 (D. Colo. 2015) (same); *Roundtree v. Bush Ross, P.A.*, 304 F.R.D 644, 661 (M.D. Fla. 2015) (same); *Esposito v. Deatrick & Spies, P.S.C.*, No. 7:13-CV-1416 GLS/TWD, 2015 WL 390392, at *2 (N.D.N.Y. Jan. 28, 2015) ("[T]he Court certifies . . . Greenwald Davidson Radbil PLLC as Class Counsel."); *Green v. Dressman Benzinger Lavelle, PSC*, No. 1:14-CV-00142-SJD, 2015 WL 223764, at *2 (S.D. Ohio Jan. 16, 2015) ("Greenwald Davidson PLLC is certified as Class Counsel").[3]

[3] *See also Donnelly v. EquityExperts.org, LLC*, No. 4:13-CV-10017-TGB, 2015 WL 249522, at *2 (E.D. Mich. Jan. 14, 2015) ("[T]he Court certifies . . . Greenwald Davidson Radbil PLLC as Class Counsel."); *Ritchie v. Van Ru Credit Corp.*, No. 2:12-CV-01714-PHX-SM, 2014 WL 3955268, at *2 (D. Ariz. Aug. 13, 2014) ("[T]he Court certifies . . . Greenwald Davidson PLLC as Class Counsel."); *White, et al. v. Scott E. Alexander*, No. 3:12-cv-06050-RBL (W.D. Wash. Feb. 28, 2014) (appointing Aaron D. Radbil of Greenwald Davidson PLLC as class counsel and granting final approval of FDCPA class action settlement); *Sharf v. Fin. Asset Resolution, LLC*, 295 F.R.D. 664, 670 (S.D. Fla. 2014) (appointing Greenwald Davidson PLLC as class counsel and finding that "Plaintiff and his counsel are committed to vigorously pursuing the claims of the class members. Plaintiff's interests are also aligned with those of the class members and his selected counsel has sufficient experience representing plaintiffs in consumer class actions."); *Garo v. Global Credit & Collection Corp.*, No. CV-09-2506-PHX-GMS, 2010 WL 5108605, at *9 (D. Ariz. Dec. 9, 2010) (appointing Aaron D. Radbil as class counsel for over 423,000 unnamed class members in connection with claims under the FDCPA).

As a result, Plaintiffs and their counsel satisfy the adequacy prong of Rule 23(a). *See Hunt*, 241 F.R.D. at 511 ("Accordingly, Plaintiffs and their counsel have no conflict with potential class members and Plaintiffs' counsel has extensive experience in FDCPA class actions."). As well, Plaintiffs' counsel will fairly and adequately represent the class and accordingly should be appointed class counsel consistent with Rule 23(g)(4). *See, e.g.*, *Jones*, 2015 WL 5704016, at *2.

E. The questions of law and fact common to the proposed settlement class predominate over any questions potentially affecting only individual class members.

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Products, Inc.*, 521 U.S. at 623. The focus of the predominance inquiry is on "the relationship between the common and individual issues." *Hanlon*, 150 F.3d at 1022. "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." *Id*.

Here, the central legal issue before this Court is whether Defendant's initial debt collection letters to consumers—which it sent on behalf of Bank of America, N.A.—violate the FDCPA by failing to properly notify consumers of their validation rights. Plaintiffs' and the class's claims stem from materially identical debt collection letters, and numerous courts have found that common questions of law and fact predominate where class members' claims are based on standardized debt collection letters, as is the case here. For example, the District of Arizona stated in *Bogner*:

> The key issue in this case is whether Defendants violated the FDCPA by stating in standardized collection letters that disputes needed to be made in writing. *See* Dkt. # 5 ¶¶ 18-21; *see also Camacho v. Bridgeport Fin., Inc.*, 430 F.3d 1078 (9th Cir.2005). The only individual issue is the identification of consumers who received the letter. The Court finds that common questions of law and fact predominate. *See Gonzales*, 233 F.R.D. at 582; *Abels*, 227 F.R.D. at 547.

257 F.R.D. at 534; *see also Sledge v. Sands*, 182 F.R.D. 255, 259 (N.D. Ill. 1998) ("There is a common factual link among the proposed plaintiffs; each plaintiff received a very similar letter from CCS. The predominate legal issue is whether these letters violate the FDCPA.").

Plaintiffs' and the settlement class's claims are based on the text of the same form letter sent by Defendant—nothing more. For the same reason articulated in *Bogner*, the issues underlying the claims of members of the settlement class here predominate over any individualized issues. Rule 23(b)(3) predominance is thus satisfied here.

F. A class action is superior to other available methods for the fair and efficient adjudication of Plaintiffs' claims, and the claims of members of their proposed class.

Rule 23(b)(3) requires that a court determine that "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." "The superiority inquiry requires determination of whether the objectives of the particular class action procedure will be achieved in the particular case." *Hanlon*, 150 F.3d at 1023. In determining whether the "superiority" requirement is satisfied, a court may consider the following: (1) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (4) the difficulties likely to be encountered in the management of a class action. Fed. R. Civ. P. 23(b)(3). These factors, however, are not exhaustive. *Kamm v. California City Dev. Co.*, 509 F.2d 205, 212 (9th Cir. 1975).

Here, as noted above, a settlement is the superior method for resolving class claims. No one member of the proposed class has an interest in controlling the prosecution of the action because the claims of all members of the settlement class are identical, as the allegations involve standardized conduct.

Noteworthy, the alternatives to a class action are either no recourse for hundreds of class members, or a multiplicity of suits resulting in the inefficient administration of the litigation. Moreover, absent a class action, many claims identical to those asserted by Plaintiffs will likely go unaddressed. Indeed, as the court in *Hunt* explained:

> [A] class action in this context is superior to individual claims. First, the Court agrees that individual consumers are most likely unaware of their rights under the FDCPA and that the likelihood of individual actions is remote. Second, the drafters of the FDCPA contemplated class action recovery within the liability portion of the act. Third, the size of any individual damages claims under the FDCPA are usually so small that there is little incentive to sue individually. Fourth, efficiency and consistency of concerns favor litigating the legality of Defendant's standardized conduct by all class members in one suit, rather than forcing each class member to sue individually.

241 F.R.D. at 514.

Further, "[c]ase law affirms that class actions are a more efficient and consistent means of trying the legality of collection letters." *Abels*, 227 F.R.D. at 547 (citing *Irwin v. Mascott*, 112 F. Supp. 2d 937 (N.D. Cal. 2000)); *see also Kalish v. Karp & Kalamotousakis, LLP*, 246 F.R.D. 461, 464 (S.D.N.Y. 2007) ("In the FDCPA context, while the potential for higher individual recoveries exists, realizing that potential requires assuming that each putative class member is aware of her rights, willing to subject herself to all the burdens of suing and able to find an attorney willing to take her case. Those transaction costs are not insubstantial and have prompted other courts in this Circuit to conclude that litigating as a class is superior to litigating individual FDCPA claims . . . ."); *Sledge*, 182 F.R.D. at 259 (finding that "a class action is the superior form of adjudication for" claims that debt collector's form debt collection letter violated the FDCPA); *Weber v. Goodman*, 9 F. Supp. 2d 163, 171 (E.D.N.Y. 1998) (rejecting defendants' argument that a class action was inappropriate because the class members might be able to recover more damages individually and noting that "no matter the number of letters, it is unlikely that any proposed class

member will bring an individual action against defendants for their alleged violations of the FDCPA. The class action form is the only way to ensure defendants' compliance with the FDCPA on this point. Each class member has a stake in vindicating his rights, and the public has an interest in seeing that the FDCPA is obeyed.").

Notwithstanding, because Plaintiffs ask this Court to certify this action in the context of a settlement, the requirements of Rule 23(a) and 23(b)(3) are readily satisfied. *See, e.g.*, *Amchem Prods., Inc.*, 521 U.S. at 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, *see* Fed. Rule Civ. Proc. 23(b)(3)(D), for the proposal is that there be no trial."). Accordingly, a class action is the superior method to adjudicate the claims of members of the settlement class.

III. The proposed class action settlement is fair and reasonable.

The FDCPA's civil liability provision states, in relevant part:

> [A]ny debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—
>
> (1) any actual damage sustained by such person as a result of such failure;
>
> * * *
>
> (B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector; and

15 U.S.C. § 1692k.

Here, Defendant has agreed to pay a substantial sum to Plaintiffs and the members of the proposed settlement class. In particular, it has agreed to establish a common fund of approximately $13,610 for the benefit of the class. Defendant also has agreed to make separate payments of

$1,000 to Mr. Schuchardt and to Ms. Muggli pursuant to 15 U.S.C. § 1692k(a)(2)(A). This equates to a total monetary settlement value of approximately $15,610.[4]

Of the utmost significance, the monetary portion of the settlement actually provides cash relief to the members of the class in excess of the limits imposed by the FDCPA. This is because the FDCPA limits statutory damages to a maximum of one percent of Defendant's net worth. *See id.*, § 1682k(A)(2)(B). And while the parties may ultimately disagree about the proper way to calculate Defendant's net worth, by making payments of at least $10.00 to each class member, Defendant will pay a total of $13,610.00 to absent class members—an amount that exceeds one percent of Defendant's net worth as defined by *Sanders v. Jackson*, 209 F.3d 998, 1004 (7th Cir. 2000) ("net worth" within meaning of § 1692k means "balance sheet or book value net worth" of assets minus liabilities).

Also worth mentioning, the $10.00 per-class-member recovery compares very favorably with other recoveries in the context of FDCPA class actions. For example, just two months ago, the Western District of Michigan preliminarily approved a nearly identical FDCPA class action settlement in which the named plaintiff will receive $1,000, class members will receive $10 each, and the defendant similarly agreed to change its collection practices moving forward. *Whitford v. Weber & Olcese, P.L.C.*, No. 15-400, 2015 WL 5607659 (W.D. Mich. Sept. 21, 2015); *see also Rhodes v. Olson Assocs., P.C.*, 308 F.R.D. 664, 667 (D. Colo. 2015) (preliminarily approving class settlement allowing for as little as $7.10 per class member); *Little-King v. Hayt Hayt & Landau*, No. 11-5621, 2013 WL 4874349, at *3, *14 (D.N.J. Sept. 10, 2013) ($40,000 fund for class of

[4] Logistically, class members will not need to submit a claim form, or any other documentation, to receive a settlement payment. To the extent any settlement checks go uncashed after the claims administrator takes all reasonable steps to forward checks to any forwarding addresses, such funds will be redistributed to Bay Area Legal Aid as a *cy pres* recipient. None of the funds will revert back to Defendant.

49,156 resulted in recovery of $7.87 per claimant); *Jerman v. Carlisle*, 271 F.R.D. 572, 576-77 (N.D. Ohio 2010) (certifying class even though cap on damages under FDCPA would limit relief to $3.10 per class member); *Hicks v. Client Servs., Inc.*, 257 F.R.D. 699, 700-01 (S.D. Fla. 2009) (approving class settlement where the maximum per-member recovery was $1.24); *Jancik v. Cavalry Portfolio Servs., LLC*, CV-06-3104 (MJD/AJB), 2007 WL 1994026 (D. Minn. July 3, 2007) (certifying an FDCPA class where the class members could have recovered only $6.94 each); *Bourlas v. Davis Law Assocs.*, 237 F.R.D. 345, 355 (E.D.N.Y. 2006) (settlement fund of $21,759 would net class members approximately $7.32); *Cope v. Duggans*, 203 F. Supp. 2d 650, 653 (E.D. La. 2002) (approving FDCPA settlement where class members returning claim forms would receive $11.90 each).[5]

Importantly, Defendant has also agreed to ensure, going forward, that its initial debt collection letters contain proper disclosures mandated by the FDCPA. Simply, Defendant no longer will utilize the template debt collection letter it used to create the written communications it sent to Mr. Schuchardt, Ms. Muggli, and the remainder of the settlement class, which, of course, gave rise to the instant action. This portion of the settlement will benefit not just Plaintiffs and the settlement class members, but also every consumer nationwide who may become the subject of Defendant's debt collection efforts in the future. The parties' settlement here thus provides both current and prospective relief.

So considering the statutorily-limited damages available to the settlement class under the FDCPA, this settlement represents an excellent result for the members of the class, as well as any consumers who will encounter Defendant's debt collection practices in the future. Indeed, because

[5] Separate from the class's and Plaintiffs' recoveries, Defendant also will pay class counsel's attorneys' fees and expenses, as well as the costs of administering the settlement and providing direct mail notice to each class member.

class members will receive statutory damages in excess of what they could have received had Plaintiffs prevailed at trial and on appeal, and because consumers nationwide have secured prospective relief by way of Defendant's change in business practices, the settlement here is exceedingly fair and reasonable.

And if all this was not enough, the proposed settlement class members will receive notice of their claims and be given the opportunity to opt out of the proposed settlement, or to object to the proposed settlement, should they so choose. This is quite significant as FDCPA class members are often completely unaware of their rights under the statute, or that those rights may have been violated. Numerous courts have recognized this. *See, e.g.*, *Hunt*, 241 F.R.D. at 514 ("the Court agrees that individual consumers are most likely unaware of their rights under the FDCPA"); *Schwarm v. Craighead*, 233 F.R.D. 655, 664 (E.D. Cal. 2006) ("Not only are most individual consumers unaware of their rights under the FDCPA, but also the size of the individual claims is usually so small there is little incentive to sue individually."); *Abels*, 227 F.R.D. at 547 ("[A] class action is the superior form of adjudication for this case. Many plaintiffs may not know their rights are being violated, may not have a monetary incentive to individually litigate their rights, and may be unable to hire competent counsel to protect their rights.") (quoting *Sledge*, 182 F.R.D. at 259); *Ballard v. Equifax Check Servs., Inc.*, 186 F.R.D. 589, 600 (E.D. Cal. 1999) ("[I]ndividual consumers are most likely unaware of their rights under the FDCPA. Class action certifications to enforce compliance with consumer protection laws are desirable and should be encouraged.").

Consequently, that every settlement class member will receive actual notice of the settlement by direct mail—making them aware of statutory rights under the FDCPA of which they were likely unaware—the settlement is all the more appealing.

IV. The proposed notice plan constitutes the best notice that is practicable under the circumstances.

Rule 23 requires that "the court . . . direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). The notice must be reasonably calculated to apprise the settlement class of the pendency of the settlement and afford them an opportunity to present their objections or opt-out. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974) (explaining that "best notice practicable" means "individual notice to all members who can be identified through reasonable effort").

If class members can be identified and are given individual notice, there is no requirement for notice by publication or other means. "[N]otice by publication is only used when the identity and location of class members cannot be determined through reasonable efforts . . . ." *In re Wal-Mart Stores, Inc. Wage and Hour Litig.*, No. 06-02069 SBA, 2008 WL 1990806, at *2 (N.D. Cal. May 5, 2008).

The notice itself is "satisfactory" if it describes "the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *Simpao v. Gov't of Guam*, 369 F. App'x 837, 839 (9th Cir. 2010). Here, the proposed notice plan will be administered by a third-party claims administrator that will use all reasonable efforts to provide direct mail notice to each member of the class. This notice plan complies with Rule 23 and due process because, among other things, it informs the class members of (1) the nature of the action; (2) the essential terms of the settlement, including the definition of the class and claims asserted; (3) the binding effect of a judgment if the class members do not exclude themselves; (4) the process for objection and/or exclusion; (5) information regarding Plaintiffs' request for

reimbursement of their attorneys' fees and costs; and (6) how to contact Plaintiffs' attorneys to make inquiries. *See* Fed. R. Civ. P. 23(c)(2)(B); MANUAL FOR COMPLEX LITIGATION, § 21.312.

A copy of the proposed notice is attached as Exhibit B to the settlement agreement. In short, this notice plan ensures that class members' due process rights are amply protected and should be approved. *See* Fed. R. Civ. P. 23(c)(2)(A); *Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 479 (D. Md. 2014) ("Under the circumstances of this case, when all class members are known in advance, the Court finds that the method of direct mail notice to each class member's last known address—and a second notice if the first was returned as undeliverable—was the best practicable notice.").

Conclusion

"It hardly seems necessary to point out that there is an overriding public interest in settling and quieting litigation. This is particularly true in class action suits. . . ." *Franklin v. Kaypro Corp.*, 884 F.2d 1222, 1229 (9th Cir. 1989); *see also see also Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) ("We are mindful of the strong judicial policy in favor of settlements, particularly in the class action context."); *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977) ("Particularly in class action suits, there is an overriding public interest in favor of settlement."); *accord* NEWBERG ON CLASS ACTIONS, § 11:50 ("In most situations, unless the [class action] settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.").

It is therefore not surprising that courts have certified class actions under the FDCPA against the backdrop of settlements far less beneficial to the subject class members than the proposed settlement now before this Court. Therefore, and considering the value of the proposed settlement to the members of the proposed settlement class, Plaintiffs respectfully request that this Court (1) certify this matter as a class action, for settlement purposes only; (2) approve the parties'

proposed class action settlement; (3) approve their proposed class notice; (4) appoint Plaintiffs as class representatives; and (5) appoint Plaintiffs' counsel as class counsel.

Date: November 18, 2015

Respectfully submitted,

/s/ Aaron D. Radbil
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was file electronically on November 18, 2015, via the Court Clerk's CM/ECF system, which will provide notice to all counsel of record.

/s/ Aaron D. Radbil
Aaron D. Radbil