UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

JAMES A. SMITH, on behalf of himself and others similarly situated,	:	
Plaintiff,	:	Civil Action No. 1:17-cv-02291-RDB
v.	:	
COHN, GOLDBERG & DEUTSCH, LLC,	:	
Defendant.	:	

PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Cohn, Goldberg & Deutsch, LLC ("Defendant") is alleged to have violated section 1692g(a)(2) of the Fair Debt Collection Practices Act ("FDCPA") with respect to the initial debt collection letters it sent to approximately 3,042 consumers in several northeast states. James A. Smith ("Plaintiff") asserts that Defendant, in those letters, failed adequately to disclose the current creditors to whom the consumers' alleged debts are owed. Defendant denies any liability or that its practices violate the FDCPA.

Nonetheless, after defeating Defendant's challenge to the sufficiency of Plaintiff's claims, the parties have reached an agreement to resolve this case whereby Defendant will create a non-reversionary cash settlement fund of $17,500, allowing approximately $29 to $60 per participating class member, depending on the number of class members who submit valid claims. Going forward, Defendant will no longer use an initial debt collection letter in the form that gave rise to this suit. Defendant also will pay—separate and apart from the monies paid to class members—full statutory damages of $1,000 to Plaintiff, the costs of administering the settlement and providing direct mail notice to each class member, and class

counsel's attorneys' fees, costs, and expenses in an amount negotiated after consummation of the settlement and subject to this Court's approval at the conclusion of this case.

Notably, the class settlement fund achieved here well exceeds the statutory damages allowed by the FDCPA, which are capped by statute at one percent of Defendant's net worth. *See* 15 U.S.C. § 1682k(A)(2)(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 considering this damages limitation, the settlement represents an excellent result for the members of the class, as well as any consumers who become the subject of Defendant's debt collection efforts in the future.

Plaintiff now seeks certification of the settlement class and preliminary approval of the settlement. He and his counsel strongly believe that the settlement is fair, reasonable, and adequate, and in the best interests of class members. Correspondingly, Plaintiff respectfully requests that this Court enter the accompanying order granting preliminary approval of the settlement, directing class notice, and setting a final fairness hearing.

Defendant does not oppose this relief.

Settlement Summary

A copy of the parties' Class Action Settlement Agreement ("Agreement") is attached to the accompanying Declaration of Jesse S. Johnson in Support of Preliminary Approval of Class Action Settlement. The Agreement defines a settlement class under Rule 23(b)(3) comprised of:

> All persons to whom Cohn, Goldberg & Deutsch, LLC mailed an initial debt collection communication, between August 10, 2016 and November 12, 2017, in connection with the collection of a consumer debt secured by residential real estate, and which failed to include the term "current creditor."

Defendant represents that there are 3,042 class members, including Mr. Smith.

Class members who submit a valid, timely claim form will receive a pro-rata portion of the $17,500 settlement fund. Assuming typical participation rates of 10% to 20% in consumer protection class actions such as this one, participating class members here would likely receive between $29 and $60 each. 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 Homeless Persons Representative Project, Inc. as a *cy pres* recipient. None of the funds will revert back to Defendant.

Another significant benefit for the class, and for many consumers outside the class, is that Defendant has agreed to change its debt collection practices moving forward by abandoning the form collection letter at the heart of this litigation. In other words, Defendant will no longer engage in the very practice that formed the basis for the allegations in Plaintiff's class action complaint.

Separate from the class settlement fund, Defendant also will pay the costs of class notice and administration of the settlement, up to $9,000. This money will ensure that each class member receives direct mail notice of the settlement, along with a claim form, at his or her last known address based on Defendant's own records. The claims administrator will take all reasonable steps necessary to ensure that each class member receives such notice, including updating addresses for any mail returned as undeliverable. A highly experienced administrator, First Class, Inc., has confirmed that it can accomplish this task within budget, using the historical assumptions described above. However, should notice and administration costs ultimately exceed the $9,000 cap—unlikely as that may be—the additional costs will be deducted from the class settlement fund prior to pro-rata distributions to participating class members.[1]

[1] But if additional notice and administration costs arise due to there being more than 3,042 class members as Defendant initially represented, those additional costs will be borne solely by Defendant,

Finally, Defendant also will pay, separate from the settlement and administration funds, $1,000 in statutory damages to Plaintiff and, subject to this Court's approval, an award of attorneys' fees, costs, and expenses to class counsel in the negotiated amount of $37,500. Plaintiff will file a motion seeking approval for such a fee and expense award at the close of this case.

Argument

I. This Court should preliminarily certify the settlement class.

To certify the proposed settlement class, Plaintiff must satisfy each of the four requirements of Rule 23(a)—numerosity, commonality, typicality, and adequacy of representation—as well as one of the requirements of Rule 23(b). *See Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 477-78 (D. Md. 2014) (Quarles, Jr., J.) (approving class action settlement).[2] Here, Plaintiff proposes a settlement class pursuant to Rule 23(b)(3), and because certification is sought 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. v. Windsor*, 521 U.S. 591, 620 (1997) ("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.").

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

Rule 23(a)'s first requirement is that the class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). As the Fourth Circuit has explained, "[n]o specified number is needed to maintain a class action." *Brady v. Thurston Motor Lines*, 726 F.2d 136, 145 (4th Cir. 1984).

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irrespective of the negotiated cap, per the parties' Agreement.

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

Rather, "an application of the rule is to be considered in light of the particular circumstances of the case." *Id*. "[C]lasses with as few as 25 to 30 members have been found to raise the presumption that joinder would be impractical." *Decohen*, 299 F.R.D. at 477.

Here, Defendant avers that there are approximately 3,042 letter recipients forming the class. Joinder of all members thus would be "wholly impracticable," and Plaintiff has accordingly satisfied the numerosity requirement of Rule 23(a). *Bicking v. Mitchell Rubenstein & Assocs., P.C.*, No. 11-78, 2011 WL 5325674, at *2 (E.D. Va. Nov. 3, 2011) (class exceeding 15,000 members); *see also Gunnells v. Healthplan Svcs., Inc.*, 348 F.3d 417, 425 (4th Cir. 2003) (class of 1,400 members "easily satisfied Rule 23(a)(1)'s numerosity requirement"); *Decohen*, 299 F.R.D. at 477 (settlement class of more than 2,000 persons).

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

"Rule 23(a)(2) does not require that all factual or legal questions raised in a litigation be common, so long as at least one issue is common to all members." *Woodard v. Online Info. Servs.*, 191 F.R.D. 502, 505 (E.D.N.C. 2000) (certifying FDCPA class). "Factual differences among the class members' cases do not violate the rule, so long as a common legal theory is shared." *Id*. Commonality is generally satisfied when, as here, the defendant has engaged in a standardized course of conduct that affects all class members.

And "[h]ere, 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*, 2011 WL 5325674, at *2. Each class member, therefore, has the same claim against Defendant, so the commonality requirement is met. *See Talbott v. GC Svcs. Ltd. P'ship*, 191 F.R.D. 99, 103 (W.D. Va. 2000) ("Mailing a standardized collection letter satisfies commonality and has

been the basis for certification in similar cases."); *D'Alauro v. GC Servs. Ltd. P'ship*, 168 F.R.D. 451, 456 (E.D.N.Y. 1996) ("Because all of the proposed class members did receive each of the two identical letters at issue in this case, the allegations in the complaint are common to all proposed class members. Standardized conduct is present here and, as stated above, such conduct weighs in favor of a finding that the commonality requirement is met.").

C. Plaintiff's claims are typical of the claims of the members of his proposed class.

Typicality requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "Typicality is satisfied when the event arises from the same event or practice or course of conduct and similarity of legal theory may control even in the face of differences of fact." *Talbott*, 191 F.R.D. at 104.

Here, Plaintiff and the members of the class suffered from a common practice employed by Defendant through the issuance of its standardized initial debt collection letters, which did not contain proper disclosures mandated by the FDCPA. Thus, Plaintiff possesses the same interests and has suffered the same injuries as each class member, and he asserts identical claims and seeks identical relief on behalf of the unnamed class members. As a result, Plaintiff's claims are typical of those of the class. *See Bicking*, 2011 WL 5325674, at *3 ("The Fourth Circuit has explained that an assessment of typicality requires a comparison of the plaintiffs' claims or defenses with those of the absent class members. Here, since they stem from the same operative facts and give rise to the same entitlement to relief, the Plaintiffs' and class members' claims are sufficiently interrelated that the interest of the class members will be fairly and adequately protected in their absence. Accordingly, the Court is satisfied as to typicality."); *Woodard*, 191 F.R.D. at 505 ("Here, all class members' claims are grounded in an identical practice and legal theory—the mailing of improper debt-collection letters in violation of the FDCPA."); *Talbott*, 191. F.R.D. at 104

("Typicality is, by definition, inherent in Talbott's class, i.e., each class member was subjected to the same FDCPA violation as Talbott when they were sent the dunning letter.").

D. Plaintiff and his counsel will fairly and adequately protect the interests of the members of the proposed class.

Next, the Court must determine if "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To adequately represent a class, a named plaintiff must show that he can act in a fiduciary role representing the interests of the class, and has no interests antagonistic to the interests of the class. Here, Mr. Smith has diligently pursued this case since its inception with the goal of obtaining relief not only for himself, but also for the members of the class. *See Bicking*, 2011 WL 5325674, at *3 ("given the nexus and lack of potential conflict between their claims and those of the putative class, Plaintiffs are adequate representatives"); *Talbott*, 191 F.R.D. at 105 ("There is no conflicting interest between Talbott's claim and those of the [class members].").

Likewise, Plaintiff's attorneys, Greenwald Davidson Radbil PLLC ("GDR"), are well qualified to serve as class counsel in this matter given their ample experience with consumer protection class actions like this one. *See, e.g.*, *Beck v. Thomason Law Firm, LLC*, No. 16-570, 2017 WL 3267751 (D.N.M. July 27, 2017) (appointing GDR class counsel and approving FDCPA class settlement); *Johnston v. Kass Shuler, P.A.*, No. 16-3390, 2017 WL 1231070 (M.D. Fla. Mar. 29, 2017) (same); *Marcoux v. Susan J. Szwed, P.A.*, No. 15-93, 2016 WL 5720713 (D. Me. Oct. 3, 2016) (same); *Cobb v. Edward F. Bukaty, III, PLC*, No. 15-335, 2016 WL 4925165 (M.D. La. Sept. 14, 2016) (same); *Schell v. Frederick J. Hanna & Assocs., P.C.*, No. 15-418, 2016 WL 3654472 (S.D. Ohio July 8, 2016) (same); *Kausch v. Berman & Rabin, P.A.*, No. 15-537, ECF No. 33 (E.D. Mo. July 8, 2016) (same); *Chamberlin v. Mullooly, Jeffrey, Rooney & Flynn, LLP*, No. 15-2361, ECF No. 44 (D.N.J. June 2, 2016) (same); *Schuchardt v. Law Office of Rory W. Clark*, 314 F.R.D. 673 (N.D. Cal. 2016) (same); *Garza v. Mitchell Rubenstein & Assocs., P.C.*,

No. 15-1572, ECF No. 22 (D. Md. Apr. 25, 2016) (Hazel, J.) (same); *Roundtree v. Bush Ross, P.A.*, No. 14-357, 2016 WL 360721 (M.D. Fla. Jan. 28, 2016) (same).

As a result, Plaintiff satisfies Rule 23(a)(4) here.

E. Plaintiff's counsel should be appointed class counsel.

Moreover, Rule 23(g)(4) requires this Court to appoint counsel who will fairly and adequately represent the class, and to consider (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit in representing the class. Given GDR's ample experience with consumer class actions, and its work to date in defeating Defendant's motion to dismiss and obtaining a favorable and efficient recovery for the proposed class, the requirements of Rule 23(a)(4) and Rule 23(g) are satisfied here.

F. The questions of law and fact common to the members of Plaintiff's proposed class predominate over any questions potentially affecting only individual members.

Turning to Rule 23(b)(3), the Supreme Court has counseled that this "inquiry trains on the legal or factual questions that qualify each class member's case as a genuine controversy," with the purpose being to determine whether a proposed class is "sufficiently cohesive to warrant adjudication by representation." *Amchem Prods., Inc.*, 521 U.S. at 623. The objective of Rule 23(b)(3) is to promote economy and efficiency in actions that are primarily for money damages. Where common questions "predominate," a class action can achieve economies of time, effort, and expense as compared to separate lawsuits, permit adjudication of disputes that cannot be economically litigated individually, and avoid inconsistent outcomes, because the same issue can be adjudicated the same way for the entire class. Fed. R. Civ. P. 23(b)(3), advisory committee's note (1966). Thus, "[p]redominance is a test readily met in certain cases

alleging consumer or securities fraud or violations of the antitrust laws." *Amchem Prods., Inc.*, 521 U.S. at 625.

Here, the core legal issue before this Court is whether Defendant's standardized initial debt collection letters violate the FDCPA by failing adequately to notify consumers of the current creditors of their alleged debts, in violation of § 1692g(a)(2). As a result, Plaintiff satisfies the predominance requirement. *See Bicking*, 2011 WL 532674, at *3 ("In this matter, all of the proposed class members' claims arise from Defendants' act of mailing the dunning letter at issue. And as already established, their legal theories are identical: Each class member's potential claim turns on the single question of whether Defendants' Verification Notice violated the FDCPA. That shared issue clearly predominates over potential peripheral matters, making collective resolution sensible in this case."); *Talbott*, 191 F.R.D. at 106 ("it is the use of standardized debt collection letters that have given rise to the plaintiff's claim. The questions of law and fact involved . . . relate to the use of the debt collection letters admittedly mailed by defendant to the proposed class. These common questions of law and fact surrounding the contents and mailing of these letters predominate over individual issues.") (citing *D'Alauro*, 168 F.R.D. at 458).

G. A class action is the superior means for the fair and efficient adjudication of Plaintiff's and the class's claims.

Finally, Rule 23(b)(3) further requires that a district court determine that "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." 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).

Because the claim in this case arises from a form initial debt collection letter, a class action is the superior vehicle for determining the rights of absent class members. No one member of the class has an interest in controlling the prosecution of this action because the claims of all class members are identical, as the allegations involve standardized conduct. Alternatives to a class action are either no recourse for thousands of class members, or a multitude of lawsuits filed in different forums resulting in the inefficient administration of the litigation. Thus, superiority is satisfied here. *See Bicking*, 2011 WL 532674, at *4 ("class litigation provides a superior means of adjudicating the claims presented here, as the minimal recovery available to most litigants under the FDCPA gives little incentive for class members to pursue their claims individually"); *Talbott*, 191 F.R.D. at 106 ("Several courts examining these factors say that class actions are the most efficient way to try the legality of a collection letter.").

II. This Court should preliminarily approve the settlement as fair, reasonable, and adequate under Rule 23(e).

Rule 23(e) requires that the Court make a preliminary determination of fairness for the proposed settlement:

> Review of a proposed class action settlement generally involves two hearings. First, counsel submit the proposed terms of settlement and the judge makes a preliminary fairness evaluation. In some cases, this initial evaluation can be made on the basis of information already known, supplemented as necessary by briefs, motions, or informal presentations by the parties. If the case is presented for both class certification and settlement approval, the certification hearing and preliminary fairness evaluation can usually be combined . . . . The judge must 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.

MANUAL FOR COMPLEX LITIGATION § 21.632 (4th ed. 2004); *see also* 4 ALBA CONTE & HERBERT B. NEWBERG, NEWBERG ON CLASS ACTIONS, § 11.25 (4th ed. 2002). Then, after the preliminary fairness evaluation has been made, the class has been certified for settlement purposes, and

notice has been issued, the Court holds a final fairness hearing to show that the proposed settlement is truly fair, reasonable, and adequate. *See* MANUAL FOR COMPLEX LITIGATION § 21.633-34; 4 NEWBERG, *supra* at § 11.25.

Preliminary approval requires only that the Court evaluate whether the proposed settlement: (1) was negotiated at arm's-length, and (2) 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 § 21.632-33. And while a complete fairness evaluation is unnecessary at this juncture, Plaintiff and his counsel firmly believe that the settlement reached here is in the class's best interests. To that end, the Fourth Circuit has identified a number of factors to assess the procedural and substantive fairness of a settlement proposal: (1) the posture of the case at the time settlement was proposed; (2) the extent of discovery that had been conducted; (3) the circumstances surrounding the negotiations; (4) the experience of counsel in the area of class action litigation; (5) the relative strength of the plaintiff's case on the merits; (6) the existence of any difficulties of proof or strong defenses the plaintiff is likely to encounter if the case goes to trial; (7) the anticipated duration and expense of additional litigation; (8) the solvency of the defendants and the likelihood of recovery on a litigated judgment; and (9) the degree of opposition to the settlement. *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 159 (4th Cir. 1991).

Here, each relevant factor supports the conclusion that the parties' settlement is fundamentally fair, adequate, and reasonable. And in applying these factors, this Court should be guided foremost by the general principle that settlements of class actions are favored. *S. Carolina Nat'l Bank v. Stone*, 749 F. Supp. 1419, 1423 (D.S.C. 1990) (noting that "[i]n the class action context in particular, 'there is an overriding public interest in favor of settlement'") (citing *Armstrong v. Bd. of Sch. Dirs.*, 616 F.2d 305,

313 (7th Cir. 1980)). By their very nature, because of the uncertainties of outcome, difficulties of proof, and lengthy duration, class actions readily lend themselves to compromise. Indeed, "[t]here is a strong presumption in favor of finding a settlement fair. Because a settlement hearing is not a trial, the court's role is more balancing of likelihoods rather than an actual determination of the facts and law in passing upon the proposed settlement." *Decohen,* 299 F.R.D. at 479; *see also Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976) (public interest in settling litigation is "particularly true in class action suits . . . which frequently present serious problems of management and expense"). Moreover, the Court should give a presumption of fairness to arm's-length settlements reached by experienced counsel. *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution.").

A. The parties fairly and honestly negotiated their settlement with the benefit of experienced counsel, whose views favor preliminary approval.

The first through fourth *Jiffy Lube* factors support approval. The parties' arm's-length settlement negotiations demonstrate the fairness of the settlement that was reached, and that it is not a product of collusion. Counsel for Defendant and Plaintiff each zealously negotiated on behalf of their clients, and a settlement was reached only after the exchange of multiple written settlement demands and counteroffers, and after multiple telephone conferences throughout the process. What's more, counsel are amply qualified to serve their clients given their valuable experience with similar class litigation. *See, e.g.*, Johnson Decl. at ¶¶ 6-9.

While this litigation has only been pending since August 2017, the settlement was achieved with a clear view as to the strengths and weaknesses of Plaintiff and the class's case, particularly in light of the Court's ruling on Defendant's motion to dismiss. *See Smith v. Cohn, Goldberg & Deutsch, LLC*, --- F. Supp. 3d ----, 2017 WL 4921695 (D. Md. Oct. 30, 2017). Following that ruling, the parties undertook

settlement discussions and exchanged informal discovery to that end, which included information regarding Defendant's net worth, potential class damages, and the number of potential class members.

Counsel, who have substantial experience in litigating consumer protection class actions, and this Court are therefore adequately informed to evaluate the fairness of the settlement. Both Plaintiff and class counsel firmly believe that the settlement is fair, reasonable, and adequate, and in the best interests of the class. *Decohen*, 299 F.R.D. at 480 ("Class counsel have significant litigation and appellate experience and . . . has served as class counsel in several successful consumer rights class actions . . . [and] have attested to the fairness of the proposal in the Settlement Agreement. Accordingly, because class counsel's experience—and the other *Jiffy Lube* factors—weigh in favor of fairness, the Court will find that the settlement is fair.").

B. The strengths of Plaintiff's case and the risks inherent in continued litigation and securing class certification favor preliminary approval.

The fifth *Jiffy Lube* factor similarly favors preliminary approval. While Plaintiff is confident in his claims, every class action—indeed, every case—involves some level of uncertainty on the merits. Settlements resolve that inherent uncertainty, and are therefore strongly favored by the courts, particularly in class actions. This action is not unique in this regard.

Even with the benefit of this Court's early ruling on the sufficiency of the allegations, the parties disagree about the merits of Plaintiff's claims, creating uncertainty about the ultimate outcome of this litigation and whether a class would be certified. Given these considerations, preliminary approval of the settlement is appropriate to avoid the uncertainties of continued litigation in favor of immediate compensation for class members. *See Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 680 (D. Md. 2013) ("Furthermore, absent final approval of the Amended Settlement Agreement, litigation of this dispute could prove to be long and expensive. In particular, the likely next steps in this case—e.g.,

additional discovery and dispositive motions—would require substantial time by the parties' attorneys. Although there is nothing to indicate that Defendant would be unable to satisfy a judgment if one were ultimately entered, it is not clear how long it might take to resolve this lawsuit. On balance, the risks, delays, and costs associated with further litigation weigh in favor of granting final approval of the Amended Settlement Agreement.").

C. The substantial cash relief afforded by the settlement—when compared to the limitations on damages imposed by the FDCPA—favors preliminary approval.

And the immediate compensation offered is attractive. In evaluating the fairness of the consideration offered in settlement, it is not the role of this Court to second-guess the negotiated resolution of the parties. "[T]he 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." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (quoting *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 626 (9th Cir. 1982)). The issue is not whether the settlement could have been better in some fashion, but whether it is fair: "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*, 150 F.3d at 1027.

No matter, here, the settlement achieves victory beyond what could have been expected at trial. It provides cash relief to class members in excess of the limits imposed by the FDCPA of one percent of Defendant's net worth. *See* 15 U.S.C. § 1682k(A)(2)(B). While the parties disagree about the proper way to calculate that net worth, Defendant has committed $17,500 to class members, which well exceeds one percent of its own balance sheet 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).

Plaintiff also secured prospective relief in that Defendant will no longer use the initial debt collection letter at issue, a public benefit that was not necessarily available at trial, as courts disagree on whether the FDCPA allows such injunctive relief. *See, e.g.*, *Midland Funding LLC v. Brent*, 644 F. Supp. 2d 961, 977 (N.D. Ohio 2009) ("This Court agrees that declaratory and injunctive relief are not appropriate under the FDCPA.").

Given this change in Defendant's practices and class members' award of statutory damages in excess of what they could have received had they prevailed at trial and on appeal, this settlement is fair, reasonable, and adequate, and should be preliminarily approved. *See Singleton*, 976 F. Supp. 2d at 680 ("Even if the Plaintiffs were to prevail on their FCRA claims at trial, it is far from certain that a jury would award the maximum of $1,000 to each Class member, especially given the statutory factors that have to be taken into account in making such an award, including frequency and persistence of noncompliance with the statute, nature of the noncompliance, and the extent to which noncompliance was willful or negligent. Further, this case involves allegations of technical FCRA violations, which creates the risk that even if a jury awarded the minimum requisite statutory damages, i.e., $100 to each of the individual class members, the court may find remitter/reduction appropriate.").

This is particularly true considering there was never any guarantee of full statutory damages, even presuming trial victory, because the FDCPA's damages provision is permissive rather than mandatory. That is, the law provides for statutory damages awards *up to* certain amounts ($1,000 for Plaintiff, and the lesser of $500,000 or 1% of Defendant's net worth for the class) after balancing such factors as the nature of the debt collector's noncompliance, the number of persons adversely affected, and the extent to which

the debt collector's noncompliance was intentional. 15 U.S.C. § 1692k(b)(2). Thus, despite a victory in the class's favor, this Court may still have awarded class members little in the way of statutory damages, or even no damages at all. *See Schuchardt v. Law Office of Rory W. Clark,* 314 F.R.D. 673, 683 (N.D. Cal. 2016) ("Because damages are not mandatory, continued litigation presents a risk to Plaintiffs of expending time and money on this case with the possibility of no recovery at all for the Class. In light of the risks and costs of continued litigation, the immediate reward to Class Members is preferable."). Accordingly, the sixth *Jiffy Lube* factor likewise supports preliminary approval of the settlement.

D. The immediate value obtained for the class outweighs the mere possibility of future relief after protracted and expensive litigation.

As for the seventh *Jiffy Lube* factor, Plaintiff is pleased to have obtained an immediate recovery for the class that exceeds the cap on statutory damages while avoiding the pitfalls and expense of continued litigation. That is, rather than risk the possibility of a smaller recovery, or even no recovery at all, after several more months of battle, Plaintiff proposes a $17,500 class fund that will provide immediate individual recoveries likely between $29 and $60 per person, which compares favorably to other recent FDCPA class settlements founded on allegedly insufficient disclosures. *See, e.g.*, *Beck*, 2017 WL 3267751, at *1, *3 (between $43 and $86 per class member); *Marcoux v. Susan J. Szwed, P.A.*, No. 15-93, 2017 WL 679150, at *4 (D. Me. Feb. 21, 2017) ($42 per class member) *Cobb*, 2016 WL 4925165, at *4 ($52.28 each); *Bellum v. Law Offices of Frederic I. Weinberg & Assocs., P.C.*, No. 15-2460, 2016 WL 4766079, at *3 (E.D. Pa. Sept. 13, 2016) ($10.92 each); *Schell*, 2016 WL 3654472, at *2 ($10 each); *Kausch*, No. 15-537, ECF No. 33, at 3 ($39.06 each); *Chamberlin*, No. 15-2361, ECF No. 44 at 4 ($12.62 each); *Schuchardt*, 314 F.R.D. at 684 ($15.10 each); *Whitford v. Weber & Olcese, P.L.C.*, No. 15-400, 2016 WL 122393 (W.D. Mich. Jan. 11, 2016) ($10 each).

III. This Court should approve the proposed notice plan.

Under Rule 23(e), this Court must "direct notice in a reasonable manner to all class members who would be bound" by the proposed settlement. Fed. R. Civ. P. 23(e)(1). Notice of a proposed settlement to class members must be the "best notice practicable." *See* Fed. R. Civ. P. 23(c)(2)(B). "[B]est notice practicable" means "individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). If class members can be identified and are given individual notice, there is no requirement for notice by publication or other means. *In re Wal-Mart Stores, Inc. Wage and Hour Litig.*, No. 06-2069, 2008 WL 1990806, at *2 (N.D. Cal. May 5, 2008).

Here, the parties have agreed to a notice program to be administered by a third-party class administrator that will use all reasonable efforts to provide direct mail notice and a straightforward claim form to each potential class member. This notice plan complies with Rule 23 and due process because, among other things, it informs 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 member does not request exclusion; (4) the process for objection and/or exclusion, including the time and method for objecting or requesting exclusion and that class members may make an appearance through counsel; (5) how to submit claims; (6) information regarding the named plaintiff's request for reimbursement of his attorneys' fees, costs, and expenses; and (7) how to make inquiries and where to find additional information. Fed. R. Civ. P. 23(c)(2)(B); MANUAL FOR COMPLEX LITIGATION § 21.312.

A copy of the proposed direct mail notice is attached as Exhibit C to the settlement agreement. Also attached to the agreement as Exhibit D is the long-form notice to be posted on class counsel's website for easy access and review by class members. The direct mail notice will provide a condensed summary

of the settlement, refer class members to GDR's website (and the long-form notice) for more information, and also provide a detachable claim form with instructions for submission. The proposed notice plan thus ensures that class members' due process rights are amply protected and should be approved. *See* Fed. R. Civ. P. 23(c)(2)(A); *Decohen*, 299 F.R.D. at 479 ("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.").

IV. This Court should schedule a final fairness hearing.

Finally, the last step in the settlement approval process is a final fairness hearing at which this Court may hear all evidence and argument necessary to make its final fairness evaluation. Fed. R. Civ. P. 23(e)(2). Proponents of the settlement may offer argument in support of final approval. In addition, settlement class members who have properly objected to the settlement may be heard at this hearing. The Court will determine after the final fairness hearing whether the settlement should be approved, and whether to enter a judgment and order of dismissal under Rule 23(e). The parties respectfully request that this Court set a date for a hearing on final approval at the Court's convenience, between 90 and 120 days after the Court's preliminary approval of the settlement.

Conclusion

Plaintiff respectfully requests that this Court enter the accompanying order granting preliminary approval to the parties' class action settlement, certifying the proposed settlement class, appointing Plaintiff class representative and his counsel class counsel, and directing notice in the manner described above. Defendant does not oppose this relief.

Dated this 1st day of March, 2018.

/s/ Jesse S. Johnson
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Counsel for Plaintiff and the proposed class

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2018, I filed the foregoing with the Court using the Clerk of Court's CM/ECF system, which will provide notice to all counsel of record.

/s/ Jesse S. Johnson
Jesse S. Johnson