UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DELIA AIKENS, on behalf of herself and all others similarly situated, Plaintiffs, vs. MALCOLM CISNEROS, a law corporation; Defendant.	CASE NO. 5:17-CV-02462-JLS-SP **ORDER (1) GRANTING PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT (Doc. 54); AND (2) SETTING A FINAL FAIRNESS HEARING DATE FOR DECEMBER 13, 2019, AT 10:30 A.M.**

Before the Court is Plaintiff Delia Aikens' unopposed Motion for Preliminary Approval of Class Action Settlement. (Mot., Doc. 54-1.) Plaintiff seeks preliminary approval of a proposed class action settlement of claims that Defendant Malcolm Cisneros, A Law Corporation violated the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, and corresponding sections of the Rosenthal Fair Debt Collections Practices Act ("RFDCPA"), Cal. Civ. Code § 1788. (*Id.* at 1.) Plaintiff asks the Court to (1) preliminarily approve the terms of the class action settlement; (2) certify the proposed class for settlement purposes only; (3) appoint Delia Aikens as Class Representative; (4) appoint Jesse S. Johnson of Greenwald Davis Radbil PLLC as Class Counsel; (5) approve First Class, Inc. as the settlement administrator; (6) approve the form and manner of class notice; and (7) schedule a final fairness hearing. (*Id.* at 2, 22.) The Court requested supplemental briefing regarding Defendant's net worth to allow the Court to evaluate the settlement's fairness, reasonableness, and adequacy. (*See* Order, Doc. 60.) The parties filed additional information addressing the Court's concerns. (*See* Supplemental Brief, Doc. 61; Defendant's Balance Sheet, Doc. 61-1.) Having read and considered the papers on file and taken the matter under submission, the Court GRANTS Plaintiff's Motion and sets a final fairness hearing for December 13, 2019, at 10:30 a.m.

I. BACKGROUND

Plaintiff Delia Aikens incurred a debt that Defendant was later employed to collect. (Complaint ¶ 12, Doc. 1.) Plaintiff alleges that Defendant mailed letters to her on October 4, 2017 and October 5, 2017 that failed to comply with notice requirements of the FDCPA and the RFDCPA. (*Id.* ¶¶ 19, 29–32.) She further alleges that Defendant made false and deceptive threats in these letters to initiate foreclosure proceedings if Plaintiff did not pay the debt in full. (*Id.* ¶¶ 34–35, 37.) On December 8, 2017, Plaintiff filed a class action lawsuit against Defendant alleging claims for: (1) violation of the FDCPA, 15 U.S.C. §§ 1692g(a)(3–5), e(5), e(2)(A), e(10), and f; and (2) violation of the RFDCPA, Cal. Civ.

Code § 1788.17, which provides that debt collectors must comply with FDCPA sections 1692b to 1692j. (*Id.* ¶¶ 66–128.)

Defendant filed an Answer to the Complaint on April 16, 2018. (Doc. 19.) The parties then engaged in informal discovery and settlement negotiations. On November 16, 2018, Plaintiff filed a Motion for Class Certification. (Doc. 39.) On January 2, 2019, Plaintiff filed a notice of settlement. (Doc. 43.) On January 9, 2019, the Court denied the Motion for Class Certification as moot and ordered Plaintiff to file a motion for preliminary approval of the parties' class action settlement. (Doc. 45.)

The Settlement Agreement defines the Class Members as all persons with a California address "to whom [Defendant] mailed a written Notice of Intent to Foreclose" in relation to a foreclosure of a deed of trust between December 8, 2016 and December 8, 2017. (Declaration of Jesse S. Johnson, Settlement Agreement, Exhibit 1 at 5 ¶ 1.C, Doc. 54-2.) While the parties initially estimated that the class had 40 members, supplemental briefing reveals that Defendant found additional Class Members, bringing the total to 46. (Settlement Agreement at 6; Supp. Brief at 1 n1.)

The Settlement Agreement provides for a full-distribution, non-reversionary settlement fund of $6,900. (Supp. Brief at 1.; Settlement Agreement at 11–12.) The FDCPA caps the named plaintiff's damages at $1,000 and class damages at an amount "not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector." *See* 15 U.S.C. § 1692k(a)(1)(2)(B). The parties assert that Defendant's net worth is $2,260,696 and that Class Member's recovery is thus capped at one percent of this net worth—$22,606.96. (Supp. Brief at 2; Defendant's Balance Sheet.) The proposed settlement fund—$6,900—is approximately 31% of this maximum recovery, each of the 46 Class Members would receive $150.00 from the fund[1] (*id.*), and Plaintiff would receive

[1] The Settlement Agreement provides that "[s]hould Defendant discover additional Class Members, the Settlement Fund will be increased by $150 per additional Class Member." (Settlement Agreement at 11.)

the full $1,000 permitted by the FDCPA for named plaintiffs. (Settlement Agreement at 12.) Plaintiff has also obtained injunctive relief—Defendant has already discontinued use of the form letter at issue. (*Id.* at 14.) The parties propose First Class, Inc. as the claims administrator. (*Id.* at 8.) First Class's costs and expenses for the administration of the settlement and class notice will be paid by Defendant separate and apart from the settlement fund. (*Id.*) Likewise, Class Counsel's attorneys' fees and costs will be paid by Defendant separate and apart from the settlement fund. (*Id.* at 13.) Though "Defendant reserves its right to contest the amount of attorneys' fees, costs, and expenses sought by Class Counsel" (*id.*), the parties are negotiating a proposed fee and expense award for Class Counsel. (Mem. at 2 n.1.)

In return for the settlement fund payments, Class Members fully release and discharge Defendant from the following:

> [A]ll claims arising out of the lawsuit, including claims under 15 U.S.C. §§ 1692g(a)(3)-(5), 15 U.S.C. § 1692e(5), 15 U.S.C. § 1692e(2)(A), 15 U.S.C. § 1692e(10), 15 U.S.C. § 1692f, and Cal. Civ. Code § 1788.17 arising out of initial written communications that Defendant sent, between December 8, 2016 and December 8, 2017, in connection with the foreclosure of a deed of trust.

(Settlement Agreement at 6 ¶ 1.D.) The release applies to Defendant and "each of its past, present, and future directors, officers, employees, partners, principals, clients, insurers, co-insurers, re-insurers, shareholders, attorneys, and any related or affiliated company, including any parent, subsidiary, predecessor, or successor company" with the exception of former Third-Party Defendants Panatte, LLC and Special Default Services, Inc.[2] (*Id.* at 6–7 ¶ 1.E.)

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[2] Defendant filed a third-party complaint seeking indemnity from Panatte and Special Default Services (Doc. 37) and Panatte filed a motion to dismiss (Doc. 42). Defendant and Panatte ultimately settled and Panatte withdrew the motion. (Doc. 58.)

The Settlement Agreement also enumerates the process for Class Notice. Defendant will provide the claims administrator with the name and last known address of each Class Member. (*Id.* at 8 ¶ 7.A.) The claims administrator will, within 21 days of the Court's Order of Preliminary Approval of the Class Action Settlement, attempt to confirm and update these addresses and then send the notice to each Class Member via U.S. mail. (*Id.*) If the claims administrator receives a returned notice with a new address, the notice will be forwarded accordingly. (*Id.*) If a returned notice is missing a forwarding address, the claims administrator will run a skip trace to search for a new address and will resend the notice if updated address information is located. (*Id.* at 9 ¶ 7.A.)

Class Members will not be required to submit a claim form to receive benefits under the Settlement Agreement. (Johnson Decl. ¶ 12.) Each Class Member who does not exclude herself will be mailed a check. Any checks still uncashed after 120 days will be voided. (Settlement Agreement at 12 ¶ 10.A.) The Settlement Agreement provides that unclaimed funds will be paid to Riverside Legal Aid as a *cy pres* recipient. (*Id.*)

Plaintiff now moves for preliminary approval of the proposed settlement. (Mem.) Plaintiff contends that the proposed settlement is fair, reasonable, adequate, and in the best interest of the proposed class. (*Id.* at 2.)

II. CONDITIONAL CERTIFICATION OF THE CLASS

Plaintiff asks the Court to preliminarily certify the proposed settlement class for settlement purposes under Rule 23(a) and 23(b)(3). (*Id.* at 5.)

"A party seeking class certification must satisfy the requirements of Federal Rule of Civil Procedure 23(a) and the requirements of at least one of the categories under Rule 23(b)." *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 542 (9th Cir. 2013). Rule 23(a) "requires a party seeking class certification to satisfy four requirements: numerosity, commonality, typicality, and adequacy of representation." *Id.* (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011)). Rule 23(a) provides:

> One or more members of a class may sue or be sued as representative parties on behalf of all members only if:
>
> (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 parties are typical of the claims or defenses of the class; and
>
> (4) the representative parties will fairly and adequately protect the interests of the class.

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

"Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc." *Dukes*, 564 U.S. at 350. This requires a district court to conduct a "rigorous analysis" that frequently "will entail some overlap with the merits of the plaintiff's underlying claim." *Id.* at 350–51.

"Second, the proposed class must satisfy at least one of the three requirements listed in Rule 23(b)." *Id*. at 345. Here, Plaintiff seeks certification of the class under Rule 23(b)(3), which permits maintenance of a class action if "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

A. <u>The Proposed Class Meets All Rule 23(a) Requirements</u>

1. Numerosity

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "The Ninth Circuit has required at least fifteen members, to certify a class, and classes of at least forty members are usually found to have satisfied the numerosity requirement." *Makaron v. Enagic USA, Inc.*, 324 F.R.D. 228, 232

(C.D. Cal. 2018). The parties agree that the class contains 46 members. (Supp. Brief at 1.) Numerosity is met for the proposed Class.

2. Commonality

Rule 23(a)(2) requires that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury." *Dukes*, 564 U.S. at 349–50 (citation and internal quotation marks omitted). The plaintiff must allege that the class injuries "depend upon a common contention" that is "capable of classwide resolution." *Id.* at 350. In other words, the "determination of [the common contention's] truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* "What matters to class certification . . . is not the raising of common questions—even in droves—but, rather the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Id.* (internal quotation marks and citation omitted).

Here, the causes of action raise questions common to the settlement class. These questions include (i) whether Defendant is a debt collector under the FDCPA, and (ii) whether Defendant's form notices violated the FDCPA. (Mem. at 7.) Plaintiff has therefore satisfied the commonality requirement.

3. Typicality

Rule 23(a)(3) requires "the claims or defenses of the representative parties [to be] typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "[U]nder the rule's permissive standards, representative claims are 'typical' if they are reasonably coextensive with those of absent class members; they need not be substantially identical." *Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571, 613 (9th Cir. 2010) (en banc) (quoting *Hanlon v. Chrysler Corp*, 150 F.3d 1011, 1020 (9th Cir. 1998)), *rev'd on other grounds*, 564 U.S. 338 (2011). As to the representative, "[t]ypicality requires that the named plaintiffs be members of the class they represent." *Id.* (citing *Gen. Tech. Co. of Sw. v. Falcon*, 457 U.S. 147, 156 (1982)). The commonality, typicality, and adequacy-of-

representation requirements "tend to merge" with each other. *Dukes*, 564 U.S. at 349 n.5 (citing *Falcon*, 457 U.S. at 157–58 n.13).

Here, Plaintiff asked that she be named class representative. (Mem. at 22.) Plaintiff's claims arise from the same common course of conduct as the claims of all Class Members. Plaintiff and the Class Members received a form letter from Defendant with the same stock language and alleged omitted disclosures at issue in this lawsuit. Their claims arise from the same practice or course of conduct. (Mem. at 8.) Thus, typicality is met.

4. Adequacy

Rule 23(a)(4) permits certification of a class action only if "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Hanlon*, 150 F.3d at 1020.

Again, Plaintiff's claims arise out of the same set of facts as the claims for the proposed Class. The Court finds no sign of a potential conflict of interest between Plaintiff and the Class Members she seeks to represent. Accordingly, the Court concludes that Plaintiff is an adequate class representative.

B. <u>The Proposed Class Meets the Rule 23(b) Requirements</u>

Plaintiff seeks certification under Rule 23(b)(3). (Mem. at 5–6.) For the reasons set forth below, the Court holds that certification of the proposed Class is appropriate.

Under Rule 23(b)(3), a class action may be maintained if: "[1] the court finds that the questions of law or fact common to class members *predominate* over any questions affecting only individual members, and [2] that a class action is *superior* to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. R. 23(b)(3) (emphases added). When examining a class that seeks certification under Rule 23(b)(3), the Court may consider:

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
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> (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
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> (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
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> (D) the likely difficulties in managing a class action.

Id. The Court finds that Plaintiff's proposed Class satisfies both the predominance and superiority requirements.

1. Predominance

"[T]he predominance analysis under Rule 23(b)(3) focuses on the relationship between the common and individual issues in the case, and tests whether the proposed class is sufficiently cohesive to warrant adjudication by representation." *Abdullah v. U.S. Sec. Associates, Inc.*, 731 F.3d 952, 964 (9th Cir. 2013) (citations and internal quotation marks omitted). "Rule 23(b)(3) requires [only] a showing that questions common to the class predominate, not that those questions will be answered, on the merits, in favor of the class." *Id*. (alterations in original).

Here, as discussed above, the Class Members' claims turn on common language (or the common lack thereof) in Defendant's standardized form notice. If one Class Member's letter violated the FDCPA, then all of the Class Members' letters would violate the FDCPA. Thus, common questions will predominate.

2. Superiority

The Court further finds that a class action would be a superior method of adjudicating Plaintiff's claims for the proposed Class. "The superiority inquiry under Rule 23(b)(3) 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. "This determination necessarily involves a comparative evaluation of alternative mechanisms of

dispute resolution." *Id.* Here, if each member of the proposed Class pursued a claim individually, the judicial system would be heavily burdened and would run afoul of Rule 23's focus on efficiency and judicial economy. *See Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 946 (9th Cir. 2009) ("The overarching focus remains whether trial by class representation would further the goals of efficiency and judicial economy"). Further, litigation costs would likely exceed potential recovery if each Class Member litigated individually. "Where recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis, this factor weighs in favor of class certification." *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (citations omitted).

Considering the non-exclusive factors under Rule 23(b)(3)(A)–(D), the Court finds that Class Members' potential interests in individually controlling the prosecution of separate actions and the potential difficulties in managing the class action do not outweigh the desirability of concentrating this matter in one litigation. *See* Fed. R. Civ. P. 23(b)(3)(A), (C), (D). Therefore, the Court finds that the proposed Class may be certified under Rule 23(b)(3).

C. Rule 23(g) – Appointment of Class Counsel

Under Rule 23(g), "a court that certifies a class must appoint class counsel." Fed. R. Civ. P. 23(g)(1). The Court must 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 to representing the class." Fed. R. Civ. P. 23(g)(1)(A).

Here, Plaintiff asks the Court to appoint Jesse S. Johnson as Class Counsel in this action, and Defendant does not object to this appointment. (Mem. at 22; Settlement Agreement at 7 ¶ 3.) Mr. Johnson has outlined his extensive experience in litigating consumer class actions. (*See* Johnson Decl. ¶¶ 6–8; Mem. at 9.) From this experience, it appears Mr. Johnson has knowledge of the applicable law in this area. Based on the

experience and work of Plaintiff's counsel, the Court concludes that he has satisfied the adequacy requirement. The Court therefore appoints Jesse S. Johnson as Class Counsel in this action.

Having found that the proposed Class satisfies the remaining elements of Rule 23(a), the Court conditionally certifies the Class for settlement purposes only.

III. PRELIMINARY APPROVAL OF CLASS SETTLEMENT

To preliminarily approve a proposed class-action settlement, Rule 23(e)(2) requires the Court to determine whether the proposed settlement is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2). In turn, review of a proposed settlement typically proceeds in two stages, with preliminary approval followed by a final fairness hearing. Federal Judicial Center, *Manual for Complex Litigation*, § 21.632 (4th ed. 2004).

"To determine whether a settlement agreement meets these standards, a district court must consider a number of factors, including: the strength of plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial;[3] the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant;[4] and the reaction of the class members to the proposed settlement." *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003) (internal citation and quotation marks omitted). "The relative degree of importance to be attached to any particular factor will depend upon and be dictated by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by each individual case." *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982). "'It is the settlement taken as a whole, rather than the

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[3] Because the class has not been certified for anything other than settlement purposes, this factor does not apply in this case.

[4] This factor does not apply in this case.

individual component parts, that must be examined for overall fairness,' and 'the settlement must stand or fall in its entirety.'" *Staton*, 327 F.3d at 960 (quoting *Hanlon*, 150 F.3d at 1026) (alterations omitted).

In addition to these factors, where "a settlement agreement is negotiated *prior* to formal class certification," the Court must also satisfy itself that "the settlement is not the product of collusion among the negotiating parties." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946-47 (9th Cir. 2011) (quotation marks and citation omitted). Accordingly, the Court must look for explicit collusion and "more subtle signs that class counsel have allowed pursuit of their own self-interests and that of certain class members to infect the negotiations." *Id.* at 947. Such signs include (1) "when counsel receive a disproportionate distribution of the settlement," (2) "when the parties negotiate a 'clear sailing' arrangement providing for the payment of attorneys' fees separate and apart from class funds," and (3) "when the parties arrange for fees not awarded to revert to defendants rather than be added to the class fund." *Id.* (quotation marks and citations omitted).

At this preliminary stage and because Class Members will receive an opportunity to be heard on the settlement, "a full fairness analysis is unnecessary . . . ." *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 665 (E.D. Cal. 2008). Instead, preliminary approval and notice of the settlement terms to the proposed class are appropriate where "[1] the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, [2] has no obvious deficiencies, [3] does not improperly grant preferential treatment to class representatives or segments of the class, and [4] falls within the range of *possible* approval . . . ." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (internal quotation marks and citation omitted) (emphasis added); *see also Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007) ("To determine whether preliminary approval is appropriate, the settlement need only be *potentially* fair, as the Court will make a final determination of its adequacy at the hearing on the Final Approval, after such time as any party has had a chance to object and/or opt out.") (emphasis in original).

In evaluating all applicable factors below, the Court finds that the proposed settlement agreement should be preliminarily approved.

A. Strength of Plaintiff's Case

The claims at issue involve Defendant's alleged failure in its letters to Plaintiff and Class Members to include required disclosures, and its alleged inclusion of false and deceptive threats of foreclosure in violation of the FDCPA and RFDCPA. While Plaintiff is confident she would prevail on the merits of her claims, Defendant denies any liability. (*See* Mem. at 1.) Defendant also raised a number of affirmative defenses. (Answer at 10–11.) In addition, Defendant had raised the possibility of moving for summary judgment based upon *Vien-Phuong Thi Ho v. Recontrust Co., NA*, 858 F.3d 568 (9th Cir. 2017). (Supp. Brief at 2–3.) The Court finds that given these potential obstacles and the inherent risk of litigation, this factor weighs in favor of granting preliminary approval.

B. Risk, Complexity, and Likely Duration of Further Litigation

Plaintiff argues that continued litigation is expensive, inherently uncertain, and susceptible to delays, and that settling allows Class Members to avoid these risks and costs while still benefitting from the lawsuit. (Settlement Agreement at 3; Mem. at 15.) Settlement eliminates the risks inherent in certifying a class, prevailing at trial, and withstanding any subsequent appeals, and it may provide the last opportunity for Class Members to obtain relief. This factor therefore weighs in favor of granting preliminary approval. *See Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) ("In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." (citation omitted)).

C. Amount Offered in Settlement

The FDCPA creates a statutory cap for class member recovery, limiting it to the lesser of $500,000 or one percent of the debt collector's net worth. 15 U.S.C. § 1692(k)(a)(2)(B). The RFDCPA incorporates the same remedies. Cal. Civ. Code §

1788.17. The Ninth Circuit has held that a plaintiff may recover under both the FDCPA and the RFDCPA "so long as the total award is below the [FDCPA's] monetary limit." *Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055, 1068 & n.15 (9th Cir. 2011).

The parties assert that Defendant's net worth is $2,260,696 and that Class Member's recovery is thus capped at one percent of this net worth—$22,606.96. (Supp. Brief at 2; Defendant's Balance Sheet.) Having reviewed the documentation filed as to Defendant's net worth, the Court is satisfied that this is in fact the maximum statutorily available amount. The class fund is $6,900, which is approximately 31% of the statutory maximum, and provides each Class Member a recovery of $150. (Supp Brief at 2-3.) The recovery for each Class Member—$150—far exceeds that obtained in similar FDCPA class action settlements. *See Sullivan v. Am. Express Publ'g Corp.*, No. SACV 09–142–JST (ANx), 2012 WL 13014989 (C.D. Cal. Feb. 21, 2012) (approving FDCPA recovery of $27.50 per class member when potential award at trial was $76 per member); *Schwarm v. Craighead*, 814 F. Supp. 2d 1025, 1031–32 (E.D. Cal. 2011) (approving FDCPA settlement where distribution plan left no monetary recovery for class members); *Schuchardt v. Law Office of Rory W. Clark*, 314 F.R.D. 673, 684 (N.D. Cal. 2016) (approving recovery of $15.10 per member); *Capps v. Singer*, No. 15-cv-02410-BAS(NLS), 2016 WL 6833937, at *8 (S.D. Cal. Nov. 21, 2016) (approving recovery of $66.70 per member). Additionally, Defendant has confirmed that it no longer uses the form that generated this lawsuit. (Mem. at 4.) Accordingly, the Court finds that the amount offered in settlement weighs in favor of preliminary approval.

The allocation of settlement funds also appears fair, adequate, and reasonable. Each Class Member will receive a payment of $150. In light of the difficulties and expenses Class Members would face to individually pursue litigation and the likelihood that they may otherwise be unaware of their claims, this settlement amount is appropriate. This weighs in favor of preliminary approval.

Finally, the amount of the settlement also appears fair, adequate, and reasonable in light of the claims released by Plaintiff and Class Members. Each Class Member will release "all claims . . . arising out of initial written communications that Defendant sent, between December 8, 2016 and December 8, 2017, in connection with the foreclosure of a deed of trust." (Settlement Agreement at 6 ¶ D.) The scope of this release weighs in favor of preliminary approval. *See Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) ("A settlement agreement may preclude a party from bringing a related claim in the future even though the claim was not presented and might not have been presentable in the class action, but only where the released claim is based on the identical factual predicate as that underlying the claims in the settled class action." (internal quotation marks and citation omitted)).

D. Stage of the Proceedings and Extent of Discovery Completed

This factor requires the Court to evaluate whether "the parties have sufficient information to make an informed decision about settlement." *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1239 (9th Cir. 1998). Discovery can be both formal and informal. *See Clesceri v. Beach City Investigations & Protective Servs., Inc.*, No. CV-10-3873-JST (RZx), 2011 WL 320998, at *9 (C.D. Cal. Jan. 27, 2011). Here, the parties engaged in "substantial written discovery" in relation to "the size and makeup of the putative class, and the damages available to the class members, which helped to inform the Parties' negotiations." (Mem. at 1; Settlement Agreement at 3.) Given these facts, the Court concludes that the parties possess sufficient information to make an informed settlement decision. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 459 (finding plaintiffs had "sufficient information to make an informed decision about the [s]ettlement" where formal discovery had not been completed but Class Counsel had "conducted significant investigation, discovery and research, and presented the court with documentation supporting those services."). Accordingly, this factor weighs in favor of granting preliminary approval.

E. Experience and Views of Counsel

"The recommendations of plaintiffs' counsel should be given a presumption of reasonableness." *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008) (citation omitted). As discussed above, Class Counsel has experience serving as plaintiffs' counsel in consumer actions, and he has endorsed the settlement as fair, reasonable, and adequate. (*See* Johnson Decl. ¶¶ 6–8.) Thus, this factor favors preliminary approval.

F. Reaction of Class Members to Proposed Settlement

Though Plaintiff has not provided evidence of the Class Members' reactions to the proposed settlement, the Court recognizes that the lack of such evidence is not uncommon at the preliminary approval stage. Before the final fairness hearing, Class Counsel shall submit a sufficient number of declarations from Class Members discussing their reactions to the proposed settlement. A limited number of objections at the time of the fairness hearing may raise a presumption that the settlement is favorable to the class. *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1043.

G. Signs of Collusion

Here, the parties have not negotiated a "clear-sailing" agreement regarding attorneys' fees and costs—to the contrary, Defendant expressly reserves its right to contest Class Counsel's attorneys' fees and costs. (*See* Settlement Agreement at 12–13.) Moreover, Plaintiff is not set to receive any incentive award—she will receive only the maximum $1,000 amount called for under the FDCPA. Thus, there are no telltale signs of collusion among the parties at the expense of the Class Members.

However, though the Court does not approve attorneys' fees at this stage, the Court raises its concerns with the dearth of information about Class Counsel's attorneys' fees.[5]

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[5] The proposed class notice states that Class Counsel will ask the Court for "reimbursements of costs and expenses of no more than $93,000 in total." (Johnson Decl. Exhibit C at 4 ¶ 15.) However, as this amount is not reflected in any other briefings or evidence, and indeed contradicts

(footnote continued)

Plaintiff states only that "[c]ounsel for the parties are negotiating a proposed fee and expense award for Plaintiff's counsel and hope to reach an agreement prior to any deadline for Plaintiff to move for such an award." (Mem. at 2 n.1.) Plaintiff's supplemental briefing filed several months after the instant motion does not update this statement. Without briefing on potential attorneys' fees, neither the Court nor the Class Members can fully scrutinize the relationship between attorneys' fees and benefit to the class. To be sure, that Class Counsel's attorneys' fees will "be paid by Defendant separate and apart from the Settlement Fund" eliminates concerns that Class Counsel will literally deprive Class Members of their recovery. (*See* Settlement Agreement at 12–13.) However, it does not eliminate all concerns regarding possible collusion.

Regardless, the Court does not find that the lack of information regarding attorneys' fees precludes preliminary approval. First, the Court will require Plaintiff to file her Motion for Attorneys' Fees fifteen (15) days before the exclusion deadline, such that Class Members will have an opportunity to view Class Counsel's requested award before having to decide whether to exclude themselves from the settlement or otherwise object. Second, attorneys' fees for FDCPA actions are calculated pursuant to the "lodestar" method, and the Court will scrupulously examine Class Counsel's requested hours and rates to ensure that the fees ultimately received are reasonable compensation for the work done on this case. *See Calderon v. The Wolf Firm*, 8:16-cv-01266-JLS-KES, Doc. 75 at 8–13 (C.D. Cal. Sept 18, 2018) (analyzing FDCPA fees pursuant to lodestar method). To this end, Class Counsel must adequately support its fee request with detailed billing records as required by the Court's Procedures (*See* Procedure Page ¶ 26, available at https://www.cacd.uscourts.gov/honorable-josephine-l-staton) as well as evidence justifying Class Counsel's requested hourly rate.

Plaintiff's representations that the parties *have not* reached an agreement regarding attorneys' fees, the Court assumes that this is a typographical error or placeholder.

Considering all factors, the Court preliminarily concludes that the settlement is fair, reasonable, and adequate.

IV. APPROVAL OF THE PROPOSED CLAIMS ADMINISTRATOR

The parties suggest First Class, Inc. as the claims administrator in this action, subject to the Court's approval. (Mem. at 20–21.) Plaintiff provides sufficient documentation of First Class, Inc.'s competence in carrying out the duties of a claims administrator. (*Id.* at 21 n.4.) Moreover, courts in this Circuit have approved First Class, Inc. as the claims administrator in other class action settlements. *See Harper v. Law Office of Harris and Zide LLP*, Case No. 15-cv-01114-HSG, 2016 WL 2344194 at *10 (N.D. Cal. May 4, 2016); *Capps*, 2016 WL 6833937 at *12. Accordingly, the Court approves First Class, Inc. as the claims administrator in this action.

V. PRELIMINARY APPROVAL OF CLASS NOTICE FORM AND METHOD

For a class certified under Rule 23(b)(3), "the court must 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). However, actual notice is not required. *See Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994).

Pursuant to the settlement, Defendant will provide the claims administrator with each Class Member's name and last known mailing address. (Settlement Agreement at 8–9 ¶ 7.A.) Within twenty-one days of preliminary approval of the settlement, the claims administrator will send the class notice by U.S. Mail. (*Id.* ¶ 7.) If the claims administrator receives information on a forwarding address or change of address, the notice will be re-mailed to the new address. (*Id.* ¶ 7.A.) If a notice is returned without a forwarding address, the claims administrator will run a skip trace to try and locate a new address. (*Id.*) Class members will not have to submit a claims form to receive benefits under the settlement. (*Id.*) The proposed settlement agreement sets the exclusion deadline as sixty days from the Court's entry of this Order of Preliminary Approval of Class Action

Settlement. (*Id.* at 9 ¶ 8.A.) The Court adjusts the deadline as follows: Class Members will have forty-five days from the initial mailing of class notice (rather than the entry of this Order) to seek exclusion from the settlement or object to its terms. For those Class Members whose notices were re-mailed due to a bad address or forwarding, they must postmark an exclusion request within forty-five days of the re-mailing.

The Supreme Court has found notice by mail to be sufficient if the notice is "reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *accord Sullivan*, 2011 WL 2600702 at *8 (quoting *Mullane*). Under the circumstances of this case, mail is a "reasonably calculated" method by which to apprise Class Members of the settlement. The Court finds that the proposed procedure for class notice satisfies these standards.

Plaintiff provided the Court with a copy of the proposed notice. (Class Notice, Johnson Decl. Ex. C.) Under Rule 23, the notice must include, in a manner that is understandable to potential class members: "(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3)." Fed. R. Civ. P. 23(c)(2)(B). The proposed notice includes this necessary information.

The Court, however, requires the notice to be modified as follows:

- Under the initial chart ("Your Legal Rights and Options in This Settlement") and Question 18 ("How do I tell the Court that I do not like the settlement?"), the notice must eliminate any reference to filing a written objection with the Court. Plaintiff's counsel are responsible for filing, in connection with Plaintiff's motion for final approval, any objections along with a brief

responding to such objections. Accordingly, the notice should instruct Class Members to object by mailing a written objection to Plaintiff's counsel only, and Plaintiff's counsel shall be responsible for ensuring that any objections are shared with counsel for Defendant and the claims administrator.

- Question 15 ("How will the lawyers be paid?") states that Class Counsel will ask for no more than $93,000 in total. As noted above, the Court assumes that this is a placeholder or a drafting error. The final notice should include a more accurate figure reflecting Class Counsel's actual fee request; or, if the parties are still discussing the fee, this section should state as much and eliminate the reference to the $93,000.
- Under Question 20 ("How do I get more information?"), the notice should also state that all papers filed in this action will also be available for review via the Public Access to Court Electronic Resources System (PACER), available online at http://www.pacer.gov. The notice should also identify the claims administrator's contact information, *i.e.*, its phone number and address.

Subject to the changes discussed above, the Court approves the form and method of class notice. The Court ORDERS the parties to file a revised version of the Class Notice within **10 days** of this Order.

The Court requires that any motion for attorneys' fees and costs be filed with the Court **no later than 15 days before** the exclusion deadline. Plaintiff shall file her motion for final approval no later than **November 8, 2019**, including a brief responding to any submitted objections and otherwise summarizing the Class Members' participation in the settlement and the settlement administration to date.

VI. CONCLUSION

For the reasons discussed above, the Court (1) conditionally certifies the class for settlement purposes only, (2) preliminarily approves the settlement, (3) names Delia Aikens as Class Representative, (4) names Jesse S. Johnson as Class Counsel, (5) approves

First Class, Inc. as the claims administrator, and (6) approves the form and method of class notice, subject to the changes discussed above. The Court ORDERS the parties to file a revised version of the Class Notice within **10 days** of this Order.

The Court sets a final fairness hearing for **December 13, 2019, at 10:30 a.m.**, to determine whether the settlement should be finally approved as fair, reasonable, and adequate to Class Members. Plaintiff shall file her motion for final approval no later than **November 8, 2019**. Class Counsel shall file any supplemental brief in support of their application for fees and costs **no later than 15 days before** the exclusion deadline. The Court reserves the right to continue the date of the final fairness hearing without further notice to Class Members.

DATED: July 31, 2019

JOSEPHINE L. STATON
UNITED STATES DISTRICT JUDGE