**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**ORLANDO DIVISION**

RAY PALMER, JR., on behalf of himself and all others similarly situated,

Plaintiff,

v. Case No: 6:15-cv-59-Orl-40KRS

DYNAMIC RECOVERY SOLUTIONS, LLC and CASCADE CAPITAL, LLC,

Defendants.

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**ORDER**

Plaintiff, Ray Palmer, Jr., initiated this putative class action against Defendants, Dynamic Recovery Solutions, LLC ("Dynamic") and Cascade Capital, LLC ("Cascade"), to vindicate his rights and the rights of other similarly situated consumers under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692–1692p. Plaintiff claims that 1,181 consumers received dunning letters from Defendants which violate the FDCPA's proscriptions against false, misleading, and unfair debt collection practices. Both Dynamic and Cascade deny any wrongdoing. The parties advise that they have resolved their dispute and now move the Court to certify a settlement class and to preliminarily approve their settlement agreement. For the following reasons, and with the benefit of a preliminary fairness hearing, the Court finds that certification and preliminary approval are inappropriate at this time.

## I. BACKGROUND

### A. The Allegations

Plaintiff alleges in his Complaint that he and the putative class members incurred and subsequently defaulted on credit card obligations owed to Bank of America. After the statute

of limitations had passed to legally enforce these defaulted obligations, Bank of America sold them to Cascade. Cascade then contracted with Dynamic to collect on the debts.

In furtherance of its collection efforts, Dynamic mailed dunning letters to Plaintiff and the putative class members seeking payment of the defaulted credit card obligations. Each letter informed the recipient that he or she owed a debt, that the original creditor was Bank of America, and that Cascade currently owns the right to collect on the obligation. Each letter further outlined a number of payment plans through which the recipient could "settle" his or her account. Upon completion of a payment plan, each letter promised that the account would be considered "satisfied and closed" and that "a settlement letter [would] be issued." The letters never disclosed that the underlying credit card obligations were no longer legally enforceable.

By couching its collection efforts in terms of "settlement" and offering payment plans without disclosing the fact that the underlying credit card obligations were no longer legally enforceable, Plaintiff claims that the dunning letters misrepresent the character or legal status of the obligations and, as a result, constitute a false, misleading, and unfair debt collection practice. Both Dynamic and Cascade deny that the letters violate the FDCPA and maintain that, even if they do, any violation was the result of a bona fide error. Cascade additionally denies liability on the grounds that it cannot be held vicariously liable under the FDCPA for any misconduct by Dynamic.

**B. The Proposed Settlement**

The parties represent that, through their counsel, they have engaged in arms-length negotiations which have resulted in settlement. The terms of that settlement include the following:

- Dynamic will pay $12,000 to the class as statutory damages under the FDCPA, which will be distributed evenly among the 1,181 class members for a pro rata award of $10.16 per class member.

- Dynamic will pay Plaintiff $2,000 in recognition for his service as class representative and $1,000 in statutory damages as permitted by the FDCPA, for a total award to Plaintiff of $3,000, which shall be paid separately from the class settlement fund.

- Plaintiff will be deemed the prevailing party and Dynamic will pay Plaintiff's reasonable attorney's fees and costs.

- Dynamic will pay the costs of class notice, distribution, and administration.

- The class will release Defendants from all known and unknown claims which could have been brought in this lawsuit.

- Defendants deny liability and retain the right to collect on the defaulted obligations.

- Class members may opt out of the class and the settlement or may enter an appearance to object to the settlement's fairness.

- Any unclaimed amount from the $12,000 class settlement fund will be divided equally between the National Consumer Law Center and the National Association of Consumer Advocates as a cy pres remedy.

## II. DISCUSSION

### A. Class Certification

"For a district court to certify a class action, the named plaintiffs must have standing, and the putative class must meet each of the [four] requirements specified in Federal Rule of Civil Procedure 23(a), as well as at least one of the requirements set forth in Rule 23(b)." *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1265 (11th Cir. 2009) (quoting *Klay v. Humana, Inc.*, 382 F.3d 1241, 1250 (11th Cir. 2004)). The Court assumes for the purposes of this Order only that all class certification requirements are satisfied. *But see* note 6, *infra*. The Court therefore turns directly to the question of whether the parties' proposed settlement should receive preliminary approval.

**B. Preliminary Approval of the Settlement**

A class action may not be settled, dismissed, or otherwise compromised without the district court's approval. Fed. R. Civ. P. 23(e). A district court should only approve a class action settlement if it is "fair, adequate and reasonable and is not the product of collusion between the parties." *Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 691 (S.D. Fla. 2014) (quoting *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984)). The Eleventh Circuit has enumerated six factors a district court should consider in evaluating the fairness, adequacy, and reasonableness of a class action settlement: (1) the plaintiff's likelihood of success on the merits, (2) the range of the plaintiff's possible recovery, (3) the point within the range of possible recovery at which settlement is fair, adequate, and reasonable, (4) the expected complexity, cost, and duration of litigation, (5) any opposition to the proposed settlement, and (6) the stage of the litigation at which settlement was reached. *Faught v. Am. Home Shield Corp.*, 668 F.3d 1233, 1240 (11th Cir. 2011). While these six factors are helpful in answering the fairness inquiry, they are neither determinative nor exhaustive, and the court may consider other relevant factors based on the particular nuances of the case and the settlement proposed. *Officers for Justice v. Civil Serv. Comm'n of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982), *cert. denied*, 459 U.S. 1217 (1983). Additional factors warranting consideration may include (7) an unjustifiably burdensome claims procedure, (8) unduly preferential treatment of the class representative, (9) the terms of settlement in similar cases, (10) an unreasonably high award of attorney's fees to prevailing class counsel, and (11) impermissibly broad releases of liability. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946–47 (9th Cir. 2011); *In re Prudential Ins. Co.*

*Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 317, 323–24 (3d Cir. 1998), *cert. denied*, 525 U.S. 1114 (1999); MANUAL FOR COMPLEX LITIGATION (FOURTH) § 21.62 (2004).[1]

Although class action settlements should be reviewed with deference to the strong judicial policy favoring settlement, the court must not approve a settlement merely because the parties agree to its terms. *Redman v. RadioShack Corp.*, 768 F.3d 622, 629 (7th Cir. 2014), *cert. denied*, 135 S. Ct. 1429 (2015); *Holmes v. Cont'l Can Co.*, 706 F.2d 1144, 1150 (11th Cir. 1983) (finding that reliance on the recommendations of the parties and their counsel "fosters rubber stamping by the court rather than the careful scrutiny which is essential in judicial approval of class action settlements"). This maxim particularly holds true in the context of precertification settlement, where the parties' speedy and seamless resolution of their dispute should prompt the court to consider whether the proposed settlement represents a bona fide end to the adversarial process or the collusive exploitation of the class action mechanism to the detriment of absent class members. *See Lane v.*

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[1] The list of potential factors to consider could go on. On this point, two astute commentators observe:

> [F]actor tests . . . suffer from shortcomings. These tests grow by accretion. They are commodious closets into which the residues of past cases can be deposited—closets that never need to be reorganized or cleaned out because the tests are suggestive only. Appeals courts never need to consider whether a factor test should be overruled. Over time, despite the good intentions that motivated their creation, they become unwieldy and disorganized . . . .
>
> The sheer number of factors is a problem. A trial judge could hardly be blamed for feeling a sense of foreboding when contemplating the nineteen items on the Third Circuit's checklist [in *Prudential*]. Running through them all seems a dreary task. Courts applying these tests often recite the litany and engage in pro forma analyses, but their hearts are not in it.

Jonathan R. Macey & Geoffrey P. Miller, *Judicial Review of Class Action Settlements*, 1 J. LEGAL ANALYSIS 167, 172 (2009) (footnotes omitted).

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