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

MARY CAPPS, individually and on  
behalf of all others similarly situated,  
  
Plaintiff,  
  
v.  
  
LAW OFFICES OF PETER W.  
SINGER, et al.,  
  
Defendants.

Case No. 15-cv-02410-BAS(NLS)

**ORDER GRANTING MOTION  
FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

**[ECF No. 26]**

24 On October 26, 2015, Plaintiff Mary Capps commenced this class action  
25 against Defendants the Law Offices of Peter W. Singer and MCT Group, Inc. seeking  
26 relief for violations of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C.  
27 § 1692 et seq., and California’s Rosenthal Fair Debt Collection Practices Act  
28 (“Rosenthal Act”), Cal. Civ. Code §§ 1788–1788.32. (Compl., ECF No. 1.) Plaintiff

1 now moves unopposed for preliminary approval of a settlement reached between the  
2 parties and for certification of a settlement class. (Mot., ECF No. 26.) The Court finds  
3 this motion suitable for determination on the papers submitted and without oral  
4 argument. See Fed. R. Civ. P. 78(b); Civ. L.R. 7.1(d)(1). For the following reasons,  
5 the Court **GRANTS** Plaintiff’s motion for preliminary approval of class action  
6 settlement.

7  
8 **I. PROPOSED SETTLEMENT**

9 **A. Settlement Class**

10 After conducting discovery and participating in arm’s length negotiations, the  
11 parties have reached a proposed settlement of this matter (“Settlement”). (Stipulation  
12 of Class Action Settlement (“Settlement Agreement”), Semnar Decl. ¶ 7, Ex. 1, ECF  
13 No. 26-2.)<sup>1</sup> The Settlement applies to a proposed Class that is defined as:

14 [A]ll consumers with addresses within the State of California who were  
15 sent a letter by the Law Offices of Peter W. Singer on behalf of MCT  
16 Group, Inc. in an attempt to collect a debt which, according to the nature  
17 of the creditor or the debt, or the records of the creditor or the  
18 Defendants, was incurred for personal, family or household purposes.  
19 Each Class [M]ember was sent such a letter between October 26, 2014,  
20 and the date of final execution of the Settlement Agreement . . . .  
21 Excluded from the Class are: (a) any consumer whose letter was sent to  
22 an attorney or debt counselor; (b) any consumer who was mailed a letter  
23 that was returned as undeliverable; and (c) any consumer who filed for  
24 bankruptcy after receiving the letter but did not disclose the claim as an  
25 asset. Also excluded from the Class are any putative Class Members  
26 who exclude themselves by filing a request for exclusion in accordance  
27 with the requirements set forth in the Class Notice.

28 (Id. § 1.) The parties estimate the Class consists of 174 individuals. (Mot. 4:18–20.)  
A Class Member is a member of the Class who does not submit a valid request for  
exclusion from the Settlement. (Settlement Agreement § 1.) To represent the Class,

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<sup>1</sup> Capitalized terms used in this Order but not defined herein have the meanings ascribed to them in the Settlement Agreement.

1 the parties agree to seek appointment of Plaintiff as Class Representative and  
2 Plaintiff’s counsel, Semnar & Hartman, LLP, as Class Counsel. (Id.)

3  
4 **B. Settlement Fund**

5 Defendants expressly deny any wrongdoing with respect to the issues  
6 presented in this Class Action; nevertheless, they wish to avoid the further expense  
7 and inconvenience of litigation. (Settlement Agreement §§ 12–13.) Thus, Defendants  
8 agree to establish a Settlement Fund in the amount of \$11,606.16 to pay solely for  
9 awards to Class Members. (Id. §§ 1, 6.) Plaintiff asserts that the Settlement Fund  
10 provides the maximum statutory damages available to the Class against Defendant  
11 the Law Offices of Peter W. Singer. (Mot. 1:17–19.) Plaintiff also brought claims on  
12 behalf of the Class against Defendant MCT Group based on a theory of vicarious  
13 liability, but Plaintiff states that due to uncertainties with this theory, the Settlement  
14 Fund is based on only the recoverable damages against Defendant the Law Offices  
15 of Peter W. Singer. (Id. 18:9–12.)

16 All Class Members who have not opted out of the Class will be sent a check  
17 for \$66.70—their pro rata share of the \$11,606.16 Settlement Fund—by the  
18 Settlement Administrator. (Settlement Agreement §§ 6–7.) All checks not cashed  
19 within 180 days of issuance will be allocated to a cy pres recipient, the Voluntary  
20 Legal Services Program of Northern California, which assists low-income clients  
21 with legal problems associated with debt collection. (Id. § 11.)

22  
23 **C. Notice to Settlement Class Members**

24 The parties designate First Class, Inc. as the Settlement Administrator.  
25 (Settlement Agreement § 1.) The Settlement Administrator will be responsible for  
26 disseminating class notice, distributing settlement awards, and managing class  
27 member data. (Id. § 7.) Within ten business days of the date of this Order, Defendants  
28 shall provide the Settlement Administrator with a list of putative Class Members and

1 the Settlement Administrator shall send each Class Member by First Class U.S. mail  
2 a Class Notice. (Id. § 8.) The Class Notice shall consist of a two page document  
3 detailing, among other things, a summary of the Settlement, directions on how to  
4 submit a claim for a share of the Settlement Fund or how to be excluded from the  
5 Class, and the right to object to the terms of the Settlement. (Proposed Notice to Class  
6 Members (“Class Notice”), Semnar Decl. ¶ 14, Ex. 2, ECF No. 26-2.)

7  
8 **D. Right to Opt Out or Object and Release of Claims**

9 Any Class Member may opt out of the Class by submitting a written Request  
10 for Exclusion to the Settlement Administrator by following directions provided in the  
11 Class Notice. (Settlement Agreement § 9.) A Request for Exclusion must be  
12 postmarked no later than 60 days after the Settlement Administrator sends the Class  
13 Notice. (Id.) Every Class Member who does not timely and properly submit a Request  
14 for Exclusion from the Class shall be bound by all proceedings, orders, and judgments  
15 in this Class Action. (Id.)

16 Upon final approval of the Settlement, the Class Representative and all Class  
17 Members shall be deemed to have released and discharged Defendants from any and  
18 all claims that are known or unknown to the Class Members and arise from the  
19 conduct alleged in the Complaint. (Settlement Agreement § 14.)

20  
21 **E. Attorneys’ Fees and Settlement Costs**

22 The parties have negotiated for Class Counsel to receive an award of \$39,000  
23 for attorneys’ fees and costs, to be paid 30 days after final approval of the Settlement.  
24 (Settlement Agreement § 5.) Class Counsel shall make its application for fees and  
25 costs concurrently with the submission of the Motion for Final Approval of the Class  
26 Settlement. (Id.) Defendants shall pay the Settlement Administrator a fee not to  
27 exceed \$4,000 to perform all responsibilities as set forth in the Settlement Agreement.  
28 (Id. § 7.)

1 **II. DISCUSSION**

2 The Ninth Circuit maintains a “strong judicial policy” that favors the  
3 settlement of class actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276  
4 (9th Cir. 1992). However, Federal Rule of Civil Procedure 23(e) first “require[s] the  
5 district court to determine whether a proposed settlement is fundamentally fair,  
6 adequate, and reasonable.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th  
7 Cir. 2000) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)).  
8 Where the “parties reach a settlement agreement prior to class certification, courts  
9 must peruse the proposed compromise to ratify both the propriety of the certification  
10 and the fairness of the settlement.” *Stanton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir.  
11 2003). In these situations, settlement approval “requires a higher standard of  
12 fairness’ and ‘a more probing inquiry than may normally be required under Rule  
13 23(e).” *Dennis v. Kellogg Co.*, 697 F.3d 858, 864 (9th Cir. 2012) (quoting *Hanlon*,  
14 150 F.3d at 1026).

15  
16 **A. Class Certification**

17 Before granting preliminary approval of a class-action settlement, the Court  
18 must first determine whether the proposed class can be certified. *Amchem Prods.,*  
19 *Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (indicating that a district court must apply  
20 “undiluted, even heightened, attention [to class certification] in the settlement  
21 context” in order to protect absentees).

22 The class action is “an exception to the usual rule that litigation is conducted  
23 by and on behalf of the individual named parties only.” *Wal-Mart Stores, Inc. v.*  
24 *Dukes*, 564 U.S. 338, 131 S. Ct. 2541, 2550 (2011) (quoting *Califano v. Yamasaki*,  
25 442 U.S. 682, 700–01 (1979)). In order to justify a departure from that rule, “a class  
26 representative must be part of the class and ‘possess the same interest and suffer the  
27 same injury’ as the class members.” *Id.* (quoting *E. Tex. Motor Freight Sys., Inc. v.*  
28 *Rodriguez*, 431 U.S. 395, 403 (1977)). In this regard, Rule 23 contains two sets of

1 class certification requirements set forth in Rule 23(a) and (b). *United Steel, Paper &*  
2 *Forestry, Rubber, Mfg. Energy, Allied Indus. & Serv. Workers Int’l Union v.*  
3 *ConocoPhillips Co.*, 593 F.3d 802, 806 (9th Cir. 2010). “A court may certify a class  
4 if a plaintiff demonstrates that all of the prerequisites of Rule 23(a) have been met,  
5 and that at least one of the requirements of Rule 23(b) have been met.” *Otsuka v. Polo*  
6 *Ralph Lauren Corp.*, 251 F.R.D. 439, 443 (N.D. Cal. 2008).

7 “Rule 23(a) provides four prerequisites that must be satisfied for class  
8 certification: (1) the class must be so numerous that joinder of all members is  
9 impracticable; (2) questions of law or fact exist that are common to the class; (3) the  
10 claims or defenses of the representative parties are typical of the claims or defenses  
11 of the class; and (4) the representative parties will fairly and adequately protect the  
12 interests of the class.” *Otsuka*, 251 F.R.D. at 443 (citing Fed. R. Civ. P. 23(a)). “A  
13 plaintiff must also establish that one or more of the grounds for maintaining the suit  
14 are met under Rule 23(b), including: (1) that there is a risk of substantial prejudice  
15 from separate actions; (2) that declaratory or injunctive relief benefitting the class as  
16 a whole would be appropriate; or (3) that common questions of law or fact  
17 predominate and the class action is superior to other available methods of  
18 adjudication.” *Id.* (citing Fed. R. Civ. P. 23(b)).

19 In the context of a proposed settlement class, questions regarding the  
20 manageability of the case for trial are not considered. E.g., *Wright v. Linkus Enters.,*  
21 *Inc.*, 259 F.R.D. 468, 474 (E.D. Cal. 2009) (citing *Anchem Prods., Inc.*, 521 U.S. at  
22 620) (“Confronted with a request for settlement-only class certification, a district  
23 court need not inquire whether the case, if tried, would present intractable  
24 management problems . . . for the proposal is that there be no trial.”).

25 The Court considers the threshold issue of whether the Class is ascertainable  
26 and each of the prerequisites for certification in turn below.

27 //

28 //

1                   **1.     Ascertainability**

2                   “As a threshold matter, and apart from the explicit requirements of Rule 23(a),  
3 the party seeking class certification must demonstrate that an identifiable and  
4 ascertainable class exists.” *Mazur v. eBay, Inc.*, 257 F.R.D. 563, 567 (N.D. Cal.  
5 2009). Certification is improper if there is “no definable class.” See *Lozano v. AT &*  
6 *T Wireless Servs., Inc.*, 504 F.3d 718, 730 (9th Cir. 2007).

7                   “A class should be precise, objective, and presently ascertainable,” though “the  
8 class need not be so ascertainable that every potential member can be identified at the  
9 commencement of the action.” *O’Connor v. Boeing N. Am. Inc.*, 184 F.R.D. 311, 319  
10 (C.D. Cal. 1998) (internal quotation marks omitted). “A class is ascertainable if it is  
11 defined by ‘objective criteria’ and if it is ‘administratively feasible’ to determine  
12 whether a particular individual is a member of the class.” *Bruton v. Gerber Prods.*  
13 *Co.*, No. 12-CV-02412-LHK, 2014 WL 2860995, at \*4 (N.D. Cal. June 23, 2014).  
14 However, “[a] class definition is inadequate if a court must make a determination of  
15 the merits of the individual claims to determine whether a person is a member of the  
16 class.” *Hanni v. Am. Airlines, Inc.*, No. C 08-00732, 2010 WL 289297, at \*9 (N.D.  
17 Cal. Jan. 15, 2010). “It is not fatal for a class definition to require some inquiry into  
18 individual records, as long as the inquiry is not so daunting as to make the class  
19 definition insufficient.” *Herrera v. LCS Fin. Servs. Corp.*, 274 F.R.D. 666, 673 (N.D.  
20 Cal. 2011) (internal quotation marks omitted).

21                   Here, the Class is defined by objective criteria—whether a consumer with a  
22 California address received a letter from Defendants with specified debt collection  
23 language. (Settlement Agreement § 1.) Further, as part of the proposed Settlement,  
24 Defendants shall provide the Class Administrator with a list of putative Class  
25 Members. (*Id.* § 8.) Through discovery, Plaintiff’s counsel has learned that the  
26 number of individuals who received substantially similar letters from Defendants is  
27 174. (Semnar Decl. ¶ 6.) Therefore, the Class is defined by objective criteria, and it  
28 is administratively feasible to determine who is a member of the Class. As such, the

1 Court finds that the Class is ascertainable.

2  
3 **2. Numerosity – Rule 23(a)(1)**

4 Rule 23(a)(1) requires that the class be “so numerous that joinder of all  
5 members is impracticable.” Fed. R. Civ. P. 23(a)(1). “[C]ourts generally find that the  
6 numerosity factor is satisfied if the class comprises 40 or more members and will find  
7 that it has not been satisfied when the class comprises 21 or fewer.” *Celano v.*  
8 *Marriott Int’l, Inc.*, 242 F.R.D. 544, 549 (N.D. Cal. 2007).

9 As previously mentioned, the anticipated number of Class Members is 174.  
10 (Semnar Decl. ¶ 6.) The Court therefore finds that joinder of all Class Members is  
11 impracticable for the purposes of Rule 23(a)(1), and the numerosity requirement is  
12 satisfied. See *Celano*, 242 F.R.D. at 549.

13  
14 **3. Commonality – Rule 23(a)(2)**

15 Under Rule 23(a)(2), the named plaintiff must demonstrate that there are  
16 “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2).  
17 “Commonality requires the plaintiff to demonstrate that the class members ‘have  
18 suffered the same injury[.]’” *Dukes*, 131 S. Ct. at 2551 (quoting *Gen. Tel. Co. of Sw.*  
19 *v. Falcon*, 457 U.S. 147, 157 (1982)). However, “[a]ll questions of fact and law need  
20 not be common to satisfy this rule.” *Hanlon*, 150 F.3d at 1019. “The existence of  
21 shared legal issues with divergent factual predicates is sufficient, as is a common core  
22 of salient facts coupled with disparate legal remedies within the class.” *Id.*

23 Plaintiff alleges that Defendants sent a collection letter to Plaintiff that  
24 “overshadowed, weakened, and failed to comply with the notice required” by both  
25 the FDCPA and the Rosenthal Act. (Compl. ¶ 38.) The letter in question stipulated  
26 that Plaintiff had only seven days to either respond to the letter or pay Defendant  
27 MTC Group an overdue balance, as opposed to the thirty days allotted by both federal  
28 and state law. (*Id.* ¶¶ 38–39.) Because the letter allegedly “attempted to limit the



1 rights available to Plaintiff” and consequently violated the FDCPA and the Rosenthal  
2 Act, Plaintiff asserts she is entitled to statutory damages. (Id. ¶¶ 38, 55–60.)

3 Plaintiff claims that because Defendants sent “substantially similar” letters to  
4 the proposed Class Members, the Class Members’ rights were similarly violated.  
5 (Compl. ¶ 43.) Thus, Plaintiff alleges there exists a “well-defined community of  
6 interest in the questions of law and fact involved” in this action. (Id. ¶ 46.) The Court  
7 agrees. In addition to sharing a common core of facts, the Class Members share a  
8 common legal issue: whether the letters sent by Defendants violated the FDCPA and  
9 the Rosenthal Act. Accordingly, the commonality requirement is satisfied.

#### 10 11 **4. Typicality – Rule 23(a)(3)**

12 To satisfy Rule 23(a)(3), the named plaintiff’s claims must be typical of the  
13 claims of the class. Fed. R. Civ. P. 23(a)(3). The typicality requirement is  
14 “permissive” and requires only that the named plaintiff’s claims “are reasonably co-  
15 extensive with those of absent class members.” Hanlon, 150 F.3d at 1020. “The test  
16 of typicality ‘is whether other members have the same or similar injury, whether the  
17 action is based on conduct which is not unique to the named plaintiffs, and whether  
18 other class members have been injured by the same course of conduct.’” Hanon v.  
19 Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992) (quoting Schwartz v. Harp,  
20 108 F.R.D. 279, 282 (C.D. Cal. 1985)). “[C]lass certification should not be granted  
21 if ‘there is a danger that absent class members will suffer if their representative is  
22 preoccupied with defenses unique to it.’” Id. (quoting Gary Plastic Packaging Corp.  
23 v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 903 F.2d 176, 180 (2d Cir. 1990)).

24 Plaintiff’s and the Class Members’ claims arise from the same alleged conduct  
25 of Defendants—the sending of debt collection letters that limit the time for the  
26 recipient to respond to less than 30 days—and are based on the same legal theory—  
27 violation of the FDCPA and the Rosenthal Act. Because Plaintiff’s claims are  
28 practically identical to the claims of absent Class Members, the typicality requirement

1 is satisfied. See, e.g., *Abels v. JBC Legal Group, P.C.*, 227 F.R.D. 541, 545 (N.D.  
2 Cal. 2005) (concluding that the typicality factor was met where “[e]ach of the class  
3 members was sent the same collection letter as [the plaintiff] and each was allegedly  
4 subjected to the same violations of the FDCPA”); *Schuchardt v. Law Office of Rory  
5 W. Clark*, No. 15-cv-01329-JSC, 2016 WL 232435, at \*5 (N.D. Cal. Jan. 20, 2016)  
6 (“Because the Class Members were sent the same letter as [p]laintiffs, suffered the  
7 same harm, and seek the same recovery, the typicality requirement is met.”).

### 8 9 **5. Adequacy – Rule 23(a)(4)**

10 Rule 23(a)(4) requires that the representative plaintiff “will fairly and  
11 adequately protect the interest of the class.” Fed. R. Civ. P. 23(a)(4). “To satisfy  
12 constitutional due process concerns, absent class members must be afforded adequate  
13 representation before entry of a judgment which binds them.” *Hanlon*, 150 F.3d at  
14 1020 (citing *Hansberry v. Lee*, 311 U.S. 32, 42–43 (1940)). “Resolution of two  
15 questions determines legal adequacy: (1) do the named plaintiffs and their counsel  
16 have any conflicts of interest with other class members and (2) will the named  
17 plaintiffs and their counsel prosecute the action vigorously on behalf of the class?”  
18 *Id.* (citing *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978)).

19 Here, there is no indication that Plaintiff or her counsel have a conflict of  
20 interest with the putative Class Members. (Mot. 12:8—10.) Plaintiff herself possesses  
21 a “basic understanding of the claims filed in her Complaint” and alleges that she “will  
22 fairly and adequately protect the interests of the Class” as a “motivated and qualified  
23 class representative.” (Id. 12:5–6; see also Compl. ¶ 47.)

24 Plaintiff’s counsel also appears to have vigorously investigated and litigated  
25 this action. (See Semnar Decl. ¶¶ 2–7.) Additionally, the Court does not question the  
26 adequacy of Plaintiff’s counsel, Babak Semnar and Jared M. Hartman of Semnar and  
27 Hartman, LLP. The firm has been counsel for and worked on a number of consumer  
28 rights class actions, including actions involving violations of the FDCPA and the

1 Rosenthal Act. (Semnar Decl. ¶ 9; Hartman Decl. ¶ 2, ECF No. 26-3.) Accordingly,  
2 this requirement is satisfied.

### 3 4 **6. Predominance and Superiority – Rule 23(b)(3)**

5 In addition to satisfying Rule 23(a)'s four prerequisites, Plaintiff must also  
6 show that her action satisfies one of the three conditions set forth in Rule 23(b). In  
7 this case, Plaintiff requests certification pursuant to subdivision (b)(3). (See Mot.  
8 12:19–22.) Rule 23(b)(3) requires that “the court finds that the questions of law or  
9 fact common to class members predominate over any questions affecting only  
10 individual members, and that a class action is superior to other available methods for  
11 fairly and efficiently adjudication the controversy.” Fed. R. Civ. P. 23(b)(3).

#### 12 13 **a) Predominance**

14 “The predominance inquiry focuses on ‘the relationship between the common  
15 and individual issues’ and ‘tests whether proposed classes are sufficiently cohesive  
16 to warrant adjudication by representation.’” *Vinole v. Countrywide Home Loans, Inc.*,  
17 571 F.3d 935, 944 (9th Cir. 2009) (quoting *Hanlon*, 150 F.3d at 1022). The focus of  
18 the inquiry is not the presence or absence of commonality as it is under Rule 23(a)(2).  
19 Instead, the predominance requirement ensures that common questions “present a  
20 significant aspect of the case” such that “there is clear justification”—in terms of  
21 efficiency and judicial economy—for resolving those questions in a single  
22 adjudication. *Hanlon*, 150 F.3d at 1022; see also *Vinole*, 571 F.3d at 944 (“[A] central  
23 concern of the Rule 23(b)(3) predominance test is whether adjudication of common  
24 issues will help achieve judicial economy.”)

25 If the Court were to determine that Defendants’ collection letter violated either  
26 the FDCPA or the Rosenthal Act, “that single adjudication would reach the claims of  
27 all proposed Class Members.” See *Schuchardt*, 2016 WL 232435, at \*6; see also,  
28 e.g., *Abels*, 227 F.R.D. at 547 (“Here, the issues common to the class—namely,

1 whether Defendants’ systematic policy of sending collection letters, and whether  
2 those letters violate the FDCPA—are predominant.”). Consequently, the issue  
3 common to all Class Members is the predominate issue in this Class Action,  
4 satisfying the predominance requirement.

5  
6 **b) Superiority**

7 “Plaintiffs must also demonstrate that a class action is ‘superior to other  
8 available methods for fairly and efficiently adjudicating the controversy.’” Otsuka,  
9 251 F.R.D. at 448 (quoting Fed. R. Civ. P. 23(b)(3)). “Where classwide litigation of  
10 common issues will reduce litigation costs and promote greater efficiency, a class  
11 action may be superior to other methods of litigation,” and it is superior “if no realistic  
12 alternative exists.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234–35 (9th  
13 Cir. 1996). The following factors are pertinent to this analysis:

- 14 (A) the class members’ interest in individually controlling the prosecution or  
15 defense of separate actions;
- 16 (B) the extent and nature of any litigation concerning the controversy already  
17 begun by or against class members;
- 18 (C) the desirability or undesirability of concentrating the litigation of the  
19 claims in the particular forum; and
- 20 (D) the likely difficulties in managing a class action.

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

22 The Court finds that a class action is the superior means for adjudicating the  
23 claims presented in this case for a variety of reasons. First, a class action is superior  
24 because of the relatively low value of the average Class Member’s potential action  
25 against Defendants—\$1,000 under the FDCPA and \$1,000 under the Rosenthal Act.  
26 15 U.S.C. § 1692k(a)(2)(A); Cal. Civ. Code § 1788.30(b). Second, “individual  
27 consumers are most likely unaware of their rights under the FDCPA” and, similarly,  
28 under the Rosenthal Act, and “[c]lass action certifications to enforce compliance with

1 consumer protection laws are ‘desirable and should be encouraged.’” Ballard v.  
2 Equifax Check Services, Inc., 186 F.R.D. 589, 600 (E.D. Cal. 1999) (quoting Duran  
3 v. Credit Bureau of Yuma, Inc., 93 F.R.D. 607, 610 (D. Ariz. 1982)). Third, because  
4 this action presents a single issue common to all Class Members that will resolve  
5 their claims—whether the letter they received violated the FDCPA and the Rosenthal  
6 Act—this action promotes judicial efficiency by saving the time and expense of  
7 individual lawsuits. Finally, the Court is unaware of any other litigation regarding the  
8 claims at issue, and the parties agree this forum is desirable to resolve the putative  
9 Class Members’ claims. Thus, the superiority requirement is satisfied.

10 For the forgoing reasons, the Court provisionally finds the prerequisites for a  
11 class action under Rule 23 of the Federal Rules of Civil Procedure have been met for  
12 the proposed Class.

### 13 14 **B. Preliminary Fairness Determination**

15 Having certified the Class, the Court must next make a preliminary  
16 determination of whether the class action settlement is “fair, reasonable, and  
17 adequate” pursuant to Rule 23(e)(2). “It is the settlement taken as a whole, rather than  
18 the individual component parts, that must be examined for overall fairness.” Hanlon,  
19 150 F.3d at 1026. A court may not “delete, modify or substitute certain provisions”  
20 of the settlement; rather, “[t]he settlement must stand or fall in its entirety.” Id.  
21 Relevant factors to this determination include, among others:

22 the strength of the plaintiffs’ case; the risk, expense, complexity, and  
23 likely duration of further litigation; the risk of maintaining class-action  
24 status throughout the trial; the amount offered in settlement; the extent  
25 of discovery completed and the stage of the proceedings; the experience  
and views of counsel; the presence of a governmental participant; and  
the reaction of the class members to the proposed settlement.

26 Id.; see also Churchill Vill., L.L.C. v. Gen. Elec., 361 F.3d 566, 575 (9th Cir. 2004).

27 Preliminary approval of a settlement and notice to the proposed class is  
28 appropriate if “the proposed settlement appears to be the product of serious,

1 informed, non-collusive negotiations, has no obvious deficiencies, does not  
2 improperly grant preferential treatment to class representatives or segments of the  
3 class, and falls within the range of possible approval.” In re Tableware Antitrust  
4 Litig., 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (internal quotation marks and  
5 citations omitted).

6 Here, the Settlement complies with all of these requirements. The Court  
7 addresses the relevant factors in further detail below.

8  
9 **1. Strength of the Plaintiffs’ Case and Risk of Further Litigation**

10 “[T]he very essence of a settlement is compromise, ‘a yielding of absolutes  
11 and an abandoning of highest hopes.’” *Officers for Justice v. Civil Serv. Comm’n of*  
12 *the City & Cty. of S.F.*, 688 F.2d 615, 624 (9th Cir. 1982) (quoting *Cotton v. Hinton*,  
13 559 F.2d 1326, 1330 (5th Cir. 1977)). As explained by the Supreme Court,  
14 “[n]aturally, the agreement reached normally embodies a compromise; in exchange  
15 for the saving of cost and elimination of risk, the parties each give up something they  
16 might have won had they proceeded with litigation.” *United States v. Armour & Co.*,  
17 402 U.S. 673, 681 (1971).

18 Here, Plaintiff argues that “the monetary value of the Proposed Settlement to  
19 [the] Class represents a fair compromise given the litigation risks and uncertainties  
20 presented by continued litigation.” (Mot. 18:2–4; see also Settlement Agreement  
21 Recital C.) Plaintiff further states that if litigation were to proceed without  
22 settlement, she would face “the risk of dismissal upon a dispositive motion, denial  
23 of class certification, and loss at trial” due to Defendants’ various arguments in  
24 opposition to her and the Class Members’ claims. (Id. 18:13–27; see also Settlement  
25 Agreement Recital C; Answer, ECF No. 9.) Both parties assert that continued  
26 litigation would be costly and time consuming, and although Defendants deny any  
27 wrongdoing, they agree to settle this case to avoid further litigation expense. (Mot.  
28 1:8–11, 19:3–5; Settlement Agreement Recital C.)

1 In light of these considerations, the Court agrees with the parties that the  
2 Settlement represents a compromise that eliminates litigation risk, while the Class at  
3 the same time relinquishes the opportunity to pursue additional damages against  
4 Defendant MCT Group. Thus, the Settlement assures that Class Members receive  
5 some compensation for their claims. Consequently, the Court finds this factor  
6 supports granting approval of the Settlement.

## 7 8 **2. Amount of the Proposed Settlement**

9 The FDCPA limits the recovery for Class Members to the lesser of \$500,000  
10 or one percent of the defendant's net worth. 15 U.S.C. § 1692k(a)(2)(B).<sup>2</sup> Further,  
11 the Rosenthal Act incorporates the FDCPA's remedies, Cal. Civ. Code § 1788.17,  
12 and the Ninth Circuit has held that a plaintiff may recover under both the Rosenthal  
13 Act and the FDCPA, *Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055, 1069 (9th  
14 Cir. 2011). "Net worth' for the purposes of the FDCPA means balance sheet net  
15 worth, not fair market net worth including goodwill." *Schuchardt*, 314 F.R.D. at 683  
16 (citing *Sanders v. Jackson*, 209 F.3d 998, 1000 (7th Cir. 2000)).

17 Here, the value of the Settlement Fund is \$11,606.16. (Settlement Agreement  
18 § 1.) As mentioned, each Class Member who does not opt out of the Class will receive  
19 approximately \$66.70, based off of an anticipated class size of 174 individuals. (Mot.  
20 4:21–28; Settlement Agreement § 6.) According to Plaintiff, the Settlement Fund is  
21 equal to a combination of the maximum damages allowed under both federal and  
22 state statutes against Defendant the Law Offices of Peter W. Singer's net worth,  
23 which equates to two percent of this Defendant's net worth. (See Mot. 18:4–9.)  
24 Plaintiff does not pursue damages on behalf of the Class based on Defendant MCT  
25 Group's net worth due to uncertainty with Plaintiff's theory of liability for this  
26 Defendant. The parties do not provide the Court with a concrete figure of the Law  
27

---

28 <sup>2</sup> In this case, the maximum recovery under the FDCPA is capped at \$174,000 because the maximum recovery per individual is \$1,000, and there are 174 class members.

1 Offices of Peter W. Singer’s net worth. Instead, the Settlement Agreement states that  
2 Defendants previously provided Plaintiff with the requisite net worth information  
3 subject to a protective order. (Settlement Agreement Recital B.)

4 The Court concludes that the amount offered in the Settlement, if indeed the  
5 maximum statutory damages allowed, weighs in favor of preliminary approval.  
6 However, the parties do not explain how they determined \$11,606.16 is the maximum  
7 amount of damages available against Defendant the Law Offices of Peter W. Singer.  
8 Thus, although the Court ultimately grants Plaintiff’s motion for preliminary  
9 approval below, the Court will order the parties to explain, prior to or at the Fairness  
10 Hearing, how they calculated the maximum amount of statutory damages. If  
11 necessary, the parties may request to file their explanation under seal, given that it  
12 may reveal Defendant’s proprietary information.

13  
14 **3. Extent of Discovery Completed and Stage of the Proceedings**

15 The Court assesses the stage of the proceedings and the amount of discovery  
16 completed to ensure the parties have an adequate appreciation of the merits of the  
17 case before reaching a settlement. See *Ontiveros v. Zamora*, 303 F.R.D. 356, 371  
18 (E.D. Cal. 2014) (“A settlement that occurs in an advanced stage of the proceedings  
19 indicates that the parties carefully investigated the claims before reaching a  
20 resolution.”). So long as the parties have “sufficient information to make an informed  
21 decision about settlement,” this factor will weigh in favor of approval. *Linney v.*  
22 *Cellular Alaska P’ship*, 151 F.3d 1234, 1239 (9th Cir. 1998); see also *In re Mego*  
23 *Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (explaining that a  
24 combination of investigation, discovery, and research conducted prior to settlement  
25 can provide sufficient information for class counsel to make an informed decision  
26 about settlement).

27 Plaintiff asserts that “[w]hile discovery is not complete, Plaintiff’s counsel has  
28 completed sufficient discovery to conclude that the Proposed Settlement is in the best



1 interest of the Class.” (Mot. 17:14–16.) The Court agrees. The parties previously  
2 engaged in two early neutral evaluation conferences with U.S. Magistrate Judge Nita  
3 L. Stormes that did not result in settlement. (Semnar Decl. ¶ 3.) Plaintiff then filed a  
4 joint discovery plan, which Defendants responded to. (Id. ¶ 4.) Through discovery,  
5 Plaintiff’s counsel learned that Defendants likewise sent 174 individuals  
6 “substantially similar form letters” to the letter Plaintiff received. (Id. ¶ 6.)  
7 Subsequently, the parties reached the Settlement through good faith, arm’s length  
8 negotiations. (Id. ¶ 7.) Given the discovery conducted, the stage of the proceedings,  
9 and the evidence of arms-length negotiations, the Court concludes that this factor  
10 weighs in favor of preliminary approval of the Settlement.

#### 11 12 **4. Experience and Views of Counsel**

13 As mentioned above, Class Counsel have significant experience in handling  
14 class actions, including class actions arising from issues with the FDCPA and the  
15 Rosenthal Act. (Semnar Decl. ¶ 9; Hartman Decl. ¶ 2.) Class Counsel also believe  
16 that the proposed Settlement treats all Class Members fairly. (Mot. 20:2–5.) Every  
17 Class Member is to receive “an equal pro rata share of the Settlement Fund,” and the  
18 Settlement Fund is the maximum statutory amount of damages available to the Class  
19 against Defendant the Law Offices of Peter W. Singer. (Id. 1:18, 20:3–4.) Class  
20 Counsel believe the proposed Settlement to be an “excellent result” for the Class. (Id.  
21 1:17.) “The recommendations of plaintiffs’ counsel should be given a presumption  
22 of reasonableness.” *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979).  
23 Accordingly, giving the appropriate weight to Class Counsel’s recommendation, the  
24 Court concludes that this factor also weighs in favor of preliminary approval.

#### 25 26 **5. Reaction of the Class to the Settlement**

27 Plaintiff, aside from her own view, provides no evidence regarding any  
28 putative Class Members’ reactions to the Settlement—presumably because no other

1 Class Members have been informed of it. The proposed Class Notice provides  
2 instructions as to how Class Members may object to or opt of the Settlement, as well  
3 as the deadlines for taking these actions. (Class Notice, Semnar Decl. Ex. 2.)  
4 Furthermore, the Class Notice will state the time and place of the Fairness Hearing  
5 and will provide Class Counsel’s contact information for any inquiries a Class  
6 Member may have. (Id.) Accordingly, the Court will further consider this factor at  
7 the Fairness Hearing before granting final approval of the Settlement.

8  
9 \* \* \*

10 On balance, the Court finds that the Settlement falls within the range of  
11 reasonableness meriting possible final approval. The Court therefore preliminarily  
12 approves the Settlement and the terms and conditions set forth in the Settlement  
13 Agreement, subject to further consideration at the Fairness Hearing.

14  
15 **C. Proposed Class Notice**

16 Under Rule 23(c)(2)(B), “the court must direct to class members the best  
17 notice that is practicable under the circumstances, including individual notice to all  
18 members who can be identified through reasonable effort.” Fed. R. Civ. P.  
19 23(c)(2)(B).

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

26 Id. “[T]he mechanics of the notice process are left to the discretion of the court  
27 subject only to the broad ‘reasonableness’ standards imposed by due process.”  
28 *Grunin v. Int’l House of Pancakes*, 513 F.2d 114, 120 (8th Cir. 1975).

1 Here, the proposed Class Notice describes the nature of the Class Action, the  
2 proposed Class, the proposed Settlement, and how Class Members may claim their  
3 share of the Settlement Fund, object to the Settlement, or request to be excluded  
4 from the Settlement. (Semnar Decl. Ex. 2.) Additionally, the Class Notice explains  
5 that if Class Members do not opt out, they are agreeing to release their claims arising  
6 from the conduct alleged in the Complaint against Defendants. (Id.) For Class  
7 Members who file an objection, the Class Notice also provides the date, time, and  
8 place of the Fairness Hearing. (Id.)

9 Having reviewed the proposed Class Notice, the Court finds that the methods  
10 and contents of the Class Notice comply with due process and Rule 23, the Class  
11 Notice is the best notice practicable under the circumstances, and the Class Notice  
12 shall constitute due and sufficient notice to all persons entitled to notice of the  
13 Settlement. Therefore, the Court approves the form and content of the proposed  
14 Class Notice to be provided to the Class Members as set forth in Section 8 of the  
15 Settlement Agreement and Exhibit 2 of Mr. Semnar's Declaration.

16  
17 **III. CONCLUSION**

18 In light of the foregoing, the Court **GRANTS** Plaintiff's motion for preliminary  
19 approval of the Settlement and certification of the Class. (ECF No. 26.)  
20 Notwithstanding the foregoing, the Court **ORDERS** the parties to explain, prior to or  
21 at the Fairness Hearing, how they calculated the maximum amount of statutory  
22 damages available against Defendant the Law Offices of Peter W. Singer. Further,  
23 the Court hereby **ORDERS** the following:

24 (1) Pursuant to Rule 23 of the Federal Rule of Civil Procedure, the Court  
25 hereby conditionally certifies the following class for settlement purposes only:

26  
27 [A]ll consumers with addresses within the State of California who were  
28 sent a letter by the Law Offices of Peter W. Singer on behalf of MCT  
Group, Inc. in an attempt to collect a debt which, according to the nature

1 of the creditor or the debt, or the records of the creditor or the  
2 Defendants, was incurred for personal, family or household purposes  
3 and such letter was sent between October 26, 2014, and the date of final  
4 execution of the Settlement Agreement, and such letter contained the  
5 following language or language substantially similar:

6 If you do not dispute the above balance due, then within  
7 seven days of your receipt of this letter, either pay my  
8 client the entire balance due or phone them to work out  
9 arrangements for payment. If you do neither of these  
10 things, my office will be entitled to file a lawsuit against  
11 you for the collection of this debt when the seven days is  
12 over. I urge you to contact my client directly at 800-622-  
13 2242.

14 Unless you notify this office within 30 days after receiving  
15 this notice that you dispute the validity of this debt, or any  
16 portion thereof, this office will assume this debt is valid.  
17 If you notify this office in writing within 30 days after  
18 receiving this notice that this debt, or any portion thereof,  
19 is disputed, this office will obtain verification of the debt  
20 or obtain a copy of a judgment against you. This office will  
21 mail you a copy of such verification or judgment. If you  
22 request it of this office in writing within the 30 day period  
23 after receiving this notice, this office will provide you with  
24 the name and address of the original creditor, if different  
25 from the current creditor.

26 Excluded from the Class are: (a) any consumer whose letter was sent to  
27 an attorney or debt counselor; (b) any consumer who was mailed a letter  
28 that was returned as undeliverable; and (c) any consumer who filed for  
bankruptcy after receiving the letter but did not disclose the claim as an  
asset. Also excluded from the Class are any putative Class Members  
who exclude themselves by filing a request for exclusion in accordance  
with the requirements set forth in the Class Notice.

25 (2) The Court hereby appoints Plaintiff Mary Capps as Class Representative  
26 of the Class.

27 (3) The Court hereby appoints Babak Semnar and Jared M. Harman of  
28 Semnar & Harman, LLP, as Class Counsel to represent the Class.

1           (4) The Court hereby preliminary approves the Settlement Agreement and  
2 the terms and conditions of the Settlement set forth therein, subject to further  
3 consideration at the Fairness Hearing.

4           (5) The Court will hold a Fairness Hearing on **Monday, March 13, 2017,**  
5 **at 10:30 a.m.** in the Courtroom of the Honorable Cynthia Bashant, United States  
6 District Court for the Southern District of California, Courtroom 4B (4th Floor -  
7 Schwartz), 221 West Broadway, San Diego, CA 92101, for the following purposes:

8                   (a) determining whether the Class meets all applicable requirements  
9 of Rule 23 of the Federal Rules of Civil Procedure, and thus, whether the claims of  
10 the Class should be certified for purposes of effectuating the Settlement; determining  
11 whether the proposed Settlement of the action on the terms and conditions provided  
12 for in the Settlement Agreement is fair, reasonable, and adequate and should be  
13 approved by the Court;

14                   (b) considering any motion of Class Counsel for an award of  
15 attorneys' fees and costs;

16                   (c) considering the motion of the Plaintiff for a service award, if any;

17                   (d) considering whether the releases by the Class Members as set  
18 forth in the Settlement Agreement should be provided; and

19                   (e) ruling upon such other matters as the Court may deem just and  
20 appropriate.

21           (6) The Court may adjourn the Fairness Hearing and later reconvene such  
22 hearing without further notice to the Class Members.

23           (7) Any motion in support of the Settlement and any motion for an award  
24 of attorneys' fees and costs or Plaintiff's service award, if any, must be filed with  
25 the Court no later than **Monday, February 13, 2017.** Any opposition must be filed  
26 no later than fourteen days after the motion is filed, and any reply must be filed no  
27 later than twenty-one days after the motion is filed.

28           (8) The Court appoints First Class, Inc. to serve as the Claims

1 Administrator for the Settlement.

2 (9) The Claims Administrator shall carry out all duties set forth in the  
3 Settlement Agreement in the manner provided in the Settlement Agreement.

4 (10) The costs and expenses related to claims administration shall be paid  
5 by Defendants and shall not exceed \$4,000, in accordance with the applicable  
6 provisions of the Settlement Agreement.

7 (11) All Class Members shall be bound by all determinations and judgments  
8 in this action concerning the Settlement, whether favorable or unfavorable to the  
9 Class.

10 (12) Any Class Member may enter an appearance in this action, at his or her  
11 own expense, individually or through counsel. All Class Members who do not enter  
12 an appearance will be represented by Class Counsel.

13 (13) Any person—including any entity via its authorized representative  
14 when applicable throughout this Order—falling within the definition of the Class  
15 may, upon request, be excluded from the Class. This procedure is also referred to as  
16 “opting out” of the Class. Any person wishing to be excluded from the Class must  
17 submit a written “Opt-Out Request” to the Claims Administrator postmarked on or  
18 before 60 days after the Notice Date (“Opt-Out Deadline”). The Notice Date will be  
19 within 10 business days of the Preliminary Approval Order and is the date the Notice  
20 is mailed. The Opt-Out Request must include the Class Member’s: (a) full name; (b)  
21 address; (c) telephone number; (d) the name of the Class Action and its number:  
22 Capps v. Law Offices of Peter W. Singer, Case No. 3:15-cv-02410-BAS-NLS (S.D.  
23 Cal.); and (e) a statement that he or she wishes to be excluded from the Settlement  
24 Class. Opt-Out Requests purportedly filed on behalf of groups of persons are  
25 prohibited and will be deemed to be void. An Opt-Out Request must be written and  
26 may not be requested telephonically or by email.

27 (14) Any Class Member who does not send a completed, signed Opt-Out  
28 Request with the information listed in Paragraph 13 above to the Claims

1 Administrator postmarked or delivered on or before the Opt-Out Deadline will be  
2 deemed to be a Class Member for all purposes and will be bound by all further orders  
3 of the Court in this Class Action and by the terms of the Settlement, if finally  
4 approved by the Court. All persons who submit valid and timely Opt-Out Requests  
5 in the manner set forth in this Paragraph and Paragraph 13 above shall not: (a) be  
6 bound by any orders or the Final Judgment; (b) gain any rights by virtue of this  
7 Settlement Agreement; (c) be entitled to relief under the Settlement Agreement; nor  
8 (d) be entitled to object to any aspect of this Settlement Agreement.

9       **(15)** No later than ten days before the Fairness Hearing, the Claims  
10 Administrator shall cause to be filed with the Court a list reflecting all Opt-Out  
11 Requests.

12       **(16)** Any Class Member who desires to object either to the Settlement, the  
13 award of Class Counsel’s fees and costs, or Plaintiff’s service award, if any, must  
14 timely file with the Clerk of this Court and timely serve on the parties’ counsel  
15 identified below by hand or first-class mail a notice of the objection(s) and proof of  
16 membership in the Settlement Class and the grounds for such objections, together  
17 with all papers that the Class Member desires to submit to the Court no later than the  
18 deadline as set forth in the class notices, which is 60 days after the Notice Date  
19 (“Objection Deadline”). Class Members may not both object and request exclusion  
20 from the Settlement. If a Class Member submits both an Opt-Out Request and an  
21 objection, the Opt-Out Request will be controlling. To be considered by the Court,  
22 the objection must also contain all of the information listed in Paragraph 17 below.  
23 The Court will consider such objection(s) and papers only if such papers are received  
24 on or before the Objection Deadline by the Clerk of the Court and by Class Counsel  
25 and Defendants’ counsel. Such papers must be sent to each of the following persons:

26 //  
27 //  
28 //

1 U.S. District Court  
2 Southern District of California  
3 Office of the Clerk  
4 333 West Broadway, Suite 420  
5 San Diego, CA 92101

6  
7 Semnar & Harman, LLP  
8 Jared M. Hartman, Esq.  
9 400 South Melrose Drive  
10 Suite 209  
11 Vista, CA 92081

12  
13 Klinedinst PC  
14 Heather Rosing  
15 501 West Broadway  
16 Suite 600  
17 San Diego, CA 92101

18  
19 **(17)** All objections must include the Class Member's: (a) full name; (b)  
20 address; (c) telephone number; (d) address of counsel, if any; (e) telephone number  
21 of counsel, if any; (f) all objections and any evidence the objecting Class Member  
22 wishes to introduce in support of the objections; (g) proof of membership in the  
23 Class; (h) a statement as to whether the Class Member intends to appear at the final  
24 Fairness Hearing, either individually or through counsel; (i) the Class Member's  
25 signature; and (j) the name of the Class Action and its number: Capps v. Law Offices  
26 of Peter W. Singer, Case No. 3:15-cv-02410-BAS-NLS (S.D. Cal.).

27 **(18)** All objections must be filed with the Clerk and served on the parties'  
28 counsel no later than the Objection Deadline. Objections that do not contain all




1 required information or are received after the Objection Deadline will not be  
2 considered at the Fairness Hearing. Any responses to objections must be filed no  
3 later than three days prior to the Fairness Hearing.

4 (19) Attendance at the Fairness Hearing is not necessary; however, any  
5 Class Member wishing to be heard orally with respect to approval of the Settlement,  
6 the motion for an award of Class Counsel’s fees and costs, or the motion for  
7 Plaintiff’s service award, if any, is required to provide written notice of his or her  
8 intention to appear at the Fairness Hearing no later than ten days prior to the Fairness  
9 Hearing by filing a “Notice of Intention to Appear.” The Notice of Intention to  
10 Appear must include the Class Member’s name, address, telephone number, and  
11 signature and must be filed and served as described in Paragraph 16 of this Order.  
12 Class Members who do not oppose the Settlement, the motion for an award of Class  
13 Counsel’s fees and costs, or the motion for Plaintiff’s incentive award, need not take  
14 any action to indicate their approval. A person’s failure to submit a written objection  
15 in accordance with the Objection Deadline and the procedure set forth in the class  
16 notices waives any right the person may have to object to the Settlement, the award  
17 of Class Counsel’s fees and costs, or Plaintiff’s service award, if any, or to appeal or  
18 seek other review of, if issued, the Final Judgment and Order of Dismissal with  
19 Prejudice approving the Settlement.

20 (20) The parties are ordered to carry out the Settlement Agreement in the  
21 manner provided in the Settlement Agreement.

22 **IT IS SO ORDERED.**

23  
24 **DATED: November 21, 2016**

  
**Hon. Cynthia Bashant**  
**United States District Judge**