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

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

Plaintiff,

v.

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

Defendants.

Case No. 14-cv-00468-BAS-KSC
**ORDER GRANTING MOTION
FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

On March 3, 2014, Plaintiff Dawn Zoerb (“Plaintiff”) commenced this class action, alleging that National Collegiate Student Loan Trust 2006-3 and the Law Offices of Patenaude and Felix, A.P.C. (“P&F”) (“Defendants”), as assignees of student loan debts, failed to properly identify the original creditor in various state court collections actions. (ECF No. 1.) This case was eventually consolidated with ten other cases making the same allegations against Defendants. (ECF No. 22.)

Now pending before the Court is plaintiffs’ unopposed Motion for Final

1 Approval of Class Action Settlement. (ECF No. 48.) The matter came on for hearing
2 on April 3, 2017. The Court has considered the Settlement Agreement and Release
3 (“Settlement” or “Settlement Agreement”), any objections and requests for exclusion
4 received regarding the proposed Settlement, the record in the above-entitled lawsuit
5 (“the Action”) and the arguments and authorities of counsel. For the reasons stated
6 below, the Court **GRANTS** this Motion. (ECF No. 48.)

7 **I. PROPOSED SETTLEMENT**

8 The proposed Settlement Agreement applies to class members (“Class” or
9 “Class Members”) defined as:

10 California, Nevada, Oregon, and Washington residents who have an
11 alleged delinquent student loan account with trust Defendants and who
12 were sued by P&F through a state court collections action in which P&F
13 allegedly failed to properly disclose the identity of the original creditor.
14 Included in the class are those persons who have pending litigation as
15 described above, or have had the lawsuit reduced to a judgment. The
16 class period is November 1, 2010, through April 1, 2014. Excluded from
17 the class will be any student loan borrower who has resolved his or her
18 account with the Trust Defendants. [However,] the named Plaintiffs in
19 [these consolidated] action[s], including Sandi Parra, Reynaldo Raquel,
Lisa Alward, Madeline Montry, Rebecca Burlingame, Joel Benoit,
Janice Benoit, Robin Goret, Charlene Baxter, Lora Mayhugh, Laurie
Alderman, Andrew Toney and Tricia Benavente are included in the
class, even if they have resolved their account with Trust Defendants.

20 (Settlement at §V.)¹

21 The Settlement contemplates that: (1) the parties will stipulate to an injunction
22 requiring Defendants to modify their future behavior and (2) “Defendants will
23 request that the following national credit reporting agencies . . . delete any reporting
24 of the trade lines associated with the student loan accounts which are the subject of
25 the lawsuits: Trans Union, Experian and/or Equifax (“CRA”). By removal of the
26

27 ¹ The Settlement is attached to the parties’ joint notice of settlement (ECF No. 43) as Exhibit 1. All
28 capitalized terms in this Order shall have the same meaning as set forth in the Settlement. (See
Settlement at §1 (Definitions).

1 negative tradeline, Class members may enjoy an increase in credit score and a greater
2 ability to obtain credit at lower cost.” (Settlement at §22.)

3 In exchange, Class members release Defendants from any Claims “arising out
4 of, based upon, or in any way relating to the class claims asserted in the lawsuits.”
5 (Settlement at §1D.)

6 **II. ANALYSIS**

7 The Ninth Circuit maintains a “strong judicial policy” that favors the
8 settlement of class actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276
9 (9th Cir. 1992). However, Federal Rule of Civil Procedure 23(e) first “require[s] the
10 district court to determine whether a proposed settlement is fundamentally fair,
11 adequate, and reasonable.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th
12 Cir. 2000) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)).
13 Where the “parties reach a settlement agreement prior to class certification, courts
14 must peruse the proposed compromise to ratify both the propriety of the certification
15 and the fairness of the settlement.” *Stanton v. Boeing Co.*, 327 F.3d 938, 952 (9th
16 Cir. 2003). In these situations, settlement approval “requires a higher standard of
17 fairness and a more probing inquiry than may normally be required under Rule
18 23(e).” *Dennis v. Kellogg Co.*, 697 F.3d 858, 864 (9th Cir. 2012) (internal quotation
19 marks omitted). Before granting preliminary approval of a class-action settlement,
20 the Court must first determine whether the proposed class can be certified. *Amchem*
21 *Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (indicating that a district court
22 must apply “undiluted, even heightened, attention [to class certification] in the
23 settlement context” in order to protect absentees).

24 For the reasons outlined in the Court’s Order Granting Joint Motion for
25 Preliminary Approval of Class Action Settlement (ECF No. 45), the Court concludes
26 that class certification under Rule 23(a) and Rule (b)(3) of the Federal Rules of Civil
27 Procedure is appropriate in this case.

28 The Court further finds that the Proposed Settlement is “fair, adequate and

1 reasonable” under Rule 23(e) of the Federal Rules of Civil Procedure. “It is the
2 settlement taken as a whole, rather than the individual component parts, that must be
3 examined for overall fairness.” *Hanlon*, 150 F.3d at 1026. A court may not “delete,
4 modify or substitute certain provisions” of the settlement; rather, “[t]he settlement
5 must stand or fall in its entirety.” *Id.*

6 “[S]ettlement approval that takes place prior to formal class certification
7 requires a higher standard of fairness.” *Hanlon*, 150 F.3d at 1026. Consequently, a
8 district court “must be particularly vigilant not only for explicit collusion, but also
9 for more subtle signs that class counsel have allowed pursuit of their own self-
10 interests and that of certain class members to infect the negotiations.” *In re Bluetooth*
11 *Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011). Other relevant factors
12 to this determination include, among others, “the strength of the plaintiffs’ case; the
13 risk, expense, complexity, and likely duration of further litigation; the risk of
14 maintaining class-action status throughout the trial; the amount offered in settlement;
15 the extent of discovery completed and the stage of the proceedings; the experience
16 and views of counsel; the presence of a governmental participant; and the reaction of
17 the class members to the proposed settlement.” *Hanlon*, 150 F.3d at 1026; *see also*
18 *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). Here, as
19 outlined in the Court’s Order Granting Preliminary Approval of the Class Action
20 Settlement (ECF No. 45), the parties’ Settlement Agreement complies with all of
21 these requirements.

22 The Court previously approved the form and manner of Notice to the class
23 members. (ECF No. 45.) The Court now finds the Class Notice program was executed
24 as previously detailed in its Order. (Declaration of Bailey Hughes, ECF No. 48-6.)
25 Class notice was sent to approximately 6,512 class members via first class mail, 1,352
26 of which were returned as undeliverable and 64 of which were returned with a new
27 address and remailed. (*Id.* ¶¶ 7–10.) Hence, presumably 5,160 class members
28 received notice. (*Id.* ¶ 11.) The Court finds this class notice satisfies due process.

1 Although the Settlement Administrator received no objections to the
2 settlement, sixteen individuals timely requested exclusion from the class and two
3 individuals requested exclusion after the deadline. (*Id.* ¶ 13.) The Court finds the fact
4 that the vast majority of the class did not object or opt out of the class further lends
5 support to the Court’s conclusion that the settlement is fair and reasonable. *See*
6 *Staton v. Boeing Co.*, 327 F.3d 938, 958 (9th Cir. 2003) (reaction of the class
7 members to the settlement is one factor that should be considered in determining
8 whether a settlement is fair and reasonable)

9 **III. CONCLUSION**

10 For the reasons stated both in this Order as well as its previous Order Granting
11 Preliminary Approval of the Class Action Settlement, the Court **GRANTS** the
12 plaintiffs’ unopposed Motion for Final Approval of Class Action Settlement. (ECF
13 No. 48.)

14 The Court **ORDERS** as follows:

- 15 1. The Judgment incorporates by reference the definitions in the Settlement,
16 including its exhibits, and all terms used herein shall have the same
17 meanings as set forth in the Settlement;
- 18 2. The Court has jurisdiction over the subject matter of this Action and all
19 Parties to the Action, including all Settlement Class members;
- 20 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court
21 certifies the following Class for settlement purposes:

22 California, Nevada, Oregon, and Washington residents who have an
23 alleged delinquent student loan account with trust Defendants and
24 who were sued by P&F through a state court collections action in
25 which P&F allegedly failed to properly disclose the identity of the
26 original creditor. Included in the class are those persons who have
27 pending litigation as described above, or have had the lawsuit reduced
28 to a judgment. The class period is November 1, 2010, through April
1, 2014. Excluded from the class will be any student loan borrower
who has resolved his or her account with the Trust Defendants.

1 [However,] the named Plaintiffs in [these consolidated] action[s],
2 including Sandi Parra, Reynaldo Raquel, Lisa Alward, Madeline
3 Montry, Rebecca Burlingame, Joel Benoit, Janice Benoit, Robin
4 Goret, Charlene Baxter, Lora Mayhugh, Laurie Alderman, Andrew
5 Toney and Tricia Benavente are included in the class, even if they
6 have resolved their account with Trust Defendants.

- 7 4. Pursuant to Rule 23(c)(3) of the Federal Rules of Civil Procedure, all such
8 persons who satisfy the Class definition above, except those Class
9 Members who excluded themselves from the Settlement Class, are
10 Settlement Class Members bound by this Judgment;
- 11 5. Pursuant to Rule 23(a) of the Federal Rules of Civil Procedure, the Court
12 finds that the named plaintiff in this Action, Dawn Zoerb, is a member of
13 the Settlement Class, her claims are typical of the Settlement Class, and she
14 fairly and adequately protected the interests of the Settlement Class
15 throughout the Proceedings in the Action. Accordingly, the Court appoints
16 Dawn Zoerb as Class Representative;
- 17 6. The Court finds that the Settlement Class meets all requirements of Rule
18 23(a) and Rule (b)(3) of the Federal Rules of Civil Procedure for
19 certification of the class claims alleged in the Complaint, including: (a)
20 numerosity; (b) commonality; (c) typicality; (d) adequacy of the Class
21 Representative and Class Counsel; (e) predominance of common questions
22 of fact and law among the Class; and (f) superiority;
- 23 7. Having considered the factors set forth in Rule 23(g)(1) of the Federal
24 Rules of Civil Procedure, the Court finds that Joshua Swigart of Hyde and
25 Swigart and Abbas Kazerounian of Kazerounian Law Group., APC, have
26 fairly and adequately represented the Class for purposes of entering into
27 and implementing the Settlement, and thus appoints these individuals as
28 Class Counsel for the Settlement Class;
8. In accordance with the Court's Preliminary Approval Order and the Court-
approved notice program, the Claims Administrator caused the Class

1 Notice to be disseminated as ordered. The Class Notice advised Class
2 Members of the terms of the Settlement, of the Final Approval Hearing,
3 and their right to appear at such hearing, of their rights to remain in or opt
4 out of the Settlement Class and to object to the Settlement, procedures for
5 exercising such rights, and the binding effect of this Judgment to the
6 Settlement Class;

7 9. The distribution of the Class Notice constituted the best notice practicable
8 under the circumstances, and fully satisfies the requirements of Rule 23 of
9 the Federal Rules of Civil Procedure, the requirements of due process, 28
10 U.S.C. § 1714, and any other applicable law;

11 10. The Settlement proposed by the parties is fair, reasonable and adequate.
12 The terms and provisions of the Settlement are the product of lengthy, arms-
13 length negotiations conducted in good faith and with the assistance of the
14 Honorable Herbert Hoffman (Ret.). Approval of the Settlement will result
15 in substantial savings of time, money and effort to the Court and the parties,
16 and will further the interests of justice;

17 11. Sixteen Class Members have timely and validly submitted requests for
18 exclusion from the class. Two additional Class Members submitted late
19 requests for exclusion from the class, but the parties do not object to these
20 two individuals also being excluded from the class. Therefore, all
21 Settlement Class Members are bound by this Judgment and by the terms of
22 the Settlement, with the exception of:

23 Javier Medina of Las Vegas, NV

24 Ronald Giblin of Las Vegas, NV

25 Mark Giblin of Las Vegas, NV

26 Minjae Pyon of Los Angeles, CA

27 Edward Pyon of Los Angeles, CA

28 Peter Quiroz of El Cajon, CA

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- Deloris Quiroz of San Diego, CA
- Juanito Francisco of Union City, CA
- Angela Tran of San Jose, CA
- Don Nguyen of San Jose, CA
- Frank Melcher of Albany, OR
- Danielle Kile of Albany, OR
- Curtis Rainey of Lopez Island, WA
- Beatriz Avisado of National City, CA
- Farideh Vargha of Brea, CA
- Jeffrey Kinstler of Olympia, WA;
- Sarah Santos (Martinez) of Corona, CA;
- Maria Cantu (Almaraz) of Armona, CA

12. The Court awards attorney’s fees and costs as set forth in the Court Order submitted simultaneously with this Order;
13. The Court dismisses with prejudice the Action and all released claims set forth in Section 20 of the Settlement Agreement;
14. The Court approves and will sign the Stipulated Injunction submitted by the parties as Exhibit 4 to the Joint Motion for Preliminary Approval and incorporates the Orders from the Stipulation into the Court’s Order for final approval;
15. Without affecting the finality of this Judgment, the Court reserves jurisdiction over the implementation, administration and enforcement of this Judgment and the Settlement;
16. There is no just reason for delay in the entry of this Final Judgment and Order approving Settlement and immediate entry by the Clerk of the Court is expressly directly pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

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3 **IT IS SO ORDERED.**

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5 **DATED: April 5, 2017**

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Hon. Cynthia Bashant
United States District Judge

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