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12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA

14 MANDY KNOWLES,
15 Plaintiff,
16 v.
17 UNITED DEBT HOLDINGS, LLC, *et al.*,
18 Defendants.

Case No. 1:14-CV-01815-AWI-GSA

**STIPULATED REQUEST AND ORDER
FOR DISMISSAL**

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22 Pursuant to the Court's August 13, 2015 Order (ECF No. 35) and Local Rule 160 of the
23 United States District Court for the Eastern District of California, Plaintiff Mandy Knowles and
24 Defendant United Debt Holdings, LLC ("UDH") hereby submit this stipulated request for
25 dismissal of the above-captioned matter. Ms. Knowles and UDH have reached a settlement that
26 would resolve Ms. Knowles' individual claims against all Defendants. Ms. Knowles and UDH
27 request that, pursuant to their settlement agreement, the Court dismiss Ms. Knowles' individual
28

1 claims with prejudice and dismiss the class claims without prejudice. Because a class has not
2 been certified and because the settlement does not in any way affect the rights of absent members
3 of the originally proposed class, the Court should dismiss this case without notice to the class.

4 **1. Background**

5 Plaintiff filed this class action lawsuit on November 19, 2014. Complaint, ECF No. 1.
6 Plaintiff asserts claims for violation of the Fair Debt Collection Practices Act (“FDCPA”) and
7 Rosenthal Fair Debt Collection Practices Act (“RFDCPA”) against Defendants UDH; Nationwide
8 Services (“Nationwide”); Hartford Mediation Group (“Hartford”); Payment Management
9 Solutions, Inc. (“PMS”); and Vantage Point Services, LLC (“Vantage”). First Amended
10 Complaint (“FAC”), ECF No. 23. Plaintiff alleges that UDH acquired a defaulted debt of hers and
11 placed it with abusive debt collector Vantage for collection, despite knowing that Vantage
12 engaged in unlawful collection practices. FAC ¶¶ 12-23, 24-28. Plaintiff alleges that Vantage
13 (with assistance from its payment processor PMS) subsequently attempted to collect her debt in a
14 series of phone calls by, among other things, falsely threatening her with arrest and criminal
15 charges and misrepresenting its identity. FAC ¶¶ 29-64. Plaintiff asserts her FDCPA claim on
16 behalf of a nationwide subclass of debtors who UDH referred to Vantage for collection and
17 asserts her RFDCPA claim on behalf of a California subclass of debtors who UDH referred to
18 Vantage for collection. FAC ¶¶ 70-71; 82-94.

19 Plaintiff has served UDH, PMS, and Vantage but only UDH has appeared. Valerian Decl.
20 ¶ 2. Defendants Nationwide Service and Hartford Mediation Group appear to be fabrications of
21 Vantage. *Id.* Vantage and PMS are in receivership as a result of a complaint filed by the Federal
22 Trade Commission and the New York State Office of the Attorney General. *Id.* ¶ 3. The receiver
23 for Vantage and PMS has indicated that Vantage and PMS are unlikely to be able to satisfy any
24 judgment against them in this action. *Id.*

25 Since the filing of the action, it has become apparent that litigating this case on a class
26 basis presents several significant challenges, including: (1) class members’ primary damages
27 consist of emotional distress, which generally is not compensable on a class basis; (2) establishing
28 liability arguably requires an individualized inquiry into the content of class members’ telephone

1 calls with Vantage; and (3) Vantage and PMS appear judgment proof, Nationwide and Hartford
2 appear not to exist, and UDH has a potentially dispositive defense that it is not a “debt collector”
3 as defined by the FDCPA and RFDCPA because it collected debts through third party debt
4 collectors. Valerian Decl. ¶ 4; *see also, Gold v. Midland Credit Mgmt., Inc.*, No. 13-CV-02019-
5 BLF, 2015 WL 1037700, at *5 (N.D. Cal. Mar. 10, 2015) (company that purchased debts from
6 original creditor but engaged a second company to collect on those debts was not a “debt
7 collector” under the FDCPA or RFDCPA). Accordingly, Plaintiff and UDH—the only viable
8 Defendant—explored and reached a settlement on an individual basis. Valerian Decl. ¶ 4.

9 **2. Dismissal of the Pre-Certification Putative Class Claims Without Notice Is Proper**

10 Plaintiff and UDH request that the Court dismiss Plaintiff’s claims with prejudice
11 pursuant to their settlement agreement and dismiss the class claims without prejudice. The
12 settlement reached encompasses all of named Plaintiff’s claims and does not resolve or bar any
13 claims by any putative absent class member.

14 Federal Rule of Civil Procedure 23(e) provides that “[t]he claims, issues, or defenses of a
15 certified class may be settled, voluntarily dismissed, or compromised only with the court’s
16 approval.” Fed. R. Civ. P. 23(e). Where no class has been certified in this case, the requirements
17 of Rule 23(e), do not apply. *See* Fed. R. Civ. P. 23(e), adv. comm. notes, 2003 amds. (“The new
18 rule requires approval only if the claims, issues, or defenses of a certified class are resolved by a
19 settlement...”).

20 Although Rule 23(e) now expressly refers to certified classes, before Rule 23(e) was
21 amended in 2003, the Ninth Circuit held that the prior version of the rule applied to pre-
22 certification dismissals and compromises. *Diaz v. Trust Territory of the Pac. Islands*, 876 F.2d
23 1401, 1408 (9th Cir.1989). In *Diaz*, the Ninth Circuit stated that pre-certification approval was
24 required “to ensure that [a settlement] is not collusive or prejudicial.” *Id.* In making that
25 determination, the Ninth Circuit stated that “the district court should inquire into possible
26 prejudice from (1) class members possible reliance on the filing of the action if they are likely to
27 know of it either because of publicity or other circumstances, (2) lack of adequate time for class
28 members to file other actions, because of a rapidly approaching statute of limitations, and (3) any

1 settlement or concession for class interests made by the class representative or counsel in order to
2 further their own interests.” *Id.*; see also *Lewis v. Vision Value, LLC*, No. 1:11-CV-01055-LJO,
3 2012 WL 2930867, at *3 (E.D. Cal. July 18, 2012) (applying the *Diaz* factors); *Lyons v. Bank of*
4 *Am., NA*, No. C 11-1232 CW, 2012 WL 5940846, at *2 (N.D. Cal. Nov. 27, 2012) (same). While
5 it is unclear that court approval of pre-certification dismissals and compromises is required in the
6 wake of the 2003 amendments to Rule 23(e), this Stipulation addresses the relevant factors in an
7 abundance of caution.

8 **A. Absent Class Members Have Not Relied on Plaintiffs’ Class Claims**

9 “With respect to ‘reliance’ on the part of absent putative class members, ‘[t]he danger of
10 reliance is ... generally limited to actions that would be considered of sufficient public interest to
11 warrant news coverage of either the public or trade-oriented variety, and such reliance can occur
12 only on the part of those persons learning of the action who are sophisticated enough in the ways
13 of the law to understand the significance of the class action allegation.’” *Lewis*, 2012 WL
14 2930867, at *3 (quoting *Del Rio v. CreditAnswers, LLC*, 2011 WL 1869881 (S.D.Cal.2011)).
15 This action has not been the subject of media coverage, and does not otherwise appear to be of
16 significant public interest. Valerian Decl. ¶ 5. Accordingly, it is unlikely that any absent class
17 member has opted to rely on this case rather than pursue action of his or her own.

18 **B. Absent Class Members Will Not Be Prejudiced by a Rapidly Approaching Statute of**
19 **Limitations**

20 “In considering whether the putative class members will be prejudiced by the dismissal,
21 the Court considers ‘possible prejudice from ... lack of adequate time for class members to file
22 other actions, because of a rapidly approaching statute of limitations.’” *Lewis*, 2012 WL 2930867,
23 at *4 (quoting *Diaz*, 876 F.2d at 1408).

24 Absent class members will not be prejudiced here. The filing of a class action on both
25 federal and state law claims tolls the applicable statute of limitations for members of the putative
26 class. See *Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 553-554 (1974); *Jolly v. Eli Lilly & Co.*,
27 44 Cal. 3d 1103, 1122 (1988). The statutes of limitations will resume running when Plaintiff’s
28 class claims are dismissed. See *Tosti v. City of Los Angeles*, 754 F.2d 1485, 1488 (9th Cir. 1985)

1 (statute of limitations resumed running on plaintiff's Section 1983 claims after class certification
2 denied). As such, putative class members will be in the same position upon dismissal of the class
3 claims as when the suit was initially filed. Accordingly, there is no prejudice to the class. *See*
4 *Lewis*, No. 1:11-CV-01055-LJO, 2012 WL 2930867, at *4 (finding notice to the class was not
5 required where class members were in the exact same position with respect to the statute of
6 limitations upon dismissal of the class claims as when the suit was initially filed).

7 **C. Plaintiffs Have Not Made Any Concession of Class Interests to Further Their Own**
8 **Interests**

9 The class claims in this case are being dismissed without prejudice, so there has been no
10 “settlement or concession” of class interests. Moreover, while the Settlement Agreement provides
11 for its terms to remain confidential, Plaintiff’s recovery is within the reasonable range of the
12 value of her individual claim based on comparable verdicts and settlements for individual claims
13 and Plaintiff’s counsel’s recovery does not exceed their costs and lodestar. Valerian Decl. ¶ 6.

14 **3. Dismissal of the Claims Against Nationwide, Hartford, PMS, and Vantage Is Proper.**

15 Although Nationwide, Hartford, PMS, and Vantage do not join in this stipulation, Plaintiff
16 may dismiss them without their consent because they have not appeared. *See* Fed. R. Civ. P.
17 41(a)(1).

18 **NOW, THEREFORE, PLAINTIFF AND UDH HEREBY STIPULATE, AGREE,**
19 **AND RESPECTFULLY REQUEST** as follows:

- 20 1. That the Court dismiss Plaintiff Mandy Knowles’ individual claims in their
21 entirety, with prejudice;
 - 22 2. That the Court dismiss the claims of the putative class members in their entirety,
23 without prejudice; and
 - 24 3. That, except as otherwise expressly agreed in writing, the parties shall each bear
25 their own attorneys' fees and costs.
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1 **IT IS SO STIPULATED.**

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DATED: September 16, 2015

GALLO LLP

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By: /s/ Dominic Valerian

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Ray E. Gallo
Dominic Valerian
Patrick V. Chesney
Attorneys for Plaintiff

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DATED: September 9, 2015

SIMMONDS & NARITA LLP

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By: /s/ Jeffrey A. Topor (as authorized on September 9, 2015)

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Jeffrey A. Topor
Liana Mayilyan
Attorneys for Defendant
United Debt Holdings, LLC

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ORDER

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Accordingly, in light of the parties' stipulation, it is hereby ordered that:

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1. Plaintiff Mandy Knowles' individual claims in their entirety are dismissed with prejudice;
- 18 2. The claims of the putative class members are dismissed in their entirety, without prejudice;
- 19 3. Except as otherwise expressly agreed in writing, the parties shall each bear their own attorneys' fees and costs; and
- 20 4. The Clerk is directed to close this case.

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IT IS SO ORDERED.

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Dated: September 16, 2015

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SENIOR DISTRICT JUDGE