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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Pedro Gonzalez, Plaintiff, v. Germaine Law Office PLC, Defendant.		No. CV-15-01427-PHX-ROS ORDER
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Plaintiff brought this class action alleging Defendant violated the Fair Debt Collection Practices Act (“FDCPA”). (Doc. 1). The FDCPA requires debt collectors to send consumers “validation notices” within five days of their initial communication, describing the consumer’s rights as prescribed in 15 U.S.C. § 1692g(a). The notices must inform consumers of their statutory right to dispute the debt within thirty days of receiving the notice. Plaintiff claims he received a notice that mimicked the statutorily required language, but stated the dispute period as only ten days. Further, the notice threatened legal action unless the Plaintiff paid the alleged debt within the ten-day period. Plaintiff filed his complaint on behalf of a putative class of consumers who allegedly received similar notices from Defendant.

Before the Court is an unopposed motion for preliminary approval of a class action settlement. (Doc. 30). The putative class consists of individuals who, between July 27, 2014 and July 27, 2015, were mailed a validation notice referencing a ten-day dispute

1 period and threatening legal action if the debt were not paid within ten days.¹

2 ANALYSIS

3 Where “the parties reach a settlement agreement prior to class certification, courts
4 must peruse the proposed compromise to ratify both the propriety of the certification and
5 the fairness of the settlement.” *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003).
6 Before granting preliminary approval of a settlement, the Court must determine whether
7 the proposed class can be certified for settlement purposes. *See Manual for Complex*
8 *Litigation* (4th Ed. 2004) § 21.632; *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620
9 (1997).

10 I. Preliminary Class Certification

11 Rule 23 governs class certification, whether the proposed class is a litigation class
12 or, as here, a settlement class. Under Rule 23, certification is appropriate where the
13 proposed class and class representatives meet four prerequisites under Rule 23(a) and one
14 of the three categories of Rule 23(b). When a court is evaluating the certification question
15 in the context of a proposed settlement class, questions regarding the manageability of the
16 case for trial purposes are not considered. *See Amchem Prod., Inc. v. Windsor*, 521 U.S.
17 591, 620 (1997) (“Confronted with a request for settlement-only class certification, a
18 district court need not inquire whether the case, if tried, would present intractable
19 management problems, *see* Fed. R. Civ. P. 23(b)(3)(D), for the proposal is that there be
20 no trial.”). However, the Ninth Circuit has long held courts must be particularly careful
21 when approving classes for settlement purposes. *Hanlon v. Chrysler Corp.*, 150 F.3d
22 1011, 1019 (9th Cir. 1998) (“[W]e must pay ‘undiluted, even heightened, attention’ to
23 class certification requirements in a settlement context.”).

24 A. Rule 23(a) Requirements

25 i. Numerosity

26 Rule 23(a)(1) requires the proposed class be “so numerous that joinder of all
27

28 ¹ The exact language in the allegedly violating notices is included in the proposed class definition.

1 members is impracticable.” Fed. R. Civ. P. 23(a). There is no specific number that
2 satisfies the numerosity requirement, but the Court is confident the 461 individuals
3 Defendant identifies as having received the allegedly violating notices satisfy this
4 requirement. *See, e.g., Rannis v. Recchia*, 380 F. App’x 646, 651 (9th Cir. 2010)
5 (certifying a class of twenty).

6 **ii. Commonality**

7 Rule 23(a)(2) requires the presence of a common question of law or fact. This
8 “requires the plaintiff to demonstrate that the class members have suffered the same
9 injury.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011) (citations and
10 internal quotation marks omitted). Thus, the class members’ claims “must depend upon a
11 common [question] . . . capable of classwide resolution.” *Id.* That is, the “truth or falsity”
12 of the common question “will resolve an issue that is central to the validity of each one of
13 the claims in one stroke.” *Id.* “[C]ommon questions may center on shared legal issues
14 with divergent factual predicates [or] a common core of salient facts coupled with
15 disparate legal remedies.” *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1165 (9th Cir.
16 2014) (citations and internal quotation marks omitted). The requirement is met “when the
17 common questions [] raised are apt to drive the resolution of the litigation, no matter their
18 number.” *Id.* (citations and internal quotation marks omitted).

19 As Plaintiff argues, the claims asserted by the class arise out of the same
20 standardized language contained in notices sent to each of the class members. Thus,
21 Plaintiff’s proposed class meets the commonality requirement of Rule 23(a)(2). *See*
22 *Bogner v. Masari Investments, LLC*, 257 F.R.D. 529, 532 (D. Ariz. 2009) (“[t]he
23 commonality requirement has been met because Plaintiffs allege that ‘a standard letter
24 sent by Defendants, to each member of the proposed class, was unfair and deceptive, in
25 violation of the FDCPA.’”) (quoting *Abels v. JBC Legal Group, P.C.*, 227 F.R.D. 541,
26 545 (N.D. Cal. 2005)).

27 **iii. Typicality**

28 Under Rule 23(a)(3), “the claims or defenses of the representative parties [must

1 be] typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3).
2 Representative claims are “typical” if they are “reasonably co-extensive with those of
3 absent class members,” they “need not be substantially identical.” *Hanlon*, 150 F.3d at
4 1020. The named plaintiffs must be members of the class they seek to represent and they
5 must “possess the same interest and suffer the same injury” as putative class
6 members. *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 156 (1982) (internal quotation
7 marks omitted).

8 Plaintiff’s claims arise from the same notice language as the rest of the class
9 members. He has experienced the same injury and shares the same interests. Therefore,
10 Plaintiff’s claims are typical of those of the putative class members.

11 **iv. Adequacy of Representation**

12 Finally, Rule 23(a)(4) requires the “representative parties will fairly and
13 adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “The adequacy-of-
14 representation requirement tend[s] to merge with the commonality and typicality criteria
15 of Rule 23(a).” *Amchem*, 521 U.S. at 626, n. 20 (citations and internal quotation marks
16 omitted). In order to be adequate, a representative may not have any conflicts of interest
17 with other class members. *Hanlon*, 150 F.3d at 1020. The representative and his counsel
18 must also show they will prosecute the action vigorously on behalf of the class. *Id.* This
19 includes showing counsel is competent and, “in the context of a settlement-only class, . . .
20 the rationale for not pursuing further litigation.” *Id.* at 1021.

21 Plaintiff claims to have no conflicts of interest with other class members. At
22 present, there is no reason to doubt this. Furthermore, the law firm Plaintiff moves to
23 admit has extensive experience in prosecuting class actions, and FDCPA cases in
24 particular. (Doc. 30-1 at 2-3). Plaintiff and counsel’s reasons for pursuing settlement
25 rather than further litigation and potentially trial, namely the risks and costs involved, and
26 the cap on statutory damages, are satisfactory. *See* 15 U.S.C. § 1692k(a)(1), (a)(2)(B)(ii)
27 (limiting class recovery to actual damages, plus the lesser of \$500,000 or one percent of
28 the debt collector’s net worth).

1 In sum, Plaintiff's proposal meets the threshold requirements of numerosity,
2 commonality, typicality, and adequacy of representation under Rule 23(a).

3 **B. Rule 23(b) Requirement**

4 In addition to satisfying all four requirements of Rule 23(a), Plaintiff must show
5 the putative class meets one of three threshold requirements under Rule 23(b). That is,
6 Plaintiff must show either: 1) prosecuting separate actions would create a risk of
7 inconsistent or dispositive adjudications; 2) the opposing party's actions have applied to
8 the class generally such that final relief respecting the whole class is appropriate; or 3)
9 questions of law or fact common to class members predominate over any questions
10 affecting only individual members, and a class action is superior to other available
11 methods for fairly and efficiently adjudicating the controversy. Fed. R. Civ. P. 23(b).

12 Plaintiff argues this case qualifies for certification under Rule 23(b)(3).

13 **i. Predominance**

14 The requirement of predominance under Rule 23(b)(3) is distinct from that of
15 commonality under Rule 23(a)(2):

16 In contrast to Rule 23(a)(2), Rule 23(b)(3) focuses on the relationship
17 between the common and individual issues. 'When common questions
18 present a significant aspect of the case and they can be resolved for all
19 members of the class in a single adjudication, there is clear justification for
handling the dispute on a representative rather than on an individual basis.'

20 *Hanlon*, 150 F.3d at 1022 (quoting 7A Charles Alan Wright, Arthur R. Miller & Mary
21 Kay Kane, *Federal Practice & Procedure* § 1778 (2d ed.1986)).

22 The class claims present common questions of law and fact. The overarching issue
23 here is whether Defendant's validation notices violated the FDCPA by confusing class
24 members of their rights under the statute. This common question predominates over any
25 possible individual issues among members of Plaintiff's proposed class. *See Bogner*, 257
26 F.R.D. at 534 (alleged FDCPA violation in standardized collection letters held to be
27 predominant issue).

28 **ii. Superiority**

1 To satisfy Rule 23(b)(3), Plaintiff must also prove class resolution of the case is
2 “superior to other available methods for the fair and efficient adjudication of the
3 controversy.” Fed. R. Civ. P. 23(b)(3). “Where classwide litigation of common issues
4 will reduce litigation costs and promote greater efficiency, a class action may be superior
5 to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234
6 (9th Cir. 1996).

7 As Plaintiff states, class members have no real alternative to class litigation. Many
8 will likely be unaware of their rights under the FDCPA, and regardless, the recoverable
9 damages are likely too small to justify individual litigation. *See* 15 U.S.C. § 1692k(a)(1),
10 (a)(2)(A) (limiting an individual’s recovery to actual damages plus \$1,000). Thus, a class
11 action is the superior form to resolve these claims. *See Chapman v. Bowman, Heintz,*
12 *Boscia & Vician, P.C.*, No. 2:15-CV-120 JD, 2015 WL 9478548, at *5 (N.D. Ind. Dec.
13 29, 2015) (“it is doubtful that many individual claims would be pursued in light of the
14 expense of litigation and the fact that separate lawsuits would be uneconomical for
15 potential class members”).

16 **II. Preliminary Settlement Approval**

17 Once a settlement class is preliminarily certified, the court decides whether
18 preliminarily to approve the proposed settlement. Under Rule 23(e), a court must evaluate
19 a proposed settlement for fundamental fairness, adequacy, and reasonableness before
20 approving it. Fed. R. Civ. P. 23(e)(2). Ultimately, a determination of the fairness,
21 adequacy, and reasonableness of a class action settlement involves consideration of:

22 [T]he strength of plaintiffs’ case; the risk, expense, complexity, and likely
23 duration of further litigation; the risk of maintaining class action status
24 throughout the trial; the amount offered in settlement; the extent of
25 discovery completed, and the stage of the proceedings; the experience and
26 views of counsel; the presence of a governmental participant; and the
reaction of the class members to the proposed settlement.

27 *Staton*, 327 F.3d at 959 (citations and internal quotation marks omitted). However, at the
28 preliminary approval stage, courts need only evaluate “whether the proposed settlement

1 appears to be the product of serious, informed, non-collusive negotiations, has no
2 obvious-deficiency, does not improperly grant preferential treatment to class
3 representatives or segments of the class and falls within the range of possible approval.”
4 *Horton v. USAA Cas. Ins. Co.*, 266 F.R.D. 360, 363 (D. Ariz. 2009) (citations and
5 internal quotation marks omitted).

6 **A. Settlement Appears to be Product of Serious, Informed, Non-Collusive**
7 **Negotiations; With No Obvious Deficiency or Preferential Treatment; and Is Within**
8 **the Range of Possible Approval**

9 Both sides are represented by experienced counsel qualified to assess the strengths
10 and weaknesses of their clients’ positions and negotiate accordingly. Under the proposed
11 settlement, Defendant would create a Settlement Fund of \$7,837. (Doc. 30-1 at 13). All
12 class members who do not opt out will receive a pro-rated share of the remaining funds.
13 The average recovery if no class members opt out is \$17. (*Id.* at 13). Defendant would
14 separately pay Plaintiff \$750² and would cover all costs to administer the settlement. (*Id.*
15 at 14-15).

16 The FDCPA drastically limits the potential recovery in a class action to actual
17 damages plus “the lesser of \$500,000 or 1 per centum of the net worth of the debt
18 collector.” 15 U.S.C. § 1692k(a). Plaintiff claims the proposed recovery of \$7,837 is
19 more than one percent of Defendant’s net worth, and thus more than the class likely could
20 have recovered at trial. The Court has no reason to disbelieve Plaintiff on this point.
21 Further, the Court is satisfied the \$17 average recovery falls within the range of recent
22 settlements relating to similar FDCPA violations. *Schuchardt v. Law Office of Rory W.*
23 *Clark*, No. 15-CV-01329-JSC, 2016 WL 232435, at *2 (N.D. Cal. Jan. 20, 2016)
24 (preliminarily approving class settlement of FDCPA claim about deceptive language in
25 validation notices with an average recovery of \$10); *Chapman*, 2015 WL 9478548, at *7
26 (same where claim was a similar FDCPA procedural violation and average recovery was
27 \$15). Therefore, the proposed settlement agreement appears to be the product of serious,

28 ² The FDCPA authorizes payments to named plaintiffs of actual damages plus up
to \$1,000. 15 U.S.C. § 1692k(a)(2).

1 informed, non-collusive negotiations.

2 **B. Form of Notice; Attorneys' Fees and Costs**

3 The agreement provides for notice by direct mail to all class members. (*Id.* at 11).
4 The Court approves the form of notice (Doc. 30-1 at 34-39) and believes direct mail, with
5 all reasonable efforts made to obtain updated addresses, is the “best notice that is
6 practicable under the circumstances.” Fed. R. Civ. P. 23(c)(2)(B).

7 The FDCPA provides for recovery of reasonable attorneys' fees and costs. 15
8 U.S.C. § 1692k(a)(3). The parties agree to negotiate in good faith the amount of
9 attorneys' fees and costs to be paid by Defendant, separate from the other payments. (*Id.*
10 at 15). If they fail to reach agreement, Plaintiff will apply to the Court for reasonable fees
11 and costs. (*Id.*). Finally, Defendant agrees to “make its best efforts” to comply with the
12 FDCPA in all correspondence with consumers. (*Id.* at 14).

13 **III. Appointment of Class Counsel**

14 Rule 23(g) governs the appointment of class counsel. In appointing class counsel,
15 a court must consider: 1) “the work counsel has done”; 2) “counsel’s experience in
16 handling class actions, other complex litigation, and the types of claims asserted in the
17 action”; 3) “counsel’s knowledge of the applicable law”; and 4) “the resources [counsel
18 will commit to representing the class.” Fed. R. Civ. P. 23(g)(1)(A).

19 Plaintiff seeks to appoint Greenwald Davidson Radbil PLLC as class counsel.
20 James L. Davidson, a partner at the firm, attests to the firm’s experience (and his own)
21 with class actions under the FDCPA and similar consumer protection statutes. (Doc. 30-1
22 at 2-3). The Court is confident the firm will be more than adequate as class counsel.

23 Accordingly, **IT IS ORDERED** as follows:

24 The Court finds that it has jurisdiction over this case and all settling parties hereto.

25 Pursuant to Fed. R. Civ. P. 23(b)(3), the Lawsuit is preliminarily certified, for
26 settlement purposes only, as a class action on behalf of the following class of plaintiffs
27 (hereinafter referred to as the “Class Members”) with respect to the claims asserted in the
28 Lawsuit:

(a) All persons with an Arizona address, (b) to whom Germaine Law

1 Office, PLC mailed, (c) between July 27, 2014 and July 27, 2015, (d) an
2 initial debt collection communication, (e) in connection with the collection
3 of a consumer debt, (f) that stated:

4 Unless you, within ten days after receipt of this
5 correspondence, dispute the validity of the debt, or any
6 portion thereof, we will assume the debt to be valid; and/or

7 If you notify us in writing within the ten-day period that the
8 debt, or any portion thereof, is disputed, we will obtain
9 verification of the debt or a copy of a judgment against you
10 and we will mail you a copy of such verification or judgment;
11 and/or

12 Upon your written request within the ten-day period, we will
13 provide you with the name and address of the original
14 creditor, if different from the current creditor; and/or

15 Unless the amount above stated is paid to this office within
16 ten (10) days from the date of this letter or other suitable
17 arrangements are made for payment, I have been authorized
18 to commence legal proceedings, without further notice to you,
19 in order to collect this amount.

20 Defendant represents that there are 461 Class Members, including Plaintiff.

21 Pursuant to Fed. R. Civ. P. 23, the Court appoints Plaintiff Pedro Gonzalez as the
22 Class Representative. The Court appoints James L. Davidson of Greenwald Davidson
23 Radbil PLLC as Class Counsel.

24 The Court preliminarily finds that the Lawsuit satisfies the applicable prerequisites
25 for class action treatment under Fed. R. Civ. P. 23, for purposes of settlement only,
26 namely:

27 A. The Class Members are so numerous that joinder of all of them in the Lawsuit
28 is impracticable;

B. There are questions of law and fact common to the Class Members, which
predominate over any individual questions;

C. The claims of the Plaintiff are typical of the claims of the Class Members;

D. The Plaintiff and Class Counsel have fairly and adequately represented and

1 protected the interests of all of the Class Members; and

2 E. Class treatment of these claims will be efficient and manageable, thereby
3 achieving an appreciable measure of judicial economy, and a class action is
4 superior to other available methods for a fair and efficient adjudication of this
5 controversy.

6 The Court preliminarily finds the terms and conditions set forth in the Settlement
7 Agreement are fundamentally fair, reasonable, adequate, and in the best interest of the
8 Class Members.

9 First Class, Inc., a third-party class administrator selected by the parties, will
10 administer the settlement and notification to Class Members. The class administrator will
11 be responsible for mailing the approved class action notice and settlement checks to the
12 Class Members. All costs of administration will be paid by Defendant separate and apart
13 from the Settlement Fund.

14 The Court approves the form and substance of the Notice of Class Action
15 Settlement, attached to the Settlement Agreement as Exhibit B. The proposed form and
16 method for notifying the Class Members of the settlement and its terms and conditions
17 meet the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process, constitute the best
18 notice practicable under the circumstances, and constitute due and sufficient notice to all
19 persons entitled to the notice. The Court finds that the proposed notice is clearly designed
20 to advise the Class Members of their rights. In accordance with the Settlement
21 Agreement, the class administrator will mail the notice to the Class Members as
22 expeditiously as possible, but no later than **June 30, 2016**. The class administrator will
23 confirm, and if necessary, update the addresses for the Class Members through standard
24 methodology that the class administrator currently uses to update addresses.

25 Any Class Member who desires to be excluded from the class must send a written
26 request for exclusion to the class administrator with a postmark date no later than **August**
27 **29, 2016**. To be effective, the written request for exclusion must state the Class
28 Member's full name, address, telephone number, and email address (if available), along
with a statement that the Class Member wishes to be excluded. Any Class Member who

1 submits a valid and timely request for exclusion will not be bound by the terms of the
2 Settlement Agreement.

3 Any Class Member who intends to object to the fairness of this settlement must
4 file a written objection with the Court no later than **August 29, 2016**. Any such Class
5 Member must provide a copy of the written objection, within the same period, to Class
6 Counsel attention: James L. Davidson, Esq., Greenwald Davidson Radbil PLLC, 5550
7 Glades Road, Suite 500, Boca Raton, FL 33431; and Counsel for Defendant, Cassandra
8 V. Meyer, The Cavanagh Law Firm, P.A., 1850 North Central Avenue, Suite 2400,
9 Phoenix, AZ 85004.

10 To be effective, a notice of intent to object to the Settlement must:

- 11 (a) Contain a heading that includes the name of the case and case number;
12 (b) Provide the name, address, telephone number and signature of the Class
13 Member filing the objection;
14 (c) Be filed with the Clerk of the Court no later than August 29, 2016;
15 (d) Be sent to Class Counsel and Defendant at the addresses designated in the
16 Notice by first-class mail, postmarked no later than August 29, 2016;
17 (e) Contain the name, address, bar number and telephone number of the objecting
18 Class Member's counsel, if represented by an attorney. If the Class Member is
19 represented by an attorney, he/she must comply with all applicable laws and rules
20 for filing pleadings and documents in the U.S. District Court for the District of
21 Arizona;
22 (f) A statement of the specific basis for each objection; and
23 (g) A list of any legal authority the objector will present at the Final Approval
24 Hearing.

25 Any Class Member who has timely filed an objection must appear at the
26 Settlement Approval Hearing, in person or by counsel, and be heard to the extent allowed
27 by the Court, applying applicable law, in opposition to the fairness, reasonableness and
28 adequacy of the Settlement, and on the application for an award of attorneys' fees and
costs. The right to object to the Settlement must be exercised individually by an

1 individual Class Member, not as a member of a group or subclass and, except in the case
2 of a deceased, minor, or incapacitated Class Member, not by the act of another person
3 acting or purporting to act in a representative capacity.

4 The Court will conduct a hearing on **September 28, 2016 at 10:00 AM** at the
5 United States District Court for the District of Arizona, Sandra Day O'Connor U.S.
6 Courthouse, Suite 624, 401 West Washington Street, SPC 59, Phoenix, AZ 85003-2158,
7 to review and rule upon the following issues:

8 A. Whether this action satisfies the applicable prerequisites for class action
9 treatment for settlement purposes under Fed. R. Civ. P. 23;

10 B. Whether the proposed settlement is fundamentally fair, reasonable, adequate,
11 and in the best interest of the Class Members and should be approved by the
12 Court;

13 C. Whether a Final Order and Judgment, as provided under the Settlement
14 Agreement, should be entered, dismissing the Lawsuit with prejudice and
15 releasing the Released Claims against the Released Parties; and

16 D. To discuss and review other issues as the Court deems appropriate.

17 Attendance by Class Members at the Final Approval Hearing is not necessary.
18 Class Members wishing to be heard are, however, required to appear at the Final
19 Approval Hearing. The Final Approval Hearing may be postponed, adjourned,
20 transferred, or continued without further notice to the Class Members.

21 Class Counsel's petition for attorney's fees and reimbursement of costs and
22 expenses – to be paid from funds separate from the Settlement Fund – must be submitted
23 no later than **August 1, 2016**. All other submissions by the Parties, including memoranda
24 in support of the proposed settlement and responses to any objections, must be submitted
25 no later than **September 13, 2016**.

26 The Settlement Agreement and this Order will be null and void if any of the
27 following occur:

28 A. The Settlement Agreement is terminated by any of the Parties because any
specified material condition to the settlement set forth in the Settlement

1 Agreement is not satisfied and the satisfaction of such condition is not waived in
2 writing by the Parties;

3 B. The Settlement Agreement is terminated by option of any of the parties because
4 more than 15% of the Class Members have excluded themselves from the
5 settlement, pursuant to Paragraph 19(C) of the Settlement Agreement.

6 C. The Court rejects any material component of the Settlement Agreement,
7 including any amendment thereto approved by the Parties; or

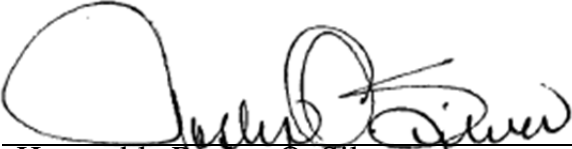
8 D. The Court approves the Settlement Agreement, including any amendment
9 thereto approved by the Parties, but such approval is reversed on appeal and such
10 reversal becomes final by lapse of time or otherwise.

11 If the Settlement Agreement and/or this order are voided, then the Settlement
12 Agreement will be of no force and effect and the Parties' rights and defenses will be
13 restored, without prejudice, to their respective positions as if the Settlement Agreement
14 had never been executed and this order never entered.

15 The Court retains continuing and exclusive jurisdiction over the action to consider
16 all further matters arising out of or connected with the settlement, including the
17 administration and enforcement of the Settlement Agreement.

18 **IT IS FURTHER ORDERED** Plaintiff's Motion for Preliminary Approval of
19 Class Action Settlement (Doc. 30) is **GRANTED**.

20 **Dated this 31st day of May, 2016.**

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24 Honorable Roslyn O. Silver
25 Senior United States District Judge
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