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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DAWN ZOERB, individually and on
behalf of others similarly situated,

Plaintiff,

v.

NATIONAL COLLEGIATE
STUDENT LOAN TRUST 2006-3, a
Delaware statutory trust(s); and LAW
OFFICES OF PATENAUDE &
FELIX, A.P.C.,

Defendants.

Case No. 14-cv-468-BAS-KSC

**ORDER GRANTING JOINT
MOTION FOR PRELIMINARY
APPROVAL OF AMENDED
CLASS ACTION SETTLEMENT
AGREEMENT**

Beginning on April 1, 2014, various plaintiffs brought lawsuits asserting class claims against Defendants pursuant to the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692, *et seq.*, the California Rosenthal Fair Debt Collection Practices Act (“RFDCPA”), Cal. Civ. Code § 1788, *et seq.*, the Washington Collection Agency Act, RCW § 19.16.100 *et seq.* (“WCAA”) and other debt collection laws. Those lawsuits generally assert that Defendants, as assignees of student loan debts, failed to properly identify the original creditor in various state court collections actions. The various cases asserting debt collection law violations

1 have since been consolidated into the current case. Now pending before this Court
2 is the Parties' joint motion for preliminary approval of class action settlement, which
3 seeks an order conditionally certifying a proposed settlement class, preliminarily
4 approving class action settlement, and setting a hearing for final approval of the
5 settlement. (ECF No. 43 ("Joint Mot."))

6 **I. PROPOSED SETTLEMENT**

7 The proposed settlement agreement (ECF No. 43-1 ("Settlement" or
8 "Settlement Agreement")) applies to class members ("Class" or "Class Members")
9 defined as natural persons who: (1) are California, Nevada, Oregon, and Washington
10 residents, (2) have an alleged delinquent student loan account with Defendant Trusts,
11 and (3) who were sued by Patenaude & Felix, APC ("P&F") through state court
12 collections actions filed on or after November 1, 2010, but on or before April 1, 2014,
13 in which P&F allegedly failed to properly disclose the identity of the original creditor.
14 (Settlement ¶¶ V, 1(A).) Included in the class are those persons who have pending
15 litigation and those who have had the lawsuit reduced to a judgment. (*Id.*) Excluded
16 from the class is any student loan borrower who has resolved his or her account with
17 Defendant Trusts. (*Id.*) Plaintiffs Dawn Zoerb, Sandi Parra, Reynaldo Raquel, Lisa
18 Alward, Madeline Montry, Rebecca Burlingame, Joel Benoit, Janice Benoit, Robin
19 Goret, Charlene Baxter, Lora Mayhugh, Laurie Alderman, Andrew Toney and Tricia
20 Benavente are included in the class, even if they have resolved their account with
21 Defendant Trusts. (*Id.*)

22 The parties agree that the Class shall be provisionally certified, and that,
23 subject to the Court's approval, Joshua B. Swigart, of Hyde & Swigart, and Abbas
24 Kazerounian, of Kazerouni Law Group, APC, will be appointed as Class Counsel.
25 (*Id.* at ¶ 3.) Dawn Zoerb will be appointed as Class Representative. (Proposed Order
26 Preliminarily Approving Class Action Settlement, ECF No. 43-2, ¶ 2C.)

27 Named Plaintiffs and Class Members release the Defendants from any claims
28 "arising out of, based upon, or in any way relating to the class claims asserted in the

1 lawsuits.” (Settlement ¶¶ 1(D), 19.) In return, the Defendants agree to request that
2 certain national credit agencies delete any reporting of trade lines associated with the
3 student loan accounts which are the subject of the Lawsuits. (*Id.* ¶ 22(B).) This may
4 lead to Class Members enjoying a higher credit score and increased ability to obtain
5 credit. (*Id.*) The Parties agree that this is a material and significant benefit. (*Id.* ¶
6 22(C).) The Parties agree to request that a stipulated injunction be entered by the
7 Court ordering the Defendants to make these tradeline deletion requests. (*Id.* ¶¶
8 22(A).)

9 The Parties agree to the appointment of the Honorable Herbert B. Hoffman
10 (Ret.) as Special Master for purposes of settlement to coordinate potential objections,
11 related discovery, and other issues. (*Id.* ¶ 31.) The terms of the Settlement
12 Agreement are hereby incorporated as though fully set forth in this Order.

13 **II. ANALYSIS**

14 **A. Class Certification (for Settlement Purposes Only).**

15 Here, the Parties seek to certify a class for settlement purposes only. Federal
16 Rule of Civil Procedure 23(a) provides that a class may be certified “only if (1) the
17 class is so numerous that joinder of members is impracticable; (2) there are questions
18 of law or fact common to the class; (3) the claims or defenses of the representative
19 parties are typical of the claims or defenses of the class; and (4) the representative
20 parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P.
21 23(a). In addition to meeting the 23(a) requirements, a class action must fall into one
22 of the categories outlined in Rule 23(b). Fed. R. Civ. P. 23(b). The Parties seek to
23 certify the class under Rule 23(b)(3). (Joint Mot. ¶ III(A); Settlement ¶ 2.) Both
24 Rule 23(a) and 23(b) are satisfied in this case.

25 **1. Fed. R. Civ. P. 23(a)**

26 **a. Numerosity**

27 The numerosity requirement is generally satisfied when the class contains 40
28 or more members, a threshold far exceeded in this case. *Consolidated Rail Corp. v.*

1 *Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995); *Cleano v. Marriott Int’l, Inc.*,
2 242 F.R.D. 544, 549 (N.D. Cal. 2007). Based on P&F’s internal records of the
3 lawsuits filed during the class period, the class contains approximately 6,677
4 individuals. (Joint Mot. ¶ IV(A)(1); Settlement ¶ V.) That number is on its face large
5 enough that individual joinder of all class members would be impracticable. The
6 numerosity requirement is therefore satisfied.

7 **b. Commonality**

8 The commonality requirement requires that there be “questions of law or fact
9 common to the class.” Fed. R. Civ. P. 23(a)(2). Here, the class claims all stem from
10 Defendants’ alleged violation of consumer protection statutes by omitting the identity
11 of the original creditor in collection lawsuits. Because Class Members here have the
12 same or similar allegations, there are common questions of law and fact and
13 commonality is satisfied.

14 **c. Typicality**

15 In general, the claims of the representative parties “need not be substantially
16 identical” to those of all absent class members, but rather need only be “reasonably
17 co-extensive” in order to qualify as typical. *Hanlon v. Chrysler Corp.*, 150 F.3d
18 1011, 1020 (9th Cir. 1998). Here, the Named Plaintiffs’ claims that Defendants
19 violated consumer protection statutes by omitting the identity of the original creditor
20 in a collection lawsuit are identical or nearly identical to those of the other Class
21 Members. The typicality requirement is therefore satisfied.

22 **d. Adequacy of Representation**

23 For the class representative to adequately and fairly protect the interests of the
24 class, two criteria must be satisfied. “First, the named representatives must appear
25 able to prosecute the action vigorously through qualified counsel, and second, the
26 representatives must not have antagonistic or conflicting interests with the unnamed
27 members of the class.” *Lerwill v. Inflight Motion Picture, Inc.*, 582 F.2d 507, 512
28 (9th Cir. 1978). Here, the Named Plaintiffs have vigorously pursued the action thus

1 far and appear capable of continuing to do so. (Declaration of Joshua Swigart, ECF
2 No. 43-5 (“Swigart Decl.”) ¶¶ 6-21.) Counsel appear qualified, competent, and
3 experienced in class action lawsuits. (Swigart Decl. ¶¶ 42-54; Declaration of Abbas
4 Kazerounian, ECF No. 43-6 (“Kazerounian Decl.”) ¶¶ 6-16.) Named Plaintiffs also
5 have no antagonistic or conflicting interests with the Class Members. They are
6 seeking injunctive relief and deletion of credit reporting trade lines, claims which do
7 not conflict with or impinge on the interests of any other class members. Thus, the
8 adequacy requirement appears to be satisfied.

9 **2. Fed. R. Civ. P. 23(b)**

10 The Parties seek to maintain their class action under Fed. R. Civ. P. 23(b)(3).
11 (Joint Mot. ¶¶ III(A), IV(B)(2); Settlement ¶ 2.) Under Rule 23(b)(3), “Plaintiffs
12 must also demonstrate that a class action is ‘superior to other available methods for
13 fairly and efficiently adjudicating the controversy.’” *Otsuka*, 251 F.R.D. at 448
14 (citing Fed. R. Civ. P. 23(b)(3)). “Where classwide litigation of common issues will
15 reduce litigation costs and promote greater efficiency, a class action may be superior
16 to other methods of litigation,” and it is superior “if no realistic alternative exists.”
17 *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234-35 (9th Cir. 1996). The
18 following factors are pertinent to this analysis:

19 (A) the class members’ interest in individually controlling the prosecution or
20 defense of separate actions;

21 (B) the extent and nature of any litigation concerning the controversy already
22 begun by or against class members;

23 (C) the desirability or undesirability of concentrating the litigation of the
24 claims in the particular forum; and

25 (D) the likely difficulties in managing a class action.

26 Fed. R. Civ. P. 23(b)(3).

27 In this case, the alternative to a class action would be to have the individual
28 Class Members, which amount to over 6,000 individuals, file separate lawsuits. That

1 would be both impractical and inefficient. Such individual litigation would consume
2 judicial resources, impose additional burdens and expenses on the litigants, and
3 present a risk of inconsistent rulings. Thus, the Court finds that the class action
4 device is superior to other methods for fairly and efficiently adjudicating this
5 controversy.

6 **B. Fairness, Reasonableness, and Adequacy of the Proposed**
7 **Settlement**

8 The Ninth Circuit maintains a “strong judicial policy” that favors the
9 settlement of class actions. *Class Plaintiffs v. City of Seattle*, 955 F.3d 1268, 1276
10 (9th Cir. 1992). However, according to Rule 23(e)(2), “the court may approve [a
11 settlement that would bind class members] only after a hearing and on finding that
12 [the settlement] is fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2).

13 In determining whether the proposed settlement is fair, reasonable, and
14 adequate, “a district court must consider a number of factors, including: the strength
15 of plaintiffs’ case; the risk, expense, complexity, and likely duration of further
16 litigation; the amount offered in settlement; the extent of discovery completed, and
17 the stage of proceedings; the experience and views of counsel; the presence of a
18 governmental participant; and the reaction of the class members to the proposed
19 settlement.” *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003). The Court
20 considers each of these factors below.

21 **1. Strength of Plaintiff’s Case, and Risk of Further Litigation**

22 Named Plaintiffs have alleged that the Defendants violated the FDCPA and
23 Rosenthal Act by filing complaints in state court collections lawsuits falsely claiming
24 that each Plaintiff had entered into a written loan contract with Defendants, when the
25 Plaintiff in fact had never dealt with Defendants and had no idea who they were.
26 (Joint Mot. ¶¶ II(A), IV(C)(1).) Defendants, however, “assert that they have
27 meritorious defenses to the alleged claims.” (*Id.* ¶¶ II(B).) Defendants claim that the
28 FDCPA is inapplicable and that because Plaintiffs received earlier notice of the

1 Defendant Trusts taking over their loan obligations, Plaintiffs could not have been
2 misled in the state court actions. (*Id.*)

3 The Parties agree that “[c]onsidering the potential risks and expenses
4 associated with continued prosecution of the Lawsuits, the probability of appeals, the
5 certainty of delay, and the ultimate uncertainty of recovery through continued
6 litigation, the proposed settlement is fair, reasonable, and adequate.” (*Id.* ¶ IV(C)(1).)
7 The Court concurs. This settlement eliminates litigation risks and ensures that Class
8 Members receive some remedy to help undo the damage they claim was done. On
9 balance, the strength of Plaintiffs’ case and the risk of further litigation weigh in favor
10 of approving the proposed settlement.

11 **2. Consideration Offered**

12 Although only equitable relief is sought for the Plaintiffs in this case, this
13 reflects the difficulty of assessing damages for each individual Plaintiff and certifying
14 a damages class. The Parties agree that the stipulated request for trade line deletion
15 is a “material and significant benefit.” (Settlement ¶ 22(C).) The Court agrees.
16 Removal of the negative trade lines would lead to Class Members having a higher
17 credit score and greater ability to obtain credit – not insignificant benefits.

18 Although Plaintiff and Class Members might be entitled to greater
19 compensation if Plaintiffs’ allegations were proven true, this does not mean that the
20 settlement is inadequate. *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th
21 Cir. 1998). “[The] very essence of a settlement is a compromise, ‘a yielding of
22 absolutes and an abandoning of highest hopes.’” *Officers for Justice v. Civil Ser.*
23 *Comm’n of the City & Cnty. of San Francisco*, 688 F.2d 615, 624 (9th Cir. 1982).
24 Under the circumstances, the Court concludes that the stipulated injunctive relief
25 offered in the Settlement Agreement is sufficient to favor approval.

26 **3. Extent of Discovery Completed and Stage of Proceedings**

27 The parties have so far completed only some informal discovery. (Joint Mot.
28 ¶ IV(C)(3).) However, “[i]n the context of class action settlements, ‘formal discovery

1 is not a necessary ticket to the bargaining table’ where the parties have sufficient
2 information to make an informed decision about settlement.” *Linney*, 151 F.3d at
3 1239. In this case, the main dispute concerns the Parties’ legal obligations to each
4 other as debtor and debt holder-assignee, and so the Parties do not need a wealth of
5 new information to make an informed decision to settle. The Parties have agreed to
6 conduct what discovery is necessary to confirm the class size and composition.
7 (Settlement ¶ 15.)

8 “[S]ettlement approval that takes place prior to formal class certification
9 requires a higher standard of fairness.” *Hanlon v. Chrysler Corp.*, 150 F.3d at 1026.
10 Although discovery has been limited in this case, the proceedings are otherwise at an
11 advanced stage. The Parties met with a private mediator, the Hon. Herbert B.
12 Hoffman (Ret.), on multiple occasions. All aspects of the settlement have been
13 extensively negotiated through numerous meetings, telephone conferences and
14 exchanges of correspondence, with multiple drafts of the Settlement Agreement
15 being prepared before it was presented for the Court’s approval. (Joint Mot. ¶ 2(C);
16 Swigart Decl. ¶¶ 52-53.) Proceedings have progressed far enough that the parties are
17 agreeing to this settlement with full awareness of what they are doing. The Court
18 therefore concludes that this factor favors approval.

19 **4. Experience and Views of Counsel**

20 As laid out in their Declarations, the Class Counsel are experienced in class
21 action lawsuits, having lead or participated in numerous class action lawsuits in state
22 and federal courts. (Swigart Decl. ¶¶ 43-50; Kazerounian Decl. ¶¶ 6-15.) Class
23 Counsel declare that, considering the risks and the above-detailed extensive arms-
24 length negotiations, “they believe that it is desirable that the action be fully and
25 finally compromised, settled and terminated now with prejudice, and forever barred
26 pursuant to the terms and conditions set forth in this Settlement Agreement.”
27 (Swigart Decl. ¶ 39; Kazerounian Decl. ¶ 4.) “Class Counsel believe the terms and
28 conditions of this Settlement Agreement are fair, reasonable and adequate to the

1 proposed class, and that it is in the best interests of the proposed class to settle the
2 Action.” (*Id.*)

3 Generally, “[t]he recommendations of plaintiffs’ counsel should be given a
4 presumption of reasonableness.” *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D.
5 Cal. 1979); *cf. Stull v. Baker*, 410 F. Supp. 1326, 1332 (S.D.N.Y. 1976) (holding that
6 the court should consider the recommendation of counsel, and weight it according to
7 counsel’s caliber and experience). Here, due especially to the experience and
8 knowledge of Class Counsel, counsel’s recommendations are presumed to be
9 reasonable. Accordingly, this factor favors approval.

10 **C. Fairness Hearing and Required Notice to Parties**

11 **1. Notice Requirements**

12 Under Rule 23(c)(2)(B), “the court must direct to class members the best notice
13 that is practicable under the circumstances, including individual notice to all
14 members who can be identified through reasonable effort.” Fed. R. Civ. P.
15 23(c)(2)(B). The Rule directs:

16 The notice must clearly and concisely state in plain, easily understood
17 language: (i) the nature of the action; (ii) the definition of the class
18 certified; (iii) the class claims, issues, or defenses; (iv) that a class
19 member may enter an appearance through an attorney if the member so
20 desires; (v) that the court will exclude from the class any member who
21 requests exclusion; (vi) the time and manner for requesting exclusion;
22 and (vii) the binding effect of a class judgment on members under Rule
23(c)(3).

22 Fed. R. Civ. P. 23(c)(2)(B). “[T]he mechanics of the notice process are left to
23 the discretion of the court subject only to the broad ‘reasonableness’ standards
24 imposed by due process.” *Grunin v. Int’l House of Pancakes*, 513 F.2d 114, 120 (8th
25 Cir. 1975).

26 The proposed settlement agreement anticipates that the parties will retain the
27 services of a third party administrator who will serve notice on the class members.
28 (Settlement ¶9.) Written notice will be sent to all class members “by direct mail

1 using addresses from the Class Members’ student loan accounts that are maintained
2 by Trust Defendants.” (Joint Mot. ¶ III(D).) The Notice will “inform Class Members
3 of the tradeline deletion remedy being implemented by Trust Defendants as
4 consideration for the Agreement.” (*Id.*) Class Members will be informed of their
5 right to opt out and retain their individual claims, as well as to object to the fairness
6 of the settlement. No opt-in form will be required. (*Id.*)

7 The Court has reviewed the proposed Notice as well as the notice procedures
8 and finds that it satisfies the requirements of Rule 23(c)(2)(b).

9 2. Fairness Hearing

10 Fed. R. Civ. P. 23(e)(2), requires that “[i]f the proposal would bind class
11 members, the court may approve it only after a hearing and on finding that it is fair,
12 reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). “The purpose of a fairness
13 hearing is to provide the court with sufficient evidence for it to make an informed
14 decision relating to the fairness of the proposed settlement.” *UAW v. Gen. Motors*
15 *Corp.*, 235 F.R.D. 383, 386 (E.D. Mich. 2006). A fairness hearing need not have all
16 the procedures and protections of a full trial; it is a forum for intervenors to voice
17 their objections and for the fairness of the settlement to be determined. A court is
18 within its discretion to limit the hearing as necessary to meet those objectives. *UAW*,
19 235 F.R.D. at 386; *Tenn. Ass’n of Health Maint. Org., Inc. v. Grier*, 262 F.3d 559,
20 567 (6th Cir. 2001).

21 Here, in their Settlement Agreement the Parties agree to a framework for Class
22 Members who either wish to opt-out or to object to the proposed Settlement.
23 (Settlement ¶¶ 10-13.) Although the Settlement Agreement calls for the Court to limit
24 the time for and method of objections, it is both reasonable and adequately preserves
25 objectors rights to be heard.

26 III. CONCLUSION & ORDER

27 In light of the foregoing, the Court **GRANTS** the Parties’ joint motion for
28 preliminary approval of the class action Settlement and hereby **ORDERS** the

1 following:

2 1. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court
3 hereby conditionally certifies a class for settlement purposes only.

4 2. The class shall consist of California, Nevada, Oregon, and Washington
5 residents who have an alleged delinquent student loan account with Defendant Trusts
6 and were sued by P&F through a state court collections action filed on or after
7 November 1, 2010, but on or before April 1, 2014, in which P&F allegedly failed to
8 properly disclose the identity of the original creditor. Included in the class are those
9 persons who have pending litigation and those who have had their lawsuits reduced
10 to a judgment. Excluded from the class is any student loan borrower who has
11 resolved his or her account with Defendant Trusts, except that Dawn Zoerb, Sandi
12 Parra, Reynaldo Raquel, Lisa Alward, Madeline Montry, Rebecca Burlingame, Joel
13 Benoit, Janice Benoit, Robin Goret, Charlene Baxter, Lora Mayhugh, Laurie
14 Alderman, Andrew Toney, and Tricia Benavente shall be included even if they have
15 resolved their accounts with Defendant Trusts.

16 3. The Court hereby appoints Dawn Zoerb as Class Representative.

17 4. The Court hereby appoints Hyde & Swigart, and Kazerouni Law Group,
18 APC, as Class Counsel to represent the Class.

19 5. The Honorable Herbert B. Hoffman (Ret.) is hereby appointed as
20 Special Master for purposes of the settlement.

21 6. The Court hereby preliminarily approves the Settlement Agreement and
22 the terms and conditions of Settlement set forth therein, subject to further
23 consideration at a Final Approval Hearing.

24 7. The Court will hold a Final Approval Hearing on **April 3, 2017** at **10:30**
25 **a.m.** in Courtroom 4B (4th Floor – Schwartz), 221 West Broadway, San Diego, CA
26 92101, for the following purposes:

27 a. Finally determining whether the Class meets all applicable requirements
28 of Rule 23 of the Federal Rules of Civil Procedure and whether the Class should be

1 certified for the purposes of effectuating the Settlement,

2 b. finally determining whether the proposed Settlement of the case on the
3 terms and conditions provided for in the Settlement Agreement is fair, reasonable,
4 and adequate and should be approved and ordered by the Court, and

5 c. ruling upon such other matters as the Court may deem just and
6 appropriate.

7 8. Before the Fairness Hearing, Defendants shall file with the Clerk of the
8 Court proof of their compliance with the notice provisions of the Class Action
9 Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715.

10 9. In compliance with Fed. R. Civ. P. 23(b)(3), the Class Members will be
11 permitted to exclude themselves from the class.

12 10. Briefs for the Final Approval Hearing must be filed with the Clerk of
13 the Court no later than 28 days prior to the Final Approval Hearing.

14 11. The Court may adjourn the Final Approval Hearing and later reconvene
15 such hearing without further notice to the Class Members.

16 12. Class Members who desire to object to the fairness of the settlement
17 must file written objections with the Clerk of this Court 49 days before the Final
18 Approval Hearing.

19 13. Class Members must also provide a copy of the written objection to the
20 Class Counsel and to counsel for the Trust Defendants and P&F at the following
21 addresses:

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23 Class Counsel:

24 Abbas Kazerounian, Esq.

25 Kazerouni Law Group, APC

26 245 Fischer Avenue, Suite D1

27 Costa Mesa, CA 92626

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14. All objections must include the objector's full name, address, and telephone number, along with a statement of the reasons for his or her objection, whether or not he or she intends to appear at the fairness hearing, and, if the objector intends to appear, whether he or she will appear on his or her own behalf or through counsel.

15. All objections must be filed with the Clerk and served on the Parties'

1 counsel no later than the Objection Deadline. Objections that do not contain all
2 required information or that are received after the Objection Deadline will not be
3 considered at the Final Approval Hearing.

4 16. Any Class Member who does not file a valid and timely objection to the
5 settlement shall be barred from seeking review of the settlement by appeal or
6 otherwise.


7 17. Any response by the Plaintiff to the objections of Class Members must
8 be filed with the Clerk of the Court no later than 14 days after the Objection Deadline.

9 18. Class Counsel shall file with the Clerk of this Court their application for
10 attorney's fees, costs, and expenses no later than 12 weeks (84 days) before the Final
11 Approval Hearing, sufficiently in advance of the expiration of the objection period
12 that any Class Member will have sufficient information to decide whether to object
13 and, if applicable, to make an informed objection.

14 19. The Parties are ordered to carry out the Settlement Agreement in the
15 manner provided in the Settlement Agreement.

16 **IT IS SO ORDERED.**

17
18 **DATED: November 22, 2016**

19 
20 **Hon. Cynthia Bashant**
21 **United States District Judge**

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