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3 **UNITED STATES DISTRICT COURT**  
4 **NORTHERN DISTRICT OF CALIFORNIA**

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6 **McMILLION ET AL,**

7 **PLAINTIFFS,**

8 **vs.**

9 **RASH CURTIS & ASSOCIATES,**

10 **DEFENDANT.**

**Case No. 4:16-cv-3396 YGR**

**ORDER DENYING MOTION TO ENFORCE  
SETTLEMENT AGREEMENT**

**DKT. NO. 33**

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13 Plaintiffs Sandra McMillion, Jessica Adekoya, and Ignacio Perez bring this case against  
14 defendant Rash Curtis & Associates (“Rash Curtis”) as a putative class-action seeking injunctive  
15 relief and statutory damages. Plaintiffs allege that Rash Curtis, a debt collection agency, violated the  
16 Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. (“TCPA”), Fair Debt Collection  
17 Practices Act, 15 U.S.C. 1692, et seq. (“FDCPA”) and California's Rosenthal Fair Debt Collection  
18 Practices Act, Civil Code 1788 et seq. (“Rosenthal Act”) by repeatedly calling plaintiffs’ cellular  
19 phones using an auto-dialer and/or artificial or pre-recorded voice. (Dkt. No. 1 (Class Action  
20 Complaint) ¶¶ 1-2, 58-74).

21 Defendant has filed this motion to enforce a purported settlement agreement with plaintiffs.  
22 (Dkt. No. 33).

23 Having carefully considered the papers submitted on this motion, and for the reasons set forth  
24 below, the Court **ORDERS** as follows: The Court **DENIES** defendant’s motion to enforce settlement.<sup>1</sup>

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26 <sup>1</sup> The Court has reviewed the papers submitted by Rash Curtis in connection with its motion  
27 to enforce settlement (Dkt. No. 33) and has determined that the motion is appropriate for decision  
28 without oral argument, as permitted by Civil Local Rule 7-1(b) and Federal Rule of Civil Procedure  
78. *See also Lake at Las Vegas Investors Group, Inc. v. Pacific Malibu Dev. Corp.*, 933 F.2d 724,  
729 (9th Cir. 1991). Accordingly, the hearing set for May 2, 2017 is **VACATED**.



1 have noted “[t]here is no doubt that release provisions are generally thought to be material terms of  
2 any settlement agreement.” *Inamed Corp. v. Kuzmak*, 275 F. Supp. 2d 1100, 1125 (C.D. Cal. 2002),  
3 aff’d, 64 F. App’x 241 (Fed. Cir. 2003); *Doi v. Halekulani Corp.*, 276 F.3d 1131, 1138 (9th Cir.2002)  
4 (referencing release as among the material terms of a settlement agreement).

5 Here, while the emails reflect agreement on the amount to be paid, the record lacks evidence  
6 of agreement on at least three material terms. First, the record lacks any showing that the parties  
7 negotiated or discussed a provision for mutual release of claims. The nature of the release was  
8 particularly important here, as plaintiffs’ lawsuit arises from allegations that the defendant improperly  
9 called them in an attempt to collect debts they allegedly did not owe. The purported settlement  
10 agreement does not appear to release plaintiffs from defendant’s debt claims.

11 Second, one of defendant’s e-mails indicates that it specifically sought a waiver of plaintiffs’  
12 rights under California Civil Code Section 1542. (Ellis Decl. at ¶ 1, Exh A) (“RCA requests a release  
13 of all known and unknown claims including a Civil Code 1542 waiver.”). Indeed, the draft settlement  
14 agreement circulated by the defendant includes such a waiver. (*Id.* at ¶ 15, Exh M). A Section 1542  
15 waiver is unquestionably material to the purported settlement agreement, especially given the  
16 defendant’s early insistence on such a waiver. Yet there exists nothing in the record to show that  
17 plaintiffs agreed to waive their Section 1542 rights.

18 Third, defendant also sought assurance from plaintiffs’ counsel that they would not file another  
19 similar suit. Again, this issue remained without resolution.

20 Accordingly, the Court finds that the parties did not agree on all material terms in the  
21 purported settlement agreement, and thus the purported settlement is not enforceable as to plaintiffs’  
22 federal law claims under *Callie*, 829 F.2d at 891.

23 **B. Plaintiffs’ California Law Claim under the Rosenthal Fair Debt**  
24 **Collection Practices Act**

25 With respect to the state law claim, pursuant to California Code of Civil Procedure Section  
26 664.6, a settlement agreement must be signed by the parties themselves, as opposed to “attorneys for  
27 the litigants.” *Levy v. Superior Court*, 41 Cal.Repr.2d 878, 882 (1995). In *Levy*, the California  
28 Supreme Court noted that the California Legislature intended to put forth this requirement because

1 settlement of a lawsuit “obviously implicates a fundamental right of the litigants themselves” and  
2 “litigants’ direct participation tends to ensure that the settlement is the result of their mature reflection  
3 and deliberate assent.” *Id.* at 882.

4 Federal courts sitting in diversity must apply substantive state law. *Erie R. Co. v. Tompkins*,  
5 304 U.S. 64, 78, 58 S. Ct. 817, 822, 82 L. Ed. 1188 (1938). A federal court exercising supplemental  
6 jurisdiction over state law claims must apply the law of the forum state just as if it were sitting in  
7 diversity. *Bass v. First Pac. Networks, Inc.*, 219 F.3d 1052, 1055 (9th Cir. 2000); *See United Mine*  
8 *Workers v. Gibbs*, 383 U.S. 715, 726, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966); *Mangold v. California*  
9 *Pub. Utils. Comm'n*, 67 F.3d 1470, 1478 (9th Cir.1995) (“The *Erie* principles apply equally in the  
10 context of pendent jurisdiction.”). Because this Court has supplemental jurisdiction over plaintiffs’  
11 Rosenthal Act claim, it must apply substantive California law.

12 The district court for the Eastern District of California previously considered the issue of  
13 whether enforcement of a settlement agreement is a substantive issue. *Renaissance Ribbon Inc. v.*  
14 *Hadley Pollet, LLC*, No. 2:07-cv-1271-JAM-DAD, 2008 WL 5179096 (E.D. Cal. Dec. 8, 2008).  
15 There, the court found that Section 664.6 was substantive. *Renaissance Ribbons* at \*2. This Court  
16 similarly finds that Section 664.6 is substantive state law because the settlement of a lawsuit is a  
17 decision to end the litigation, and implicates substantial rights of the litigants. For a settlement  
18 agreement to be enforceable under Section 664.6 the litigants must actually sign the agreement. Here,  
19 no evidence exists in the record that plaintiffs signed or even saw the purported settlement agreement.  
20 Accordingly, the purported settlement is not enforceable with regard to plaintiffs’ state law claim  
21 under California Code of Civil Procedure Section 664.6.

22 Even if Section 664.6 is not substantive state law, the purported settlement is not enforceable  
23 with regard to plaintiffs’ state law claim under *Callie* for the same reasons that it is not enforceable  
24 with regard to the federal law claims discussed above.

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**III. CONCLUSION**

For the foregoing reasons, defendant's motion to enforce settlement is **DENIED**.

This Order terminates Docket Number 33.

**IT IS SO ORDERED.**

Dated: April 18, 2017

  
**HON. YVONNE GONZALEZ ROGERS**  
**UNITED STATES DISTRICT COURT JUDGE**