

KAZEROUNI LAW GROUP, APC
1303 EAST GRAND AVENUE, SUITE 101
ARROYO GRANDE, CA 93420

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

KAZEROUNI LAW GROUP, APC
Abbas Kazerounian, Esq. (249203)
ak@kazlg.com
Matthew M. Loker, Esq. (279939)
ml@kazlg.com
245 Fischer Avenue, Unit D1
Costa Mesa, CA 92626
Telephone: (800) 400-6808
Facsimile: (800) 520-5523

CARDOZA LAW CORPORATION
Michael F. Cardoza, Esq. (194065)
mike.cardoza@cardozalawcorp.com
548 Market Street, #80594
San Francisco, CA 94104
Telephone: (415) 488-8041
Facsimile: (415) 651-9700

HYDE & SWIGART
Joshua B. Swigart, Esq. (225557)
josh@westcoastlitigation.com
2221 Camino Del Rio South, Ste. 101
San Diego, CA 92108
Telephone: (619) 233-7770
Facsimile: (619) 297-1022

Attorneys for Plaintiffs,

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**ROSA CALDERON; AND,
JAVIER CALDERON,
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiffs,

v.

**THE WOLF FIRM, A LAW
CORPORATION,**

Defendant.

Case No.: CV16-1266 JLS (KESx)

**PLAINTIFFS ROSA CALDERON;
AND, JAVIER CALDERON'S
MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

DATE: December 15, 2017

TIME: 2:30 p.m.

DPT: 10A

HON. JOSEPHINE L. STATON

KAZEROUNI LAW GROUP, APC
1303 EAST GRAND AVENUE, SUITE 101
ARROYO GRANDE, CA 93420

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- I. INTRODUCTION..... 1
- II. PLAINTIFFS’ ALLEGATIONS..... 3
- III. STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT..... 4
- IV. THE SETTLEMENT 6
 - A. THE SETTLEMENT CLASS..... 6
 - B. SETTLEMENT PAYMENT..... 6
 - C. INJUNCTIVE RELIEF 7
 - D. CLASS NOTICE..... 7
 - E. SCOPE OF RELEASE..... 8
 - F. OPPORTUNITY TO OPT OUT AND OBJECT..... 8
 - G. TERMINATION OF SETTLEMENT..... 8
 - H. CLASS REPRESENTATIVE’S APPLICATION FOR INCENTIVE AWARD..... 9
 - I. CLASS COUNSEL’S APPLICATION FOR ATTORNEYS’ FEES AND COSTS.. 9
 - J. CY PRES DISTRIBUTION..... 9
- IV. LEGAL ANALYSIS 9
 - A. THE PROPOSED CLASS SATISFIES THE REQUIREMENTS OF RULE 23.... 10
 - 1. *The requirement of numerosity is satisfied* 11
 - 2. *The requirement of commonality is satisfied*..... 11
 - 3. *The requirement of typicality is satisfied* 13

KAZEROUNI LAW GROUP, APC
 1303 EAST GRAND AVENUE, SUITE 101
 ARROYO GRANDE, CA 93420

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. *The requirement of adequate representation is satisfied* 13

B. THE ACTION MEETS THE REQUIREMENTS OF RULE 23(B)(3) 14

 1. *Common questions predominate* 16

 2. *A class action is superior to other methods of adjudication* 16

C. THE RISK OF AN INCONSISTENT RULING SATISFIES THE REQUIREMENTS OF RULE 23(B)(1)..... 18

V. THE SETTLEMENT SHOULD BE GIVEN PRELIMINARY APPROVAL AS IT IS FAIR, REASONABLE, ADEQUATE AND THE PRODUCT OF DILIGENT INVESTIGATION, LITIGATION AND ARMS-LENGTH NEGOTIATION..... 20

VI. THE PARTIES JOINTLY REQUEST A PRELIMINARY APPROVAL HEARING, IF NECESSARY, AND AN ORDER APPROVING THE PROPOSED CLASS SETTLEMENT 23

VII. CONCLUSION 23

KAZEROUNI LAW GROUP, APC
 1303 EAST GRAND AVENUE, SUITE 101
 ARROYO GRANDE, CA 93420

TABLE OF AUTHORITIES

CASES	PAGE(S)
<i>Abat v. Chase Bank USA, N.A.</i> , 2010 WL 1146535 (C.D. Cal. 2010).....	7
<i>Abels v. JBC Legal Group, P.C.</i> , 227 F.R.D. 541 (N.D. Cal. 2005).....	14
<i>Amchem Prods. Inc. v. Windor</i> , 521 U.S. 591 (1997).....	10, 15, 18
<i>Arata v. Nu Skin Int’l</i> , 96 F.3d 1265 (9th Cir. 1996)	5
<i>Ballard v. Equifax Check Svcs.</i> , 186 F.R.D. 589, 600 (E.D. Cal. 1999)	4, 16
<i>Berther v. TSYS Total Debt Mgmt., Inc.</i> , 2007 WL 1795472 (E.D. Wis. 2007).....	17
<i>Blackie v. Barrack</i> , 524 F.2d 891 (1975).....	11, 12
<i>Bonnett v. Education Debt Services, Inc.</i> , 2003 WL 21658267 (E.D. Pa. 2003)	17
<i>Burkhammer v. Allied Interstate, LLC</i> , 2017 Cal. Super. LEXIS 109 (SLO Superior Court May 19, 2017).....	17
<i>Calderon, et al. v. The Wolf Law Firm</i> , 2017 U.S. Dist. LEXIS 7125 (C.D. Cal. Jan. 18, 2017)	2
<i>Carrizosa v. Stassinis</i> , 186 669 F. Supp. 2d 1081 (N.D. Cal. 2008).....	14
<i>Carson v. American Brands, Inc.</i> , 450 U.S. 79 (1981).....	5
<i>Celano v. Marriott Int’l, Inc.</i> , 242 F.R.D. 544 (N.D. Cal. 2007).....	11
<i>City of Detroit v. Grinnell Corp.</i> , 495 F.2d 448 (2d Cir. 1974).....	5

KAZEROUNI LAW GROUP, APC
 1303 EAST GRAND AVENUE, SUITE 101
 ARROYO GRANDE, CA 93420

1	<i>Coleman v. Recontrust Co. N.A.</i> , 2012 U.S. Dist. LEXIS 53928 (D. Utah 2012)	11
2	<i>Consolidated Rail Corp. v. Town of Hyde Park</i> ,	
3	47 F.3d 473 (2d Cir. 1995).....	11
4	<i>Cope v. Duggins</i> ,	
5	203 F. Supp. 2d 650 (E.D. La. 2002).....	17
6	<i>De La Fuente v. Stokely-Van Camp, Inc.</i> ,	
7	713 F.3d 225 (7th Cir. 1983)	13
8	<i>Ditty v. Check Rite, Ltd.</i> ,	
9	182 F.R.D. 639 (D. Utah 1999)	13
10	<i>Ferree v. Marianos</i> ,	
11	1997 U.S. App. LEXIS 30361 (10th Cir. 1997)	2
12	<i>Gaalswijk-Knetze v. Receivables Mgmt. Servs. Corp.</i> ,	
13	2008 WL 3850657 (M.D. Fla. 2008)	17
14	<i>General Tel. Co. v. Falcon</i> ,	
15	457 U.S. 147 (1982).....	12, 14
16	<i>Graziano v. Harrison</i> ,	
17	950 F.2d 107 (3d Cir. 1991).....	2
18	<i>Hanon v. Dataproducts Corp.</i> ,	
19	976 F.2d 497 (9th Cir. 1992)	13
20	<i>Harris v. Palm Springs Alpine Estates, Inc.</i> ,	
21	329 F.2d 909 (9th Cir. 1964)	11
22	<i>Henderson v. Eaton</i> ,	
23	2002 WL 3145728 (E.D. La. 2002).....	11
24	<i>Horton v. Merrill, Lynch, Pierce, Fenner & Smith, Inc.</i> ,	
25	855 F. Supp. 825 (E.D.N.C. 1994)	4
26	<i>Hunt v. Check Recovery Systems, Inc.</i> ,	
27	241 F.R.D. 505 (N.D. Cal. 2007).....	14
28	<i>In re Bromine Antitrust Litig.</i> ,	
	203 F.R.D. 403 (S.D. Ind. 2001).....	4, 5
	<i>In re Crocs, Inc. Secs. Litig.</i> ,	
	2013 U.S. Dist. LEXIS 122593 (D. Colo. 2013).....	4

KAZEROUNI LAW GROUP, APC
 1303 EAST GRAND AVENUE, SUITE 101
 ARROYO GRANDE, CA 93420

1	<i>In re Drexek Burnham Lambert Group, Inc.</i> , 960 F.2d 285 (2d Cir. 1992).....	18
2	<i>In re Joint Eastern and Southern District Asbestos Litig.</i> , 982 F.2d 721 (2d Cir. 1992).....	19
3	<i>In re Mid-Atlantic Toyota Antitrust Litig.</i> , 564 F. Supp. 1379 (D. Md. 1983).....	5
4	<i>In re NASDAQ Market-Makers Antitrust Litig.</i> , 186176 F.R.D. 99 (S.D.N.Y. 1997).....	5, 10
5	<i>In re Prudential Sec. Inc. Ltd. Partnerships Litig.</i> , 163 F.R.D. 200 (S.D.N.Y. 1995).....	15
6	<i>In re Teletronics Pacing Sys., Inc.</i> , 137 F. Supp. 2d 985 (S.D. Ohio 2001).....	5
7	<i>In re United Energy Corp. Solar Power Modules Tax Shelter Ivs. Sec. Litig.</i> , 122 F.R.D. 251 (C.D. Cal. 1988).....	13
8	<i>Jacobson v. Persolve, LLC</i> , 2015 U.S. Dist. LEXIS 73313 (N.D. Cal. 2015).....	21
9	<i>Karvaly v. eBay, Inc.</i> , 245 F.R.D. 71 (E.D.N.Y. 2007).....	4
10	<i>Keele v. Wexler</i> , 149 F.3d 589 (7th Cir. 1998).....	4, 16
11	<i>Lerwill v. Inflight Motion Pictures, Inc.</i> , 582 F.2d 507 (9th Cir. 1978).....	14
12	<i>Lightbourn v. County of El Paso, Tex.</i> , 118 F.3d 639 (D. Utah 1988).....	13
13	<i>Little dove v. JBC & Associates, Inc.</i> , 2001 WL 42199 (E.D. Cal. 2001).....	4
14	<i>Livingstone v. Toyota Motor Sales USA, Inc.</i> , 1995 U.S. Dist. LEXIS 21757 (N.D. Cal. 1995).....	5
15	<i>Mace v. Van Ru Credit Corp.</i> , 109 F.3d 338 (7th Cir. 1997).....	21
16	<i>Moreno-Peralta v. TRS Recovery Services, Inc.</i> , 2017 Cal. Super. LEXIS 548 (SLO Superior Court Oct. 18, 2017).....	20

KAZEROUNI LAW GROUP, APC
 1303 EAST GRAND AVENUE, SUITE 101
 ARROYO GRANDE, CA 93420

1 *Nelson v. Bennett*,
 662 F. Supp. 1325 (E.D. Cal. 1987)..... 5

2 *Offices for Justice v. Civil Service Comm 'n*,
 3 688 F.2d 615 (9th Cir. 1982) 5, 15

4 *Ortiz v. Fireboard Corp.*,
 5 527 U.S. 815 (1999)..... 19

6 *Oslan v. Law Offices of Mitchell N. Kay*,
 232 F. Supp. 2d 436 (E.D. Pa. 2002) 17

7 *Schwarm v. Craighead*,
 8 233 F.R.D. 655 (E.D. Cal. 2006) 4, 21

9 *Schwartz v. Harp*,
 10 108 F.R.D. 279 (C.D. Cal. 1985)..... 13

11 *Thomas v. Pierce, Hamilton, and Stern, Inc.*,
 967 F. Supp. 507 (N.D. Ga. 1997)..... 7

12 *United States v. Hardage*,
 13 982 F.2d 1491 (10th Cir. 1993) 4

14 *Utility Reform Project v. Bonneville Power Admin*,
 15 869 F.2d 437 (9th Cir. 1989) 15

16 *Williams v. Vukovich*,
 720 F.2d 909 (6th Cir. 1983) 5

17 *Wyatt v. Creditcare, Inc.*,
 18 2005 WL 2790684 (N.D. Cal. 2005) 14, 16

19

20

21

22

23

24

25

26

27

KAZEROUNI LAW GROUP, APC
1303 EAST GRAND AVENUE, SUITE 101
ARROYO GRANDE, CA 93420

I. INTRODUCTION

In this putative class action, Plaintiffs ROSA CALDERON; and, JAVIER CALDERON (“Individual Plaintiffs” and “Class Representatives”) assert that Defendant THE WOLF FIRM, A LAW CORPORATION (“Wolf Firm”) violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. (“FDCPA”); and, Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788, et seq. (“RFDCPA”) by including language in the Wolf Firm’s demand letter that allegedly overshadowed consumer’s rights pursuant to 15 U.S.C. § 1692g while allegedly failing to include the notice of consumer’s rights pursuant to the RFDCPA. The FDCPA requires a debt collector’s initial written communication to state

- (1) the amount of the debt;
- (2) the name of the creditor to who the debt is owed;
- (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain a verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
- (5) a statement that upon the consumer’s written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

See 15 U.S.C. § 1692g(a). In addition, this information needs to be conveyed by the debt collector to the consumer in a manner that does not “contain[] language that ‘overshadows or contradicts’ other language informing a consumer

1 of her rights.” *Ferree v. Marianos*, 1997 U.S. App. LEXIS 30361, at *6 (10th Cir.
2 1997) (citing *Graziano v. Harrison*, 950 F.2d 107, 111 (3d Cir. 1991)).

3 In response to this Litigation and the alleged therein, the Wolf Firm filed a
4 Motion to Dismiss Plaintiffs’ First Amended Complaint. Said Motion was
5 eventually denied on January 18, 2017. [ECF No. 43; *see also Calderon, et al. v.*
6 *The Wolf Law Firm*, 2017 U.S. Dist. LEXIS 7125; 2017 WL 253969].

7 The Parties then submitted their dispute to mediation. In advance of
8 mediation, counsel for the Individual Plaintiffs requested, and the Wolf Firm
9 produced, data and documents regarding the Individual Plaintiffs’ claims and the
10 potential number of persons in the Settlement Class. Following arms-length
11 settlement negotiations, in which the Individual Plaintiffs, the Class
12 Representatives, and Defendant were all represented by competent, experienced
13 and informed counsel, the Parties agreed to fully and finally resolve all claims and
14 liabilities asserted in the Litigation, without any admission of liability or
15 wrongdoing on the part of the Wolf Firm. The Parties agreed on the terms and
16 conditions memorialized in the Settlement Agreement attached as Exhibit 1.

17 Pursuant to the terms of the Settlement Agreement and the Declaration of
18 Matthew M. Loker (“Loker Decl.”), the Parties now jointly request this Court to:

- 19 1. Certify a class for settlement purposes only;
- 20 2. Appoint Matthew M. Loker; and, Abbas Kazerounian of the
21 Kazerouni Law Group, APC as well as Joshua B. Swigart of Hyde &
22 Swigart as class counsel;
- 23 3. Appoint the Individual Plaintiffs as the Class Representatives;
- 24 4. Approve the proposed plan of providing Notice to the Class; and,
- 25 5. Approve the proposed preliminary schedule for providing notice to
26 the class and for class members to submit requests for exclusion or
27 objections to the proposed settlement.

KAZEROUNI LAW GROUP, APC
1303 EAST GRAND AVENUE, SUITE 101
ARROYO GRANDE, CA 93420

1 In the event that settlement is not approved, the Parties agree that any
2 agreement and order certifying a settlement class shall be null and void and the
3 Parties shall return to their respective positions at the time this Motion was
4 submitted to the Court for approval. Should this Court grant the Parties' requests,
5 the [proposed] Order Certifying Provisional Settlement Class; Preliminarily
6 Approving Class Action Settlement and Providing For Notice to the Settlement
7 Class; and, the [proposed] Final Order Approving Class Action Settlement are
8 attached as Exhibits 1A and 1B respectively to Loker Decl.

9 **II. PLAINTIFF'S ALLEGATIONS**

10 The Individual Plaintiffs allege the following facts: In July 2015, the
11 Individual Plaintiffs incurred consumer financial obligations to Franklin Credit
12 Management Corporation. [Complaint, ECF No. 1 ("Complaint"), ¶ 19].
13 Sometime thereafter, the Individual Plaintiffs' debt was transferred to the Wolf
14 Firm for collection. [*Id.* at ¶ 21]. The Wolf Firm sent the Individual Plaintiffs a
15 written communication dated July 16, 2015. [*Id.* at ¶ 22]. Said written
16 communication stated that the Individual Plaintiffs had thirty days from the date of
17 the letter to cure the Individual Plaintiffs' default. [*Id.* at ¶ 23]. The Wolf Firm's
18 initial written communication allegedly failed to inform the Individual Plaintiffs of
19 their rights pursuant to the RFDCPA. [*Id.* at ¶ 30]. As the Individual Plaintiffs'
20 contend, the Wolf Firm's allegedly contradictory statement and omissions that the
21 Individual Plaintiffs must pay the Individual Plaintiffs debt within thirty days of
22 the date of the letter as opposed to the date the letter was received overshadowed
23 the protections of 15 U.S.C. § 1692g. [*Id.* at ¶ 26-35]. Thus, the Wolf Firm's
24 written communication allegedly violated the FDCPA and RFDCPA. [*Id.*]. The
25 Wolf Firm denies any liability or wrongdoing of any kind, and has vigorously
26 defended the Litigation. In that regard, the Wolf Firm also denies that any claims
27 asserted in the Litigation were appropriate for class certification.

KAZEROUNI LAW GROUP, APC
1303 EAST GRAND AVENUE, SUITE 101
ARROYO GRANDE, CA 93420

1 **III. STANDARD FOR PRELIMINARY APPROVAL OF CLASS**
2 **ACTION SETTLEMENT**

3 Congress expressly recognized the propriety and utility of class litigation
4 for enforcement of consumers' rights under the FDCPA and RFDCPA. As such,
5 through enactment of 15 U.S.C. §§ 1692k(a)(2)(B) and (b)(2), Congress provided
6 an express statutory mechanism for computation of class awards. See 15 U.S.C §§
7 1692k(a)(2)(B) and (b)(2); *Ballard v. Equifax Check Services, Inc.*, 186 F.R.D.
8 589 (E.D. Cal. 1999); *Littledove v. JBC & Associates, Inc.*, 2001 WL 42199 (E.D.
9 Cal., January 11, 2001); *Schwarm v. Craighead*, 233 F.R.D. 655 (E.D. Cal. 2006);
10 *Keele v. Wexler*, 149 F. 3d 589 (7th Cir. 1998).

11 The approval of a proposed settlement of a class action suit is a matter
12 within the broad discretion of the trial court. *United States v. Hardage*, 982 F.2d
13 1491, 1495 (10th Cir. 1993). Preliminary approval does not require the trial court
14 to answer the ultimate question of whether a proposed settlement is fair,
15 reasonable and adequate. Rather, the determination is made only after notice of
16 the settlement has been given to the members of the Class and after they have
17 been given an opportunity to voice their views of the settlement. See *In re Crocs,*
18 *Inc. Secs. Litig.*, 2013 U.S. Dist. LEXIS 122593, at *10-11 (D. Colo. 2013); and, 5
19 James Wm. Moore *et al.*, MOORE'S FEDERAL PRACTICE § 23.83[1], at 23-336.2 to
20 23-339 (3d ed. 2002).

21 Courts have also noted that the standard for preliminary approval is less
22 rigorous than the analysis at final approval. See, e.g., *Crocs*, 2013 U.S. Dist.
23 LEXIS, at *10-11; *Karvaly v. eBay, Inc.*, 245 F.R.D. 71, 80 (E.D.N.Y. 2007);
24 *Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 855 F. Supp. 825, 827
25 (E.D.N.C. 1994) (holding that the issue at preliminary approval is whether there is
26 probable cause to justify notifying the class members of proposed settlement); *In*
27 *re Bromine Antitrust Litig.*, 203 F.R.D. 403, 416 (S.D. Ind. 2001) (bar for

KAZEROUNI LAW GROUP, APC
1303 EAST GRAND AVENUE, SUITE 101
ARROYO GRANDE, CA 93420

1 obtaining preliminary approval of class action settlement is low).

2 In considering a potential settlement, the trial court need not reach any
3 ultimate conclusions on the issues of fact and law which underlie the merits of the
4 dispute (*City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 456 (2d Cir. 1974) and
5 need not engage in a trial on the merits. *See Offices for Justice v. Civil Service*
6 *Comm’n*, 688 F.2d 615 (9th Cir. 1982).¹ The relevant inquiry is “to [weigh] the
7 likelihood of success on the merits against the amount and form of the relief
8 offered in the settlement.” *Williams v. Vukovich*, 720 F.2d 909, 922 (6th Cir.
9 1983) (*citing to Carson v. American Brands, Inc.*, 450 U.S. 79, 88 (1981)).

10 In evaluating a settlement in this type of litigation, courts have long
11 recognized that such litigation “is notably difficult and notoriously uncertain.”
12 *Lewis v. Newman*, 59 F.R.D. 525, 528 (S.D.N.Y. 1973) (footnote omitted). Thus,
13 compromise is particularly appropriate. *Nelson v. Bennett*, 662 F. Supp. 1325,
14 1334 (E.D. Cal. 1987).

15 Here, although the Wolf Firm did not prevail on its Motion to Dismiss, its
16 defenses present litigation risk that make it appropriate for the Individual

17 _____
18 ¹ Various District Courts across the country have also followed this analysis in
19 deciding whether preliminary approval is appropriate. *See Arata v. Nu Skin Int’l*,
20 96 F.3d 1265, 1268-69 (9th Cir. 1996) (noting, in approving settlement that
21 ‘district court evaluated the proposed settlement and granted preliminary
22 approval...in accordance with the procedures outlined in the Manual for Complex
23 Litigation’); *Livingstone v. Toyota Motor Sales USA, Inc.*, 1995 U.S. Dist. LEXIS
24 21757, at *23-24 (N.D. Cal. 1995) (preliminary approval recommended where
25 special master concludes that proposed settlement “[fell] within the range of
26 possible approval” because “(a) the negotiations occurred at arm’s-length; (b)
27 there was sufficient discovery; [and] (c) the proponents of the settlement are
28 experienced in similar litigation”); *In re Teletronics Pacing Sys., Inc.*, 137 F.
Supp. 2d 985, 1015-1016 (S.D. Ohio 2001) (same, citing MANUAL FOR COMPLEX
LITIGATION, § 30.44 (2d ed. 1985)); *In re NASDAQ Market-Makers Antitrust*
Litig., 176 F.R.D. 99, 102 (S.D.N.Y. 1997) (same); *In re Mid-Atlantic Toyota*
Antitrust Litig., 564 F. Supp. 1379 (D. Md. 1983) (same).

KAZEROUNI LAW GROUP, APC
1303 EAST GRAND AVENUE, SUITE 101
ARROYO GRANDE, CA 93420

1 Plaintiffs to seek a negotiated resolution. Such defenses include defenses on the
2 merits to the FDCPA and RFCPA claims as well as defenses to class certification.
3 Thus, the settlement ensures Class Members receive some relief.

4 **IV. THE SETTLEMENT**

5 **A. THE SETTLEMENT CLASS**

6 The “Classes” means the persons in the following definitions:

7 National Class. All persons with addresses within the U.S.
8 who received an initial demand letter from Defendant from
9 July 8, 2015 to the date of the entry of the Preliminary
Approval of Settlement and Notice Order,

10 Subclass. All persons with addresses within the State of
11 California who received an initial demand letter from
12 Defendant from July 8, 2015 to the date of the entry of the
Preliminary Approval of Settlement and Notice Order.

13 Based upon the Parties’ investigation into the matter, the total number of
14 potential Class Members in the Settlement Class is estimated to be approximately
15 114. The process used to arrive at the estimated number of potential Class
16 Members were verified during confirmatory discovery. All that is needed for a
17 Class Member to receive payment is to refrain from submitting an opt-out form.
18 [Settlement Agreement, ¶ 13.1].

19 **B. SETTLEMENT PAYMENT**

20 Under the Settlement, the Wolf Firm agrees to establish an all-in Settlement
21 Fund in the amount of \$68,000.00 within 30 days of Preliminary Approval.
22 [Settlement Agreement, ¶ 3]. This number represents the maximum amount
23 payable by the Wolf Firm in Settlement of this Action and it is inclusive of
24 amounts paid to Settlement Class members, notice costs; incentive awards;
25 attorneys’ fees; administrative fees; and, litigation costs. [Settlement Agreement,
26 ¶ 3.1].

KAZEROUNI LAW GROUP, APC
1303 EAST GRAND AVENUE, SUITE 101
ARROYO GRANDE, CA 93420

1 Each of the 114 class members that do not exclude themselves will receive a
2 *pro rata* distribution of \$1,785.24 from the Settlement Fund.² A 100% claims rate
3 will leave each consumer with \$15.66. The Parties suspect the claims rate to be
4 near 100% since this is an opt-out settlement in order to reduce the amount of
5 administrative costs. This reduction permitted the Wolf Firm to establish a larger
6 Settlement Fund instead of pay higher administrative costs. The Honorable
7 Cormac J. Carney approved an opt-out procedure in *Abat v. Chase Bank USA,*
8 *N.A.*, 2010 WL 1146535, *2 (C.D. Cal. 2010).

9 **C. INJUNCTIVE RELIEF**

10 The putative class members and future consumers will also benefit from
11 injunctive relief in the form of a material change to the Wolf Firm’s initial written
12 communication. [Settlement Agreement, ¶ 5.5]. Specifically, the Wolf Firm, as a
13 direct result of this action, has agreed to update its letter in the form attached as
14 Exhibit 1D to the Settlement Agreement in order to avoid the potential for any
15 confusion and eliminate the risk of future litigation. [*Id.*]. Said relief is
16 appropriate because the purpose of damages under the FDCPA is to incentivize
17 compliance rather than to provide compensation. *See, e.g., Thomas v. Pierce,*
18 *Hamilton, and Stern, Inc.*, 967 F. Supp. 507, 509 (N.D. Ga. 1997).

19 **D. CLASS NOTICE**

20 The Parties propose using a third-party claims administrator, Phoenix Class
21 Action Administration Solutions, to facilitate the administration of all claims in
22 this matter. The Claims Administrator’s responsibilities will include, but are not
23 limited to, providing notice to the class members, fielding inquiries related to the
24 settlement, and issuing the settlement payments. [Settlement Agreement, ¶ 10].

25 ² The Parties at the Court’s request will submit evidence of the Wolf Firm’s net
26 worth for an in-camera review to support the sufficiency of the *pro rata*
27 distribution. *See* 15 U.S.C. § 1692k(a)(2)(B)(ii).

KAZEROUNI LAW GROUP, APC
1303 EAST GRAND AVENUE, SUITE 101
ARROYO GRANDE, CA 93420

1 The Claims Administrator will also maintain a settlement website as well as a
2 toll-free settlement call center from which Class Members can obtain further
3 information regarding the settlement. In addition to this Notice, the Kazerouni
4 Law Group, APC will also post settlement documents at www.kazlg.com.

5 **E. SCOPE OF RELEASE**

6 The Parties desire and seek Court approval of the settlement and a final
7 judgment and order dismissing with prejudice the Individual Plaintiffs’ and Class
8 Members’ claims as set forth in this Settlement Agreement. The scope of the
9 release by all Class Members (other than those who exclude themselves from the
10 Settlement) covers any and all actions, causes of action, obligations, costs,
11 expenses, damages, losses, claims, liabilities, and demands, of whatever character,
12 known or unknown, arising out of, relating to, or in connection with, the
13 Complaint, the claims asserted in Action, the Wolf Firm’s form written
14 communication, and the administration of this settlement. [Settlement Agreement,
15 ¶ 7.1].

16 **F. OPPORTUNITY TO OPT OUT AND OBJECT**

17 Under the terms of the proposed Settlement, Class members will have the right
18 to opt out of the Settlement or object to its terms. [See Settlement Agreement, ¶
19 12]. The deadline for doing so is within 60 days of the completion of notice.
20 [Settlement Agreement, ¶ 22]. Class members will be informed of these rights
21 through the Settlement Website and the mailed notice, and information available
22 by calling the Toll-Free Number. [*Id.*].

23 **G. TERMINATION OF SETTLEMENT**

24 The Parties shall have the right to terminate the settlement. [*Id.* at ¶ 16]. In
25 the event that the settlement is terminated pursuant to this Section, the Parties will
26 be returned to the status quo ante as if no settlement had been negotiated or
27 entered into. [*Id.*].

H. CLASS REPRESENTATIVE’S APPLICATION FOR INCENTIVE AWARD

The Individual Plaintiffs will apply to the Court for an incentive award of up to \$2,000.00 each for the Individual Plaintiffs’ service as Class Representative in this action. [*Id.* at ¶ 6.2]. Any incentive award approved by the Court will be paid by the Claims Administrator out of the Settlement Fund established by the Wolf Firm before payments to other class members are made. [*Id.*].

I. CLASS COUNSEL’S APPLICATION FOR ATTORNEYS’ FEES, COSTS AND EXPENSES

Class Counsel shall move the Court for an award of attorney’s fees and costs (“Motion for Fees”) not to exceed \$56,414.76. [Settlement Agreement, ¶ 6.1]. Any award of fees and costs approved by the Court shall be paid from the Settlement Fund. [*Id.*]. The Wolf Firm shall not object to Class Counsel’s Motion for Fees so long as the total amounts requested by Class Counsel do not exceed the agreed upon amount. [*Id.*]. Court approval of Class Counsel’s attorney’s fees and costs is not a condition of the settlement. [*Id.*].

J. CY PRES DISTRIBUTION

If there are any unclaimed funds or any funds from uncashed settlement checks, Class Counsel will file a brief in support and recommendation of one or more *cy pres* recipients, as agreed by the Wolf Firm, which will then require approval by the Court. [*See* Settlement Agreement, ¶ 4.5.2].

V. LEGAL ANALYSIS

Rule 23(e) requires court approval for settlement of class claims. Approval of a class settlement occurs in two steps:

First, the Court conditionally certifies the class and grants preliminary approval of the settlement.

Second, after the settlement is preliminarily approved and notice of the settlement is provided to the class, the Court conducts a fairness hearing to

KAZEROUNI LAW GROUP, APC
1303 EAST GRAND AVENUE, SUITE 101
ARROYO GRANDE, CA 93420

KAZEROUNI LAW GROUP, APC
1303 EAST GRAND AVENUE, SUITE 101
ARROYO GRANDE, CA 93420

1 determine if the settlement is “fair, reasonable, and adequate.” Fed. R. Civ. P.
2 23(e)(2); Manual for Complex Litigation (4th ed. 2004) § 21.632; *In re NASDAQ*
3 *Market Makers Antitrust Litigation*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997).

4 The instant Motion is submitted in support of the first step of the settlement
5 approval process.

6 **A. THE PROPOSED CLASS SATISFIES THE REQUIREMENTS OF RULE 23**

7 Before granting preliminary approval of a settlement, the Court must
8 determine that the proposed class can be certified for settlement purposes. See
9 *Manual for Complex Litigation* (4th Ed. 2004) § 21.632; *Amchem Prods. Inc. v.*
10 *Windor*, 521 U.S. 591, 620 (1997). Rule 23 governs the issue of class
11 certification, whether the proposed class is a litigated class or, as here, a
12 settlement class. All criteria for certification of a class for litigation purposes,
13 except manageability, apply to certification for settlement purposes.

14 Certification is appropriate where the proposed class and the proposed class
15 representatives meet four prerequisites of Rule 23(a) – (i) numerosity; (ii)
16 commonality; (iii) typicality; and, (iv) adequacy of representation. In addition,
17 one of the three requirements of Rule 23(b) must also be met. Certification of a
18 class action for damages requires a showing that “questions of law and fact
19 common to the members of the class predominate over any questions affecting
20 only individual members, and that a class action is superior to other available
21 methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P.
22 23(b)(3).

23 The Parties agree that the requirements for class certification under Rule 23
24 have been met for the sole purpose of effectuating settlement of this disputed class
25 claim. Nothing in regard to the settlement of this disputed claim shall be
26 construed as an admission that the Individual Plaintiffs have satisfied the
27 substantive requirements of Rule 23. Furthermore, the treatment of this matter as

KAZEROUNI LAW GROUP, APC
1303 EAST GRAND AVENUE, SUITE 101
ARROYO GRANDE, CA 93420

1 a class action for purposes of settlement shall not be admissible to support class
2 certification in any other matter. In the event that the settlement is not approved,
3 the Parties agree that any agreement and order certifying a settlement class shall
4 be null and void and the parties shall return to their respective positions at the time
5 this Motion was submitted to the Court for approval.

6 **1. *The requirement of numerosity is satisfied.***

7 The first requirement for maintaining a class action under Rule 23(a) is that
8 the class is so numerous that joinder of all members would be “impracticable.”
9 *Coleman v. Recontrust Co. N.A.*, 2012 U.S. Dist. LEXIS 53928, at *8 (D. Utah
10 2012) citing to Fed. R. Civ. P. 23(a)(1). Generally, the numerosity requirement is
11 satisfied when the class is comprised of 40 or more members. *Celano v. Marriott*
12 *Int’l, Inc.*, 242 F.R.D. 544, 549 (N.D. Cal. 2007).³ In this case, the class has been
13 estimated to potentially consist of approximately 114 class members as of the date
14 of this Motion submission. The Wolf Firm arrived at the class size based on
15 review of the Wolf Firm’s records. Based upon the Wolf Firm’s internal
16 investigation, this putative class action appears to exceed the numerosity
17 threshold. Thus, the proposed class meets the first prerequisite of Rule 23 for
18 settlement purposes.

19 **2. *The requirement of commonality is satisfied.***

20 The second prerequisite to class certification is the existence of questions of
21 law or fact that are common to the class. Fed. R. Civ. P. 23(a)(2). Commonality
22 can be established by showing “that the class is united by a common interest.”
23 See *Blackie v. Barrack*, 524 F.2d 891, 901 (1975) (holding that “slight differences

24 ³ *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964)
25 (“Generally speaking, courts will find that the ‘numerosity’ requirement has been
26 satisfied when the class comprises 40 or more members”); *Consolidated Rail*
27 *Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995) (numerosity
presumed at level of 40 members).

KAZEROUNI LAW GROUP, APC
1303 EAST GRAND AVENUE, SUITE 101
ARROYO GRANDE, CA 93420

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

in class members’ positions” will not defeat commonality). The existence of shared legal issues” will satisfy the commonality requirement even if there are “divergent factual predicates.” *Dukes*, 774 F.3d at 1225. Because the test of commonality is qualitative rather than quantitative, “one significant issue common to the class may be sufficient to warrant certification.” *Id.*⁴

Here, common questions of both law and fact are raised concerning the propriety of the Wolf Law Firm’s form letter. Every prospective class member was sent a substantially identical letter. The Complaint addresses the following legal issues and each applies equally to each and every member of the Class, namely:

- a) Whether the Wolf Firm’s letter contained language that overshadowed the explanation of consumer’s rights;
- b) Whether the Wolf Firm’s letter violated the FDCPA;
- c) Whether members of the Class are entitled to the remedies under the FDCPA;
- d) Whether The Wolf Law Firm’s letter omitted language required by the RFDCPA;
- e) Whether The Wolf Law Firm’s letter violated the RFDCPA;
- f) Whether members of the Class are entitled to declaratory relief;
- g) Whether members of the Class are entitled to injunctive relief;
- h) Whether members of the Class are entitled to an award of reasonable attorneys’ fees and costs of suit pursuant to the FDCPA;
- i) Whether members of the Class are entitled to an award of reasonable

⁴ See also *General Tel. Co. v. Falcon*, 457 U.S. 147, 155 (1982) (“Class relief is ‘particularly appropriate’ when the ‘issues involved are common to the class as a whole’ and when they ‘turn on questions of law applicable in the same manner to each member of the class.’”)

attorneys’ fees and costs of suit pursuant to the RFDCPA; and,

j) Whether the Wolf Firm can satisfy the bona fide error affirmative defense.

Therefore, the commonality requirement of Rule 23(a)(2) is satisfied.

3. The requirement of typicality is satisfied.

The third prerequisite to class certification is that the named plaintiff’s claims are typical of the class. Fed. R. Civ. P. 23(a)(3). A plaintiff’s claim is typical “if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory.” *De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.3d 225, 232 (7th Cir. 1983). The test for typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct. *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992), quoting *Schwartz v. Harp*, 108 F.R.D. 279, 282 (C.D. Cal. 1985). See also *Ditty v. Check Rite, Ltd.*, 182 F.R.D. 639, 642 (D. Utah 1988); *Lightbourn v. County of El Paso, Tex.*, 118 F.3d 421, 426 (5th Cir. 1998); *In re United Energy Corp. Solar Power Modules Tax Shelter Ivs. Sec. Litig.*, 122 F.R.D. 251, 256 (C.D. Cal. 1988).

Here, each and every member of the proposed class is alleged to have received a letter in the form of the letter received by the Individual Plaintiffs. Each member of the Class has the very same claims against the Wolf Firm and each of those claims would be susceptible to the same defenses. The Individual Plaintiffs respectfully submit that, since the claims of all Class members, including the Individual Plaintiffs, arise from the same event, practice or course of conduct, namely, the receipt of a standardized form letter, typicality is satisfied..

4. The requirement of adequate representation is satisfied.

The final requirement of Rule 23(a) is that the representative plaintiff will

KAZEROUNI LAW GROUP, APC
1303 EAST GRAND AVENUE, SUITE 101
ARROYO GRANDE, CA 93420

KAZEROUNI LAW GROUP, APC
1303 EAST GRAND AVENUE, SUITE 101
ARROYO GRANDE, CA 93420

1 fairly and adequately represent the interests of the class. Fed. R. Civ. P. 23(a)(4).
2 “This factor requires: (1) that the proposed representative plaintiffs do not have
3 conflicts of interest with the proposed class, and that plaintiffs are represented by
4 qualified and competent counsel.” *Dukes*, 509 F.3d at 1185.⁵

5 Here, the Individual Plaintiffs have the same interests as the class members
6 that the Individual Plaintiffs seek to represent because this action is based upon
7 the same alleged conduct of Wolf Firm; namely, the usage of language in a
8 demand letter that overshadows consumers’ rights pursuant to the FDCPA; and/or,
9 omitted information required by the RFDCPA.

10 Furthermore, the Individual Plaintiffs are represented by counsel who are
11 qualified in class action litigation and have had extensive experience in consumer
12 protection class action lawsuits. *Carrizosa v. Stassinis*, 669 F. Supp. 2d 1081
13 (N.D. Cal. 2008); *Hunt v. Check Recovery Systems, Inc.*, 241 F.R.D. 505 (N.D.
14 Cal. 2007); *Wyatt v. Creditcare, Inc.*, 2005 WL 2780684 (N.D. Cal. 2005); and,
15 *Abels v. JBC Legal Group, P.C.*, 227 F.R.D. 541 (N.D. Cal. 2005). [See
16 Declarations of Matthew M. Loker; Joshua B. Swigart; and, Abbas Kazerounian
17 filed concurrently herewith]. Thus, the Individual Plaintiffs and the Individual
18 Plaintiffs’ counsel adequately represent the class.

19 **B. THE ACTION MEETS THE REQUIREMENTS OF RULE 23(B)(3).**

20 Once the four requirements of Rule 23(a) are met, “the potential class must
21 also satisfy at least one provision of Rule 23(b).” *Rosario*, 963 F.3d at 1017; see
22 also *General Tel. Co. v. Falcon*, 457 U.S. 147, 161 (1982). Rule 23(b)(3) states
23 that a class may be certified when “questions of law or fact common to class
24 members predominate over any questions affecting only individual members, and
25 [...] a class action is superior to other available methods for fairly and efficiently

26 ⁵ See also *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir.
27 1978)

KAZEROUNI LAW GROUP, APC
1303 EAST GRAND AVENUE, SUITE 101
ARROYO GRANDE, CA 93420

1 adjudicating the controversy.”

2 The common issue presented in this action is whether Wolf Firm’s written
3 communication violates the FDCPA or the RFDCPA. Since this action is
4 predicated on the same conduct, this common issue predominates over any
5 individual issue.

6 Moreover, a class action is superior to other available methods for the fair
7 and efficient adjudication of this controversy because Wolf Firm sent 114 letters
8 to separate individuals. By utilizing the class action vehicle, relief may be
9 provided to class members without the need for numerous separate trials on the
10 same facts. Hence, a class action will achieve economies of time, effort and
11 expense, as well as promote uniformity of decision as to persons similarly
12 situated.

13 Because this is a settlement class, the Court need not consider issues of
14 manageability relating to trial. See *Amchem*, 521 U.S. at 620 (“[c]onfronted with
15 a request for settlement-only class certification, a district court need not inquire
16 whether the case, if tried, would present intractable management problems, for the
17 proposal is that there be no trial.”).

18 Accordingly, the Parties stipulate, solely for the purposes of this settlement,
19 that the class is suitable for certification for settlement purposes. Thus, the Parties
20 request that the Court certify the settlement class pursuant to Rule 23(b)(3) for
21 purposes of granting preliminary approval of the settlement.⁶

22
23 ⁶ As a matter of public policy, settlement is a strongly favored method for
24 resolving disputes. See *Utility Reform Project v. Bonneville Power Admin.* 869
25 F.2d 437, 443 (9th Cir. 1989). This is especially true in class actions such as this.
26 See *Officers for Justice v. Civil Service Comm’n*, 688 F.2d 615 (9th Cir. 1982). As a
27 result, courts should exercise their discretion to approve settlements “in recognition
28 of the policy encouraging settlement of disputed claims.” *In re Prudential Sec. Inc.*
Ltd. Partnerships Litig., 163 F.R.D. 200, 209 (S.D.N.Y. 1995).

1. Common questions predominate

The predominance criterion is satisfied where a “common nucleus of operative fact” exists among all members of the class for which a remedy is provided at law. *Newman v. CheckRite California, Inc.*, supra at *8 (internal quotation omitted). In consumer actions brought under the FDCPA, a common nucleus of operative fact is “typically” found where, as here, “defendants have engaged in standardized conduct toward members of the proposed class by mailing to them allegedly illegal form letters or documents.” *Ballard*, 186 F.R.D. at 595, quoting *Keele v. Wexler*, 149 F. 3d 589, 594 (7th Cir. 1998).

Here, Wolf Firm’s “standardized conduct” upon which the alleged violations are premised clearly predominates over any questions affecting only individual members. At issue are Wolf Firm’s standardized form letters which were mailed to consumers. As such, individual issues concerning identification of prospective class members and entitlement to actual damages are capable of determination and considered “ancillary to the Court’s evaluation of the predominantly common issues.” *Wyatt v. Creditcare, Inc.*, 2005 WL 2780684, *5 (N.D. Cal., October 25, 2005). Therefore, the “predominance” requirement is met.

2. A class action is superior to other methods of adjudication.

In the context of such actions, courts have routinely found a class action superior to individual claims. First, individual consumers are most likely unaware of their rights under the FDCPA and/or RFDCPA, therefore class action certifications to enforce compliance with consumer protection statutes should be encouraged. Second, the size of individual claims is usually so small there is little incentive to sue individually. According to 15 U.S.C. §1692k: “(a) Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this title with respect to any person is liable to such person in an amount equal to the sum of ... (B) in the case of a class action... (ii) such amount

KAZEROUNI LAW GROUP, APC
1303 EAST GRAND AVENUE, SUITE 101
ARROYO GRANDE, CA 93420

KAZEROUNI LAW GROUP, APC
1303 EAST GRAND AVENUE, SUITE 101
ARROYO GRANDE, CA 93420

1 as the court may allow for all other class members, without regard to a minimum
2 individual recovery, not to exceed the lesser of \$500,000 or 1 per centum of the
3 net worth of the debt collector...” 15 U.S.C. §1692k.

4 Here, the Settlement Fund is in excess of one percent The Wolf Law Firm’s
5 net worth. [Settlement Agreement, ¶ 5.3.2]. The Court need not award the
6 maximum, but may award some lesser amount in its discretion after considering
7 the factors listed in the FDCPA. Based on a putative class size of approximately
8 114 members, each class member will be awarded approximately \$15.66. Courts
9 have approved class settlements where the actual settlement distributions were as
10 low as \$10 per class member. See *Berther v. TSYs Total Debt Mgmt., Inc.*, 2007
11 WL 1795472 (E.D. Wis. June 19, 2007); *Gaalswijk-Knetzke v Receivables Mgmt.*
12 *Servs. Corp.*, 2008 WL 3850657 (M.D. Fla. Aug. 14, 2008) (awarding \$3.20 per
13 claimant); *Bonnett v. Education Debt Services, Inc.*, 2003 WL 21658267 (E.D. Pa.
14 2003) (awarding \$77.46 per claimant); *Cope v. Duggins*, 203 F. Supp. 2d 650
15 (E.D. La. 2002) (awarding \$11.90 per claimant); *Henderson v. Eaton*, 2002 WL
16 3145728 (E.D. La. 2002) (awarding \$21.00 per claimant); *Oslan v. Law Offices of*
17 *Mitchell N. Kay*, 232 F. Supp. 2d 436 (E.D. Pa. 2002) (awarding \$62 per
18 claimant); *Saunders v. Berks Credit & Collections, Inc.*, 2002 WL 1497374 (E.D.
19 Pa. 2002) (awarding \$62.54 per claimant); and, *Burkhammer v. Allied Interstate,*
20 *LLC*, 2017 Cal. Super. LEXIS 109 (San Luis Obispo Superior Court, May 19,
21 2017) (final approval granted with consumers to receive \$18.66 each).

22 Finally, concerns of judicial efficiency and consistency favor litigating the
23 propriety of The Wolf Law Firm’s conduct by all class members in one action
24 rather than several individual suits. Moreover, The Wolf Law Firm, class
25 representatives and a vast majority of the putative class members reside in this
26 district, therefore the current venue is ideal. In light of the Congressional intent
27 behind the FDCPA; and, RFDCPA and its mandate to allow for class action

KAZEROUNI LAW GROUP, APC
1303 EAST GRAND AVENUE, SUITE 101
ARROYO GRANDE, CA 93420

1 litigation, a class action under the circumstances presented here would be superior
2 to any other method of adjudication.

3 **C. THE RISK OF AN INCONSISTENT RULING SATISFIES THE**
4 **REQUIREMENTS OF RULE 23(B)(1)**

5 In addition to meeting the numerosity, commonality, typicality, and
6 adequacy of representation requirements of Rule 23(a), the proposed class must
7 also meet one of the three provisions of Rule 23(b). It is the parties' position that
8 the class may be certified under Fed.R.Civ.P.23(b)(1) or Fed.R.Civ.P.23(b)(3).

9 According to Fed.R.Civ.P.23(b)(1), a class action may be maintained if:
10 “(1) prosecuting separate actions by or against individual class members would
11 create a risk of: (A) inconsistent or varying adjudications with respect to
12 individual class members that would establish incompatible standards of conduct
13 for the party opposing the class; or (B) adjudications with respect to individual
14 class members that, as a practical matter, would be dispositive of the interests of
15 the other members not parties to the individual adjudications or would
16 substantially impair or impede their ability to protect their interests.” Fed. R. Civ.
17 P. 23(b)(1)(B). Certification under Fed. R. Civ. P. 23(b)(1)(A) becomes applicable
18 where a party is obliged by law to treat all members of the class alike. *Amchem*
19 *Products, Inc. v. Windsor*, 521 U.S. 591, 614 (1997).

20 A class may also be appropriate under Fed. R. Civ. P. 23(b)(1)(B) because
21 judgments in individual lawsuits could adversely affect the rights of other
22 members of the class. See *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d
23 285, 292 (2d Cir. 1992)(“Some members . . . might attempt to maintain costly
24 individual actions in the hope . . . that their claims are more meritorious than the
25 claims of other class members. A mandatory class action under Rule 23(b)(1)(B)
26 is thus necessary ... to prevent claimants with such motivations from unfairly
27 diminishing the eventual recovery of class members.”); See also *In re Joint*

KAZEROUNI LAW GROUP, APC
1303 EAST GRAND AVENUE, SUITE 101
ARROYO GRANDE, CA 93420

1 *Eastern and Southern District Asbestos Litigation*, 982 F.2d 721, 736-37 (2d Cir.
2 1992), modified, 993 F.2d 7 (2d Cir. 1993) ... (limited fund class appropriate when
3 "recoveries of early successful claimants...would...preclude later claimants . ."
4 from recovering).

5 Here, because there are at least 114 class members who can file their own
6 complaint against the Wolf Firm, the funds available for recovery may be
7 insufficient to cover the claims of each individual. Therefore, a class certified
8 under Fed. R. Civ. P. 23(b)(1)(B) may be appropriate. *Ortiz v. Fireboard Corp.*,
9 527 US 815, 834 (1999). In order to certify under Fed. R. Civ. P. 23(b)(1)(B), the
10 Court must find that the totals of the aggregated liquidated claims and the fund
11 available for satisfying them, set definitely at their maximums, demonstrate the
12 inadequacy of the fund to pay all the claims. *Id.* at 838. Here, there are at least 114
13 different class members. If each were to receive \$2,000.00 (the maximum
14 statutory award set forth by the FDCPA and RFDCPA) that alone would amount
15 to \$228,000.00, which is not inclusive of attorney's fees and costs that a
16 prevailing party would also be entitled to under the FDCPA and RFDCPA. But
17 the Wolf Firm's total liability is capped at \$1,785.24, which is far less and would
18 be inadequate to satisfy all claims.⁷

19 Fed. R. Civ. P. 23(b)(1)(B) is appropriate where the Wolf Firm may be
20 forced through separate litigation to pay claimants with lower priority to the
21 prejudice of those with higher priority claims. *Id.* at 839. Given that the Wolf
22 Firm's potential liability is capped at 1,785.24⁸, individuals who file suit early on
23 would be awarded damages and attorney's fees in amounts that would, as a
24 practical matter, be to the detriment of claimants who file their lawsuits at a later
25 time. Where the class is comprised of individuals who might state a claim on a

26 ⁷ See Footnote 2.

27 ⁸ See Footnote 2.

KAZEROUNI LAW GROUP, APC
1303 EAST GRAND AVENUE, SUITE 101
ARROYO GRANDE, CA 93420

1 single set of facts, thereby invoking a common theory of recovery, and are to be
2 satisfied from a limited fund as the source of payment, certification under Fed. R.
3 Civ. P. 23(b)(1)(B) is appropriate. *Id.* See 1 J. Pomeroy, Equity Jurisprudence §
4 407, pp. 764-765 (4th ed. 1918) ("[I]f the fund is not sufficient to discharge all
5 claims upon it in full . . . equity will incline to regard all the demands as standing
6 upon an equal footing, and will decree a pro rata distribution or payment"). Based
7 on the foregoing reasons, the Court will find that the requirements of Fed. R. Civ.
8 P. 23(b)(1)(B) have been met.

9 **V. THE SETTLEMENT SHOULD BE GIVEN PRELIMINARY**
10 **APPROVAL AS IT IS FAIR, REASONABLE, ADEQUATE AND**
11 **THE PRODUCT OF DILIGENT INVESTIGATION, LITIGATION**
12 **AND ARMS-LENGTH NEGOTIATION**

13 As stated above, under 15 U.S.C. §1692k, a class member may recover a
14 maximum award “not to exceed the lesser of \$500,000 or 1 percent of the net
15 worth of the debt collector...” 15 U.S.C. §1692k. Again, here the Settlement Fund
16 exceeds the one (1) percent multiplier of Defendant’s actual net worth. Thus, this
17 amount exceeds the maximum amount the Class can be awarded should this case
18 proceed to trial.

19 Moreover, Courts have approved final settlements based solely on
20 injunctive relief when the monetary damages are so *de minimis* that the value of
21 the injunction to the plaintiff outweighs the potential financial gain. *Foti v. NCO*
22 *Fin. Sys.*, 2008 U.S. Dist. LEXIS 16511, at *12 (S.D.N.Y. Feb. 19, 2008)
23 (approving class action settlement which offered only injunctive relief for a
24 violation of the FDCPA); and, *Moreno-Peralta v. TRS Recovery Services, Inc.*,
25 2017 Cal. Super. LEXIS 548 (San Luis Obispo Superior Court, Oct. 18, 2017)
26 (order granting preliminary approval of RFDCPA injunctive relief only class). In
27

KAZEROUNI LAW GROUP, APC
1303 EAST GRAND AVENUE, SUITE 101
ARROYO GRANDE, CA 93420

1 addition, courts in the Ninth Circuit have previously approved class certification
2 for claims under the FDCPA on an injunctive basis. *See Schwarm v. Craighead*,
3 233 F.R.D. 655, 662–63 (E.D. Cal. 2006). Such settlements, though small
4 monetarily, effectuate the purpose of class actions and the RFDCPA. *See*
5 *Jacobson v. Persolve, LLC*, 2015 U.S. Dist. LEXIS 73313, at *22-23 (N.D. Cal.
6 2015). Therein, *Jacobson* relied upon *Mace v. Van Ru Credit Corp.*, 109 F.3d
7 338, 344-45 (7th Cir. 1997) which stated

8 [W]e believe that a de minimis recovery (in monetary terms)
9 should not automatically bar a class action. The policy at the
10 very core of the class action mechanism is to overcome the
11 problem that small recoveries do not provide the incentive for
12 any individual to bring a solo action prosecuting his or her
13 rights. A class action solves this problem by aggregating the
14 relatively paltry potential recoveries into something worth
15 someone’s (usually an attorney’s) labor.

16 True, the FDCPA allows for individual recoveries of up to
17 \$1000. But this assumes that the plaintiff will be aware of her
18 rights, willing to subject herself to all the burdens of suing and
19 able to find an attorney willing to take her case. These are
20 considerations that cannot be dismissed lightly in assessing
21 whether a class action or a series of individual lawsuits would
22 be appropriate for pursuing the FDCPA’s objections.

23 *Id.* citing to *Warcholek v. Medical Collection Sys., Inc.*, 241 F.R.D. 291, 295-96
24 (N.D. Ill. 2006) (certifying 23(b)(3) FDCPA class where defendant claimed
25 negative net worth).

26 “Ultimately, the ‘unfortunate reality...that most of Defendant’s...FDCPA
27 violations would probably go unnoticed absent this lawsuit” must be balanced
28 against the possibility that any class recovery may be relatively minimal.”
Jacobson, 2015 U.S. Dist. LEXIS 73313, at *26-27 citing to *Kalish v. Karp &*
Kalamotousakis, LLP, 246 F.R.D. 461, 464-65 (S.D.N.Y. 2007). “In light of the

KAZEROUNI LAW GROUP, APC
1303 EAST GRAND AVENUE, SUITE 101
ARROYO GRANDE, CA 93420

1 probability that most individual plaintiffs are unaware of their claims and because
2 of the small incentives for bringing individual FDCPA claims, the Court finds that
3 class certification would be superior to any alternative, notwithstanding the
4 possibility of a de minimis class recovery.” *Id.* As such, injunctive relief is
5 available for a claim under the FDCPA; and, RFDCPA and is particularly
6 appropriate here as it will provide a substantial and tangible immediate recovery
7 without the risks of continued litigation.

8 Further, given counsels’ thorough analysis of the legal and factual issues
9 raised by this case, this litigation has reached the stage where “the Parties
10 certainly have a clear view of the strengths and weaknesses of their cases”
11 sufficient to support the Settlement. *Boyd v. Bechtel Corp.*, 485 F.Supp 610, 617
12 (N.D. Cal. 1979). Based on their experience with these types of cases and analysis
13 of the issues raised herein, counsel share the view that this is a fair and reasonable
14 settlement and in the best interests of the Class. Because of the detailed legal and
15 actual analysis conducted by counsel for both parties, their endorsement of the
16 Settlement “is entitled to significant weight” in deciding whether to approve the
17 Settlement. *Fisher Bros. v. Cambridge Lee Industries, Inc.*, 630 F.Supp. 482, 488
18 (E.D. Pa. 1985); *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D.
19 Cal.1980); *Boyd v. Bechtel Corp.*, 485 F.Supp. 616-617. Courts should not
20 substitute their judgment for that of the proponents, particularly where, as here,
21 settlement has been reached with the participation of experienced counsel familiar
22 with the litigation. *National Rural Telecommunications Coop. v. DIRECTV, Inc.*,
23 221 F.R.D. 523, 528 (C.D. Cal. 2004). Such considerations apply given the
24 experienced counsel for both the Individual Plaintiffs and Wolf Firm.

25 Accordingly, the parties respectfully request that this Court preliminarily
26 approve the Class Settlement.

KAZEROUNI LAW GROUP, APC
1303 EAST GRAND AVENUE, SUITE 101
ARROYO GRANDE, CA 93420

1 **VI. THE PARTIES JOINTLY REQUEST A PRELIMINARY**
2 **APPROVAL HEARING, IF NECESSARY, AND AN ORDER**
3 **APPROVING THE PROPOSED CLASS SETTLEMENT**

4 The law favors settlement, particularly in class actions and other complex
5 cases where substantial judicial resources can be conserved by avoiding formal
6 litigation." *In re Gen. Motors*, 55 F.3d 768, 784 (3d Cir.1995). Because the
7 requirements of Fed. R. Civ. P. 23 have been met, the parties stipulate that the
8 defined class be conditionally certified for settlement purposes and jointly request
9 that the Court schedule a Preliminary Approval Hearing. The parties respectfully
10 request that the Court approve and adopt the attached proposed "Class Action
11 Settlement Agreement and General Release."

12 By settling this matter, both parties avoid the expense of trial and
13 uncertainty of outcome. If this matter proceeded to trial the net value of the
14 recovery would be further decreased due to the costs of compelling further
15 discovery, retaining expert witnesses, preparing for trial and possibly, engaging in
16 post-trial matters, including the lodging of an appeal. The Court, after reviewing
17 the terms negotiated upon by the parties, will find that the settlement reached will
18 be fair, adequate and reasonable for all involved. Therefore, the circumstances of
19 this matter, as discussed above, heavily weigh in favor of the proposed settlement.

20 **VII. CONCLUSION**

21 The parties submit that this action meets all of the prerequisites for
22 certification as a class action. As discussed above, there are common issues of law
23 and fact that predominate over individual issues, and given the size of the class
24 and the Defendant's net worth, a class action is a superior method of adjudication.
25 A class action will avoid inconsistent judgments and prejudice to the class
26 members. The parties have also reached a settlement in principal, which is fair,
27

KAZEROUNI LAW GROUP, APC
1303 EAST GRAND AVENUE, SUITE 101
ARROYO GRANDE, CA 93420

1 adequate and reasonable.

2 For the foregoing reasons, the parties respectfully request that the Court (1)
3 grant preliminary approval of the proposed Settlement, (2) approve the proposed
4 Notice procedure an the form, manner and content of the Notice, (3) stay all
5 proceedings until the Court renders a final decision regarding the approval of the
6 Settlement, (4) conditionally certify the proposed Settlement Class, (5) appoint
7 Plaintiffs as Class Representatives and Plaintiffs' Counsel as Class Counsel, and
8 (6) schedule a hearing for Final Approval.

9
10 Date: November 13, 2017

KAZEROUNI LAW GROUP, APC

11 By: /s/ Matthew M. Loker
12 MATTHEW M. LOKER ESQ.
13 ATTORNEY FOR PLAINTIFFS

BROWNSTEIN HYATT FARBER SCHRECK, LLP

14
15 By: /s/ Richard B. Benenson
16 RICHARD B. BENENSON, ESQ.
17 ATTORNEY FOR DEFENDANT

18 **SIGNATURE CERTIFICATION**

19 Pursuant to Section 2(f)(4) of the Electronic Filing Administrative Policies
20 and Procedures Manual, I hereby certify that the content of this document is
21 acceptable to defense counsel, and that I have obtained defense counsel's
22 authorization to affix defense counsel's electronic signature to this document.

23 Date: November 13, 2017

KAZEROUNI LAW GROUP, APC

24 By: /s/ Matthew M. Loker
25 MATTHEW M. LOKER, ESQ.
26 ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

A copy of the foregoing *Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement* has been filed this 13th day of November, 2017, through the Court’s electronic filing system. All parties may access the foregoing via the Court’s electronic filing system.

/s/ Matthew M. Loker
MATTHEW M. LOKER, ESQ

KAZEROUNI LAW GROUP, APC
1303 EAST GRAND AVENUE, SUITE 101
ARROYO GRANDE, CA 93420

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28