WILLIAM McGRANE [057761]
McGRANE LLP
Four Embarcadero Center, Suite 1400
San Francisco, CA 94111
(415) 292-4807
william.mcgrane@mcgranellp.com

MATTHEW J. SHIER [072638]
LINDA SORENSEN [072753]
shierkatz RLLP
930 Montgomery Street, 6th Floor
San Francisco, CA 94133
(415) 691-7027
mshier@shierkatz.com

JONATHAN BASS [075779]
MARK L. HEJINIAN [281417]
COBLENTZ PATCH DUFFY & BASS LLP
One Ferry Building, Suite 200
San Francisco, CA 94111
(415) 772-5726
jbass@cpdb.com

Attorneys for Plaintiff 4EC Holdings, LLC, a Delaware limited liability company, on behalf of itself and all others similarly situated

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

4EC HOLDINGS, LLC, a Delaware limited liability company, individually and on behalf of a class of similarly situated persons and entities,

Plaintiff,

vs.

LINEBARGER GOGGAN BLAIR & SAMPSON LLP, a Texas limited liability partnership,

Defendant.

Case No. 3:14-CV-01944-VC

PLAINTIFF CLASS'S MOTION FOR COURT APPROVAL OF THE SETTLEMENT, CERTIFICATION OF THE CLASS AND ENTRY OF THE PROPOSED ORDER AND BRIEF IN SUPPORT

Date: January 7, 2016
Time: 10:00 am
Judge: Hon. Vince Chhabria
Place: Courtroom 4, 17th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

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NOTICE / MOTION

Please take notice that on January 7, 2015, at 10:00 a.m. in Courtroom 4, on the 17th floor of the United States District Court for the Northern District of California, 450 Golden Gate Ave., San Francisco, California, Plaintiff 4EC Holdings, LLC will request that the Court approve the Amended and Corrected Stipulation of Class Action Settlement and Release (Dkt 90), certify the Settlement Class specified in its Order Preliminarily Approving Settlement as Amended and Providing for Notice (Dkt 94) and enter Final Judgment (see Dkt. 90-4).

POINTS AND AUTHORITIES IN SUPPORT OF THE MOTION

I. BACKGROUND

A. THE TEXAS LAW FIRM'S ACTIVITIES

In 2002 Defendant Linebarger Goggin Blair & Sampson LLP (the Texas Law Firm[1]) entered the State of California[2] to propose to various California Governments—such as the Franchise Tax Board, the City of Los Angeles and the City and County of San Francisco—that it be retained to collect their debts. It got the contracts and sent letters ("Texas Lawyer Scare Letters") to over 800,000 people; collected millions of dollars; out of which millions of dollars it took payment for services rendered.

The Texas Law Firm sent two such Texas Lawyer Scare Letters to 4EC asserting that it owed the City of San Francisco $90.00. (SAC ¶ 18, Exh. 2). The letters, similar to those it sent others, had all the hallmarks of a letter from an attorney; they:

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[1] This brief adopts the terminology used in the Amended Stipulation of Class Action Settlement and Release (Settlement Agreement) (Dkt 90) and 4EC Holdings, LLC (4EC)'s Second Amended Complaint (SAC) (Dkt 1, Exh. A). In footnotes, documents in the records of the Court are referred to by their ECF Docket number.

[2] Corp. C. § 16959(a)(1) requires registration with the California Secretary of State before any foreign limited liability partnership may transact intrastate business in California. Corp. C. § 16959(l) defines "transact intrastate business" as: "to repeatedly and successively provide professional limited liability partnership services in this state, other than in interstate or foreign commerce." Corp. C. §16101(13) provides: "Professional limited liability partnership services means . . . the practice of law." Debt collection is not a professional limited liability partnership service.

- ✓ Identified the firm as "Attorneys at Law" in the letterhead;
- ✓ Stated: "Please be advised that *this law firm* has been retained;"
- ✓ Referred to *the* California Governments as "our client," and
- ✓ And the *second* letter began: "Our law firm previously sent you a letter . . . ."

The trouble was—until September 2013, the Texas Law Firm did not have a California lawyer on its roster (and even after September, the lawyer has never himself personally reviewed any of the Texas Lawyer Scare Letters).

B. THE 4EC ACTION

4EC initiated this action on May 28, 2013, on behalf of itself and all others similarly situated (collectively, Class Members), in the Superior Court in and for the City and County of San Francisco, alleging that the Texas Law Firm was violating Business & Professions Code section 17200 et seq. (UCL)[3] by engaging in the unauthorized practice of law.[4]

4EC sought restitution of the money paid to the Texas Law Firm, which money was paid under false pretenses and as a result of unfair and unlawful conduct.[5]

The Texas Law Firm denied that it was practicing law; its position is that it was acting as a debt collector.

After several unsuccessful (for the Texas Law Firm) rounds of demurrers and successful (for 4EC) motions to compel discovery, on April 28, 2014, the Texas Law Firm removed the case to federal court. The Texas Law Firm there repeated the cycle: moving to dismiss (Dkt 11) and seeking reconsideration of a state court order compelling discovery (Dkt 19).

4EC opposed the Texas Law Firm's various recycled motions. See, e.g. Dkts 23-28, Dkt 31-32. 4EC also separately moved to remand. Dkt 14.

[3] Dkt 1 at Exh. A at ¶¶ 35–41.

[4] See Bus. & Prof. C. § 6125.

[5] Plaintiffs alleged that whereas the Texas Law Firm had no right to practice law in California, whatever money it collected from California Citizens was collected entirely as an officious intermeddler and that, as a result, the entire amount collected needed to be returned to California Citizens.

C. THE SETTLEMENT

In about May, 2014, the parties called a temporary cessation to the battles and attempted to settle this case. The settlement has gone through several iterations, beginning in December 2014 (Dkt 50), to March 2015 (Dkt 65) and July 10, 2015 (Dkt. 76), and July 22, 2015 (Dkt 81). The current proposed agreement was submitted on August 19, 2015 (Dkt 90). The main sticking points along the way were the amount of the settlement, the requirement in earlier versions that Class Members submit claims for restitution, the reversion of unspent money to the Texas Law Firm, and the administrative costs. These issues have now been resolved to the satisfaction of the parties and to benefit of the Class.

D. PRELIMINARY APPROVAL OF THE SETTLEMENT

On August 20, 2015, the Court entered the Order Preliminarily Approving Settlement as Amended and Providing for Notice (Pre. App. Order). Dkt 94. The Pre. App. Order conditionally certified a Settlement Class and specified procedures to notify the class.

E. THE PRELIMINARY NOTICE TO THE SETTLEMENT CLASS SATISFIED ANY DUE PROCESS CONCERNS

The procedures specified by the Pre. App. Order to notify the Settlement Class (Dkt 94 at 4:3–5:8) were eminently sensible. Since this case is all about letters sent to Class Members by the Texas Law Firm, the Texas Law Firm compiled a database of the addresses it used to contact the Class Members during the Class Period. Notices were mailed to the Settlement Class Members by the Settlement Administrator, Gilardi & Co., LLC (Gilardi), giving the Class Members the opportunity to object or opt-out. If these addresses did not work, the Texas Law Firm would consult the Postal Service's National Change of Address Database and third-party data bases, such as LexisNexis Accurint.[6] Dkt. 90 at 15:10–23. Gilardi also set up the website, referred to in the Individual Notices (Dkt 90-2), at www.lgbssettlement.com, which includes the Individual Notices and Detailed Notices (Dkts 90-1, 90-2) as well as the other documents relevant to the settlement. [7]

[6] Compilation of the address database was at the expense of the Texas Law Firm, not the Class.

[7] Declaration of Jonathan Bass in Support of Motion to Approve Settlement (Bass Decl.) ¶ 5, Exh. 1.

The latest report from Gilardi shows that 82,906 notices were initially mailed, with about 10% being re-mailed to updated addresses or—failing any updated address being available—then back to the original address. Only about 2% have been returned unanswered after this process.[8]

The deadline for objections to the settlement is December 17, 2015; the opt-out date is December 24, 2015. So far no objections or exclusions have been received by Class Counsel.[9]

II. THE SETTLEMENT IS BENEFICIAL TO THE CLASS.

If the settlement is approved, the Texas Law Firm (which has already advanced monies to Gilardi & Co.) will deposit the balance of $3.4 million into the Settlement Fund. Dkt 90 at 17:3–14. At least $2 million of that $3.4 million will be distributed to the Class. The other $1.4 million is reserved to pay for court approved attorneys' fees and expenses as well as a possible *cy pres* award.[10] See Dkt 3:1–11.

Every Class Member[11] will receive a check from the Settlement Fund proportionate to the amount of money they paid to the California Governments in response to the Texas Lawyer Scare Letters.[12] No claim process is required; a check will be sent to every Class Member. If there is

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[8] Bass Decl., ¶ 6, Exh. 2.

[9] Class Counsel has received about five phone call inquiries about the settlement, mostly from people who are concerned that cashing the settlement check might affect the Class Member's "undocumented" status. Class Counsel are not immigration specialists, so we have not undertaken to answer such questions but have advised the Class Members to seek their own counsel.

[10] A separate motion for attorneys' fees and expenses is being filed contemporaneously.

[11] References to "Class Members" hereafter refers to those member of the Class who do not opt-out.

[12] The formula for determining the amount, the "Class Member Payment," is set forth at Dkt 90 at 3:23–4:11 as follows:

> 9. Class Member Payment. or CMP: the payments to be made to Settlement Class Members under Section IX; the CMP for each Settlement Class Member shall be the product of three factors: the Class Member Base defined in paragraph I.10, the Linebarger Fee Percentage defined in paragraph I.25, and the Class Payment Percentage defined in paragraph I.11; stated as a mathematic equation, CMP=CMB x LFP x CPP.
>
> 10. Class Member Base. or CMB: the total amount paid by a Class Member in response to one or more demand letters sent by Linebarger to such Class Member on behalf of a Client to extinguish one or more debts owed by such Class Member to the Client, where Linebarger received a fee for the collection of the debt(s).

any unclaimed money in the end, the Net Settlement Fund will become a *cy pres* contribution to a charitable organization such as Public Justice.[13] There is no reversion. Dkt. 90 at 20:19–24.

The Texas Law Firm will be released from any claims, etc. arising out of "any matter that was the subject of the allegations made in the Complaint." Dkt 90 at 8:1–2.

III. THE SETTLEMENT CLASS SHOULD BE CERTIFIED.

A. THE CLASS

The Ninth Circuit has recognized that certifying a settlement class to resolve lawsuits is commonplace. Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998). In the Pre. App. Order (Dkt 94 at 2:28–3:9) the Court conditionally certified the following class:

> Pursuant to Fed. R. Civ. P 23, the Court preliminarily certifies, solely for purposes of effectuating the Settlement, a Class of every Person who, during the period February 6, 2002, through September 15, 2013, inclusive, paid money in response to one or more demand letters sent by Linebarger to such Person on behalf of a Client, where the money was paid to extinguish a debt owed by such Person to the Client and Linebarger received a fee for the collection of that debt. For purposes of this Class definition, a Client is any California government entity that retained Linebarger to assist it with the collection of debts owed to such California government entity. Excluded from the Class are those Persons who timely and validly request exclusion from the Class pursuant to the procedures described in the Individual Notice and Detailed Notice appended to this Notice Order and described in Paragraph 5 below.

B. THE CLASS MEETS THE REQUIREMENTS OF RULE 23(a).

Federal Rule of Civil Procedure 23 provides:

> (a) Prerequisites. One or more members of a class may sue or be sued as representative parties on behalf of all members only if:
>
> (1) the class is so numerous that joinder of all members is impracticable;
>
> (2) there are questions of law or fact common to the class;

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ll. Class Payment Percentage. or CPP: 33.39%, which is the ratio of A/B, where A is the difference between the Settlement Fund ("SF") defined in paragraph I.40 and the sum of the AEA defined in paragraph I.2 and the AFA defined in paragraph I.3, and B is the Linebarger Fees ("LF") defined in paragraph I.24; stated as a mathematic equation, CPP={SF - (AEA + AFA)} / LF.

[13] See Declaration of F. Paul Bland, Jr. in Support of Plaintiffs' Motion for Cy Pres Distribution, filed herewith.

> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
>
> (4) the representative parties will fairly and adequately protect the interests of the class.
>
> (b) Types of Class Actions. A class action may be maintained if Rule 23(a) is satisfied and if:
>
> (1) prosecuting separate actions by or against individual class members would create a risk of:
>
> (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or
>
> (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;
>
> (2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or
>
> (3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:
>
> (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
>
> (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
>
> (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
>
> (D) the likely difficulties in managing a class action.

The Class meets all of the necessary requirements for certification.

1. Numerosity

According to Ms. Gruver, the Texas Law Firm's Chief Compliance Officer, 87,107 California Citizens received Texas Lawyer Scare Letters from the Texas Law Firm and then paid money in response. Dkt 82-1 at 2:13–15.

2. Commonality

In all 87,107 cases, the Texas Lawyer Scare Letters were basically the same.[14] Each had the characteristics of a letter sent by a lawyer. Thus, whether the letters were a form of unauthorized practice of law is the same issue for everyone in the class.

3. Typicality

For the same reason that the claims are common among all of the Class Members, 4EC is a typical class member. [15]

4. Adequacy of Representation

In light of the benefits to the Class from the Settlement, we respectfully submit that the Class has been well represented. However, the backgrounds of Class Counsel are explicated in greater detail in the declarations submitted in support of this motion.

C. THE CLASS MEETS THE REQUIREMENTS OF RULE 23(b)

Rule 23(b) provides three categories justifying a class action. This case meets all three criteria, but the focus here is on Rule 23(b)(3) because a class action was clearly the best means of achieving a beneficial result for the Class.

The median fee received by the Texas Law Firm during the Class Period was $25.75, and the average fee was $71.21. Dkt 82-1 at 2:18 –19. Thus this is a quintessential case for the superiority of class action—the amounts involved for each individual were not enough to justify pursuing a claim, whereas the aggregate amount was $6 million. "Where recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis, this factor weighs in favor of class certification." Wolin v. Jaguar Land Rover North Am., LLC, 617 F.3d 1168, 1175 (9th Cir. 2010).

[14] Bass Decl., ¶ 7, Exh. 3.

[15] It was noted above that collections for the City and County of San Francisco were paid for differently than other California Governments. In that sense, 4EC is different from others. But since the calculation of the Class Member Payment is tied to the total amount paid by the California Citizen to the California Government (i.e., the Texas Law Firm's client), this is a distinction without a difference.

Due to the relatively small amounts involved for each individual Class Member, they would not appear to have a substantial individual interest in controlling the prosecution of this case. There was no other litigation against the Texas Law Firm. The desirability of "concentrating" the litigation in a single action (and therefore a single forum) is manifest. Finally, management is not really an issue since we are in the settlement phase. See Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 620 (1997) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems for the proposal is that there be no trial.")

IV. THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE.

A. THE APPLICABLE STANDARDS

"[T]here is a strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." Pilkington v. Cardinal Health, Inc. (In re Syncor ERISA Litig.), 516 F.3d 1095, 1101 (9th Cir. 2008). In Laguna v. Coverall N. Am., Inc., 753 F.3d 918, 923 (9th Cir. 2014) the Ninth Circuit explained the factors (known as the *Hanlon* factors) that are considered in determining whether a settlement meets the Rule 23 requirements.

> Federal Rule of Civil Procedure 23(e) "requires the district court to determine whether a proposed settlement is fundamentally fair." Hanlon, 150 F.3d at 1026. As a general rule, a district court must consider the following factors when examining the fairness of a proposed settlement:
>
> > (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement.

In Officers for Justice v. Civil Service Com., 688 F.2d 615, 625 (9th Cir. 1982) the Ninth Circuit explained that the District Court's evaluation is not meant to second-guess the negotiated results:

> The district court's role in evaluating a proposed settlement must be tailored to fulfill the objectives outlined above. In other words, the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the

> agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned. Therefore, the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits. Neither the trial court nor this court is to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators. [Citations omitted.]
>
> Ultimately, the district court's determination is nothing more than "an amalgam of delicate balancing, gross approximations and rough justice." [Citation omitted]. Finally, it must not be overlooked that voluntary conciliation and settlement are the preferred means of dispute resolution.

See also, e.g., Bellinghausen v. Tractor Supply Co., 306 F.R.D. 245 (N.D. Cal. 2015); Rieckborn v. Velti PLC, 2015 U.S. Dist. LEXIS 13542, *15 (N.D. Cal. Feb. 3, 2015).

B. THE SETTLEMENT MEETS THE *HANLON* FACTORS

1. The Strength of the Plaintiff's Case

2. The Risk, Expense, Complexity and Likely Duration of Further Litigation

The Class has a strong liability claim.[16] The initial reactions of both the state and federal judges bolster this view. California Superior Court Judge Goldsmith, in denying a demurrer, said[17]:

> I think that they're over the 17200 hurdle because the collection letter is misleading. That's the 17200 issue. And it makes a misrepresentation that the—impliedly, of course, that the defendants are authorized to practice law in California.
>
> Right there you've got a 17200 case. The cases under 17200 where there's false advertising, misrepresentation, those cases are legion. And you add on to that not only is it misleading, it implies that you have the power to do something about it, which would be illegal.
>
> It's a tough one to get around for you.

[16] See generally 4EC's Memorandum of Points and Authorities in Opposition to Defendant's Motion to Dismiss (Dkt 31).

[17] Bass Decl., ¶ 8, Exh.4.

And this District Court remarked[18]:

> It kind of seems like [Plaintiffs are] shooting fish in a barrel in this case is what I'm saying . And you can have a -- you know, there could be a debate about, you know, just how egregious the conduct was or just how, you know, morally culpable the defendant was, I suppose.
>
> But in terms of what you would be able to recover, I doubt any of that would matter. I would think that you would be able to recover everything that the defendant got from the unauthorized practice of law in California…

Summarizing the Class's position: The UCL prohibits unlawful, unfair or fraudulent business practices.

- The Texas Law Firm's conduct was unlawful. "By proscribing 'any unlawful business act or practice' . . . UCL 'borrows' rules set out in other laws and makes violations of those rules independently actionable." Zhang v. Superior Court, 57 Cal. 4th 364, 370 (2013). "Virtually any law or regulation - federal or state, statutory or common law - can serve as predicate for a § 17200 'unlawful' violation." William Stern, Bus. & Prof. C. § 17200 Practice, ¶ 3:56, p. 3-13 (TRG 2013) (Stern). In this case: the Texas Law Firm engaged in the unauthorized practice of law;[19] it violated the Rule of Professional Conduct that it was required to follow under Corp. C. § 16959(a)(1),[20] and it violated the Rules of Professional

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[18] Bass Decl., ¶ 9, Exh.5.

[19] Bus. & Prof. C. § 6125 provides:

> (a) Any person advertising or holding himself or herself out as practicing or entitled to practice law or otherwise practicing law who is not an active member of the State Bar, or otherwise authorized pursuant to statute or court rule to practice law in this state at the time of doing so, is guilty of a misdemeanor punishable by up to one year in a county jail or by a fine of up to one thousand dollars ($1,000), or by both that fine and imprisonment.

See also Bluestein v. State Bar, 13 Cal. 3d 162, 175 (1974) (falsely holding oneself out as qualified to practice law is, in itself, the unlawful practice of law).

[20] That is, that one must be a member of the State Bar to practice law in this state. Bus. & Prof. C. § 6125. See Birbrower, Montalbano, Condon & Frank, P.C. v. Superior Court, 17 Cal. 4th 119, 131-133 (1998) (refusing to recognize any exemption from the strictures of Business & Professions Code section 6125 for out-of-state attorneys).

Conduct even after hiring a California lawyer by sending out dunning letters without his review. SAC, ¶¶ 11–12.

- The Texas Law Firm's conduct was unfair. "The standard for determining what business acts or practices are 'unfair' in consumer actions under the UCL is currently unsettled." Zhang v. Superior Court, 57 Cal. 4th 364, 380, n.9 (2013). But even under the more restrictive standard adopted by Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co., 20 Cal. 4th 163, 181 (1999) for competition cases—that a wrongdoing be "tethered to specific constitutional, statutory or regulatory provisions"—the Texas Law Firm fails the test. By sending Texas Lawyer Scare Letters to California Citizens on behalf of California Governments, the Texas Law Firm committed wrongful acts "tethered" to the specific statutory and regulatory provisions under which the State Bar regulates the practice of law in this State. In other words, the Court is not being asked to measure the Texas Law Firm's actions against some subjective notion of "fairness." The Texas Law Firm's actions were unfair, within the meaning of Section 17200, because they were directly at odds with specific public policies of the State of California, as set forth in the statutes and rules governing the practice of law.
- The Texas Law Firm's conduct was fraudulent. A business practice is "fraudulent" under the UCL if it was "likely to deceive." Zhang, *supra,* 57 Cal.4th at 380. In contrast to common law fraud, "the UCL's focus [is] on the defendant's conduct, rather than the plaintiff's damages, in service of the statute's larger purpose of protecting the general public against unscrupulous business practices." In re Tobacco II Cases, 46 Cal. 4th 298, 312 (2009). The average person—indeed even the above average person—receiving a demand letter from a law firm would naturally assume that the letter was from a law firm that was authorized to practice

law.[21] And, of course, that is exactly what the Texas Law Firm intended the Class Members to think. That is how the Texas Law Firm has promoted itself to its government agency clients—that a demand from a law firm is more effective than a letter from a collection agency.

Nevertheless, the Texas Law Firm is represented by capable counsel who raised a number of issues that would have made further pursuit of this case a risky proposition. They argued that:

- The Texas Law Firm was a debt collector and not "practicing law." Dkt 82 at 11:12–12:6. (Indeed the Texas Law Firm claims that finding that it was practicing law would create a Constitutional crisis. Mtn Pre. App'l, Dkt 82 at 12:25–27, n.7.)
- If it was practicing law, it was a permissible interstate practice. Dkt 82 at 12:8–18.
- There is no private right of action under California's scheme to regulate the practice of law. Dkt 82 at 12:21–13:14.
- The language used in the Texas Lawyer Scare Letters was approved in other federal decisions. Dkt 82 at 13:16–26.
- The Texas Law Firm acted in good faith. Dkt 82 at 14:2–11.
- The claims of a large part of the Class were barred by the statute of limitation. Dkt 82 at 14:13–25.

These were by any stretch, complex legal issues.

The issue of the amount of restitution was in play. The Texas Law Firm submitted evidence that it collected $6 million from Class Members during the Class Period (TLF Revenue)—$4.35 million if the Class Period was only four years. Mtn Prelim. App'l, Dkt 82 at 14:23.

[21] The Texas Law Firm touted this as its competitive advantage over mere debt collection agencies. See Dkt 32, Exhs. 2–5. See also Palmer v. Stassinos, 2009 U.S. Dist. LEXIS 4265 (N.D. Cal. 2009) ("[G]etting a letter from an 'attorney' . . . [means] the price of poker has just gone up. And that clearly is the reason why the dunning campaign escalates from the collection agency, which may not strike fear in the heart of the [debtor], to the attorney, who is better positioned to get the debtor's knees knocking" (internal quotations omitted)").

The Texas Law Firm claims that only the City of San Francisco tacked a specific collection fee on their bills. According to the Texas Law Firm only 1% of the TLF Revenue came from such add-on fees. The rest of the California Governments paid the Texas Law Firm a percentage of the collections themselves. From this vantage point, they argued that 99% of the Class Members paid what they otherwise owed to the California Governments, regardless of whether it was the Texas Law Firm or someone else doing the collecting, and were therefore not entitled to any restitution. Mtn Prelim. App'l, Dkt 82 at 10:15–11:10.

4EC asserted on behalf of Class that it was entitled to the full amount collected by the Texas Law Firm because restitution is an equitable remedy and because the Texas Law Firm, having misrepresented itself to the California Governments in the first place, had no legal right to collect anything from the Class.

If a court accepted the Texas Law Firm's argument, the restitution award could have been as low as $60,000.

If the past is prologue, there would be a pitched battle over every aspect of the Texas Law Firm's liability defenses and the amount of restitution. The complexity and likely expense of continued litigation was high. In May 2014 the parties reached a turning point where it was felt that further litigation would not be marginally beneficial to the Class even if it could produce a larger Settlement Fund. See Settlement Agreement, Dkt 90 at 10:25–11:14; Bass Decl. ¶ 10.

3. The Risk of Maintaining Class Action Status

The Texas Law Firm was bound to attack class certification on the ground that 4EC had to prove that every member of the Class relied on the representation that the Texas Lawyer Scare Letters were coming from lawyers (as opposed to debt collectors), and that because such proof is specific to each individual, there was no commonality.

4EC disagreed. First, the basis of the Class's claims was not merely misrepresentation. Under the UCL the Texas Law Firm's activities were also unlawful and unfair. Second, under In re Tobacco II Cases, 46 Cal.4th 298 (2009), once it is established that the representative plaintiff

was injured in fact,[22] it is not necessary to prove that everyone in the Class relied upon a defendant's misrepresentation.

4. The Amount of the Settlement

The settlement involves a substantial ***public*** benefit. The Texas Law Firm will now have to use a member of the State Bar in its California debt collection practices, and it will have to abide by the strictures of the Business & Professional Code and the California Rules of Professional Conduct. See Dkt 90 at 17:15–19. Even if the Class Members pay their bills on time in the future, other members of the public will reap the benefits of this settlement.

As to the monetary rewards for the Class: the Settlement calls upon the Texas Law Firm to return to the Class Members a substantial part of the fees it received from its Texas Lawyer Scare Letters:

If the maximum amount of restitution possible is:	The Settlement Fund ($3.4 million) is:	The Net Settlement Fund (assuming the entire $1.4 million set aside is spent on fees and expenses) is:
$60,000	5,666%	3,333%
$4.35 million	78%	46%
$6 million	57%	33%
	of the maximum	of the maximum

In light of the argument that the Class Members would have paid the same amount whether the Texas Law Firm violated the law or not, and in light of the risks described in part IV.B.2 above, we respectfully submit that this is an exceptional success for the Class.

5. The Extent of Discovery Taken

As noted above, there have been extensive discovery battles in this case. See also Settlement Agreement, Dkt 90 at 11:20–12:3. The discovery taken has been sufficient to justify the settlement. The main bit of information needed for the settlement was the TLF Revenue figure.

[22] See Bus. & Prof. C. § 17204.

The Texas Law Firm submitted a declaration from Lori Gruver testifying to the TLF Revenue figure. Mtn Pre. App'l, Dkt 82-1 at 2:12–19.[23]

6. The Experience and Views of Counsel

The proposed settlement is the result of arms-length negotiations by the parties. It is entitled to an initial presumption of fairness. See Harris v. Vector Mktg. Corp., 2011 U.S. Dist. LEXIS 48878 * 24 (N.D. Cal. Apr. 29, 2011) ("An initial presumption of fairness is usually involved if the settlement is recommended by class counsel after arm's-length bargaining."). The parties were assisted by a neutral and experienced mediator, a former United States District Court Judge, Hon. Vaughn R. Walker. See Harris, at *25; Satchell v. Federal Express Corp., 2007 U.S. Dist. LEXIS 99066 * 17 (N.D. Cal. Apr. 13, 2007) ("The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive.")

Class counsel regards the settlement as fair, adequate and reasonable. Bass Decl., ¶ 11. The percentage of disgorgement on the part of the Texas Law Firm is substantial, particularly in light of the novelty of the claim, the concomitant risks and uncertainties of further litigation, and the diminishing returns of further investments of resources in the case. There is no reason to believe that the gross settlement value of the case (the amount that the Texas Law Firm would be willing to pay) would increase with further litigation, and there is good reason to believe that the net settlement value of the case (the settlement payment, reduced by litigation expense) would decrease.

7. Reaction of the Class Members

Thus far there has not been any negative reaction from Class members.

8. Additional Factors

The Court should also take into account the facts that: (i) under the settlement the Class Members will receive cash—not coupons or discounts or such; (ii) the Class is paid automatically;

[23] The calculation of the amount involved is straightforward; this is not a situation where there could be a significant difference of opinion over how to measure the damages. We believe that conducting an audit of the figure would not have been profitable.

they need not submit applications or requests to be paid, and (iii) no incentive award is being requested.

9. There are no Side Deals

No agreements have been made between the parties or their counsel except as set forth in the Settlement Agreement (Dkt 90). See Bass Decl., ¶ 12. There has been no collusion in the fashioning of this settlement. In particular, there is no agreement on the amount of attorney's fees.[24]

V. CONCLUSION

4EC and Class request that the Court approve the proposed settlement certify the Class and enter the proposed judgment.

Dated: November 6, 2015

McGRANE LLP
shierkatz RLLP
COBLENTZ PATCH DUFFY & BASS LLP

/s/ Jonathan Bass
By: Jonathan Bass
Attorneys for 4EC and all others similarly situated

[24] To the contrary, the Texas Law Firm has expressly reserved the right to contest whatever Class Counsel may seek by way of attorney fees and expenses. See Dkt 82 at 16:25 –27.