

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**Department 3, Honorable Patricia Lucas Presiding**

JeeJee Vizconde, Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: 408.882.2130

**To contest the ruling, call (408) 808-6856 before 4:00 p.m.**

**Please state the case name, case number, the name of the attorney and contact number. It would also be helpful if you could identify the specific portion or portions of the tentative ruling that will be contested. Thank you.**

State and local rules prohibit recording of court proceedings without a court order. These rules apply while in court and also while participating in a telephonic hearing.

The court does not provide court reporters for proceedings in the complex civil litigation departments. Any party wishing to retain a court reporter to report a hearing may do so in compliance with this Court's October 13, 2020 Policy Regarding Privately Retained Court Reporters.

**LAW AND MOTION TENTATIVE RULINGS**

**DATE: JANUARY 11, 2023**

**TIME: 1:30 P.M.**

<b>LINE #</b>	<b>CASE #</b>	<b>CASE TITLE</b>	<b>RULING</b>
<a href="#">LINE 1</a>	20CV362674	Velasquez, et al. v. L Brands, Inc., et al.	Click on LINE 1 for Ruling
<a href="#">LINE 2</a>	20CV373916	Chai v. Velocity Investments, LLC, et al.	Click on LINE 2 for Ruling
<a href="#">LINE 3</a>	22CV393435	CKS Prime Investments LLC v. Vincenzi, et al. (Class Action)	Click on LINE 3 for Ruling
<a href="#">LINE 4</a>	21CV386225	Young v. Autothink, Inc.	Click on LINE 4 for Ruling
<a href="#">LINE 5</a>	20CV366581	Hernandez, et al. v. Joseph J. Albanese, Inc.	Click on LINE 5 for Ruling
<a href="#">LINE 6</a>			Click on LINE 6 for Ruling
<a href="#">LINE 7</a>			Click on LINE 7 for Ruling

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA**

MONICA VELAZQUEZ and CHRYSTAL  
FREGOSO, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

vs.

L BRANDS, INC., a Delaware corporation;  
VICTORIA’S SECRET STORES, INC., a  
Delaware corporation; VICTORIA’S SECRET  
STORES, LLC, a Delaware limited liability  
company; and DOES 1 through 50, inclusive,

Defendants.

Case No. 20CV362674

**TENTATIVE RULING RE: MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

The above-entitled action comes on for hearing before the Honorable Patricia M. Lucas on January 11, 2023, at 1:30 p.m. in Department 3. The court now issues its tentative ruling as follows:

**I. INTRODUCTION**

This is a class action arising out of alleged violations of the Fair Credit Reporting Act (“FCRA”). The Complaint, filed by plaintiffs Monica Velazquez and Chrystal Gregoso (collectively, “Plaintiffs”) against defendants L Brands, Inc., Victoria’s Secret Stores, Inc., and

1 Victoria's Secret Stores, LLC (collectively, "Defendants") on February 3, 2020, sets forth a  
2 single cause of action for Violation of 15 U.S.C. §§1681b(b)(2)(A) (FCRA).

3 Plaintiffs have reached a settlement with Victoria's Secret Stores, LLC. Plaintiffs now  
4 move for preliminary approval of the settlement.

## 5 **II. LEGAL STANDARD**

6 Generally, "questions whether a settlement was fair and reasonable, whether notice to the  
7 class was adequate, whether certification of the class was proper, and whether the attorney fee  
8 award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple*  
9 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.*  
10 (1996) 48 Cal.App.4th 1794 (*Dunk*).

11 In determining whether a class settlement is fair, adequate and reasonable, the  
12 trial court should consider relevant factors, such as "the strength of plaintiffs'  
13 case, the risk, expense, complexity and likely duration of further litigation, the  
14 risk of maintaining class action status through trial, the amount offered in  
15 settlement, the extent of discovery completed and the stage of the proceedings, the  
16 experience and views of counsel, the presence of a governmental participant, and  
17 the reaction of the class members to the proposed settlement."

18 (*Wershba, supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1801  
19 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d 615, 624  
20 (*Officers*).

21 "The list of factors is not exclusive and the court is free to engage in a balancing and  
22 weighing of factors depending on the circumstances of each case." (*Wershba, supra*, 91  
23 Cal.App.4th at p. 245.) The court must examine the "proposed settlement agreement to the  
24 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or  
25 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a  
26 whole, is fair, reasonable and adequate to all concerned." (*Ibid.*, quoting *Dunk, supra*, 48  
27 Cal.App.4th at p. 1801 and *Officers, supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

28 The burden is on the proponent of the settlement to show that it is fair and  
reasonable. However "a presumption of fairness exists where: (1) the settlement  
is reached through arm's-length bargaining; (2) investigation and discovery are  
sufficient to allow counsel and the court to act intelligently; (3) counsel is  
experienced in similar litigation; and (4) the percentage of objectors is small."

(*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

1 **III. DISCUSSION**

2 **A. Provisions of the Settlement**

3 The case has been settled on behalf of the following class:

4 [A]ll individuals who (1) were hired by [Victoria’s Secret Stores, LLC (“VS”)] in  
5 the United States during the period of February 3, 2015 until the Preliminary  
6 Approval Date in this matter or until the total number of class members equals  
315,000, whichever occurs first and (2) about whom VS procured a background  
check during that same period.

7 (Declaration of Shaun Setareh in Support of Plaintiff’s Unopposed Motion for Preliminary  
8 Approval of Class Action Settlement and Certification of Settlement Classes (“Setareh Dec.”),  
9 Ex. 1 (“Settlement Agreement”), p. 3:2-3, & ¶¶ I.3, I.8 .)

10 According to the terms of settlement, Victoria’s Secret Stores, LLC will pay a gross, non-  
11 reversionary settlement amount of \$5,000,000. (Settlement Agreement, ¶¶ I.20 & III.26.) The  
12 total settlement amount includes attorney fees not to exceed \$1,666,666.66 (1/3 of the gross  
13 settlement fund), litigation expenses not to exceed \$18,000, service awards in the total amount of  
14 \$20,000 (\$10,000 for each class representative), and reasonable costs of settlement  
15 administration (currently estimated to be \$431,000). (Settlement Agreement, ¶¶ III.26-III.30.)  
16 The net settlement amount will be distributed to class members pro rata basis. (Settlement  
17 Agreement, ¶¶ III.26 & IV.39.) Checks remaining uncashed more than 180 days after mailing  
18 will be void and the funds from those checks will be sent to the Controller of the State of  
19 California pursuant to the Unclaimed Property Law. (Settlement Agreement, ¶ IV.41.)

20 The parties’ proposal to send funds from uncashed checks to the Controller of the State of  
21 California does not comply with Code of Civil Procedure section 384, which mandates that  
22 unclaimed or abandoned class member funds be given to “nonprofit organizations or foundations  
23 to support projects that will benefit the class or similarly situated persons, or that promote the  
24 law consistent with the objectives and purposes of the underlying cause of action, to child  
25 advocacy programs, or to nonprofit organizations providing civil legal services to the indigent.”  
26 Plaintiffs are directed to provide a new *cy pres* in compliance with Code of Civil Procedure  
27 section 384 in connection with the motion for final approval.

28 In exchange for the settlement, the class members agree to release:

1 VS, along with its former and present parents, subsidiaries, divisions, successors,  
2 assigns, and affiliates (including L Brands, Inc. and Victoria’s Secret Stores, Inc.)  
3 and past or present officers, directors, shareholders, partners, agents, insurers,  
4 employees, attorneys, advisors, accountants, representatives, trustees, heirs,  
5 executors, administrators, predecessors, or successors or assigns of any of the  
6 foregoing (the “Released Parties”) from all claims for any known or unknown  
7 alleged violations of any provision of the Fair Credit Reporting Act (15 U.S.C.  
8 § 1681, et seq.), the California Consumer Credit Reporting Agencies Act  
(California Civil Code § 1785, et seq.), the California Investigative Consumer  
Reporting Agencies Act (California Civil Code § 1786, et seq.), California  
Business and Professions Code § 17200, et seq. (as to claims based on the facts  
alleged in the pleadings), or any comparable provisions of any other federal, state  
or local law that in any way relates to or arises out of the procurement of, use of,  
disclosure of intent to procure, or authorization to procure or use a consumer  
report, investigative consumer report, credit check, background check, criminal  
history report, reference check, or similar report that were or could have been  
asserted based on the facts alleged in the pleadings (“Released Class Claims”).

9 (Settlement Agreement, ¶¶ VI.47.) Plaintiffs also agreed to a comprehensive general release.

10 (Settlement Agreement, ¶ VI.48.)

11 **B. Fairness of the Settlement**

12 Plaintiffs state that the settlement was reached through extensive arm’s-length  
13 negotiations after formal and informal discovery, and mediation with Mark S. Rudy, Esq.  
14 Plaintiffs state that the class consists of approximately 300,000 members and each class  
15 member’s share of the net settlement amount is approximately \$9.54. Plaintiffs explain that the  
16 FCRA limits recovery, when it is shown that a defendant’s actions are willful, to between \$100  
17 and \$1,000 or actual damages, whichever is greater. Plaintiffs, therefore, estimate that the  
18 potential liability for FCRA statutory damages ranges from \$30,000,000 to \$300,000,000.  
19 Plaintiffs state that it is reasonable to assume that a jury in this case would enter an award at the  
20 lower end of this range, and that a \$30,000,000 would be highly unlikely. Plaintiffs cite case law  
21 supporting the position that the conduct at issue here likely would not be egregious enough to  
22 result in an award of \$1,000 per violation. Plaintiffs cite additional case law providing that the  
23 minimum of \$100 per violation is the proper comparator in standalone disclosure cases.  
24 Plaintiffs further explain that continued litigation poses substantial risks, and that Victoria’s  
25 Secret Stores, LLC contends that their claim is time-barred in whole or in part.

26 Overall, the court finds that the settlement is fair and reasonable. The settlement provides  
27 for some recovery for each class member and eliminates the risk and expense of further  
28 litigation.

1           **C.     Incentive Award, Fees, and Costs**

2           Plaintiffs request service awards in the total amount of \$20,000 (\$10,000 for each class  
3 representative).

4           The rationale for making enhancement or incentive awards to named plaintiffs is  
5 that they should be compensated for the expense or risk they have incurred in  
6 conferring a benefit on other members of the class. An incentive award is  
7 appropriate if it is necessary to induce an individual to participate in the suit.  
8 Criteria courts may consider in determining whether to make an incentive award  
9 include: 1) the risk to the class representative in commencing suit, both financial  
10 and otherwise; 2) the notoriety and personal difficulties encountered by the class  
11 representative; 3) the amount of time and effort spent by the class representative;  
12 4) the duration of the litigation and; 5) the personal benefit (or lack thereof)  
13 enjoyed by the class representative as a result of the litigation. These “incentive  
14 awards” to class representatives must not be disproportionate to the amount of  
15 time and energy expended in pursuit of the lawsuit.

16 (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks,  
17 brackets, ellipses, and citations omitted.)

18           In connection with the motion for final approval, the class representatives shall file  
19 declarations specifically detailing their participation in the action and an estimate of the time  
20 spent. The court will make a determination at that time.

21           The court also has an independent right and responsibility to review the requested  
22 attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los*  
23 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs’ counsel will  
24 seek attorney fees up to \$1,666,666.66 (1/3 of the gross settlement fund). Plaintiffs’ counsel  
25 shall submit lodestar information (including hourly rates and hours worked) so the court can  
26 compare the lodestar information with the requested fees. Plaintiffs’ counsel shall also submit  
27 evidence of actual costs incurred.

28           **D.     Conditional Certification of Class**

          Plaintiffs request that the putative class be conditionally certified for purposes of the  
settlement. Rule 3.769(d) of the California Rules of Court states that “[t]he court may make an  
order approving or denying certification of a provisional settlement class after [a] preliminary  
settlement hearing.” California Code of Civil Procedure Section 382 authorizes certification of a  
class “when the question is one of a common or general interest, of many persons, or when the  
parties are numerous, and it is impracticable to bring them all before the court . . . .” As

1 interpreted by the California Supreme Court, Section 382 requires: (1) an ascertainable class; and  
2 (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v.*  
3 *Superior Court* (2004) 34 Cal.4th 319, 326.)

4 The “community-of-interest” requirement encompasses three factors: (1) predominant  
5 questions of law or fact; (2) class representatives with claims or defenses typical of the class;  
6 and, (3) class representatives who can adequately represent the class. (*Sav-On Drug Stores, Inc.*  
7 *v. Superior Court, supra*, 34 Cal.4th at p. 326.) “Other relevant considerations include the  
8 probability that each class member will come forward ultimately to prove his or her separate  
9 claim to a portion of the total recovery and whether the class approach would actually serve to  
10 deter and redress alleged wrongdoing.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)  
11 The plaintiff has the burden of establishing that class treatment will yield “substantial benefits”  
12 to both “the litigants and to the court.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d  
13 381, 385.)

14 As explained by the California Supreme Court:

15 The certification question is essentially a procedural one that does not ask whether  
16 an action is legally or factually meritorious. A trial court ruling on a certification  
17 motion determines whether the issues which may be jointly tried, when compared  
18 with those requiring separate adjudication, are so numerous or substantial that the  
19 maintenance of a class action would be advantageous to the judicial process and  
20 to the litigants.

(*Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at p. 326, internal quotation  
marks, ellipses, and citations omitted.)

21 Plaintiffs state that there are approximately 300,000 class members, who can be  
22 ascertained from Victoria’s Secret Stores, LLC’s records. There are common issues regarding  
23 whether the disclosure and authorization form contained extraneous information. No issue has  
24 been raised regarding the typicality or adequacy of Plaintiffs as class representatives. In sum, the  
25 court finds that the proposed class should be conditionally certified.

#### 26 **E. Class Notice**

27 The content of a class notice is subject to court approval. “If the court has certified the  
28 action as a class action, notice of the final approval hearing must be given to the class members  
in the manner specified by the court.” (Cal. Rules of Court, rule 3.769(f).)

1 The notice generally complies with the requirements for class notice. (See Settlement  
2 Agreement, Ex. A.) It provides basic information about the settlement, including the settlement  
3 terms, and procedures to object or to request exclusion. However, some minor modifications  
4 should be made.

5 First, in paragraphs 23 and 24, the notice must be amended to make clear that any class  
6 member may appear and make an oral objection at the final approval hearing without providing  
7 any advance notice of their intent to appear.

8 Second, the information currently in paragraph 26 about how to appear at the hearing  
9 remotely should be in paragraph 23, not in paragraph 26. The language concerning a remote  
10 appearance must be modified to include the following language regarding appearances at the  
11 final approval hearing:

12 Class members may appear at the final approval hearing remotely using the  
13 Microsoft Teams link for Department 3 (Afternoon Session). Instructions for  
14 appearing remotely are provided at  
15 [https://www.scscourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml) and  
16 should be reviewed in advance. Class members who wish to appear remotely are  
17 encouraged to contact class counsel at least three days before the hearing if  
18 possible, so that potential technology or audibility issues can be avoided or  
19 minimized.

20 Third, the office hours of the clerk referenced in paragraph 26 are incorrect. The current  
21 hours are 8:30 am – 3:00 pm Mon. – Th. and 8:30 am – 12:00 pm Fri.

22 The amended notice shall be provided to the court for approval prior to mailing.

#### 23 **IV. CONCLUSION**

24 The motion for preliminary approval of the class action settlement is GRANTED. The  
25 final approval hearing is set for June 21, 2023, at 1:30 pm. in Department 19.

26 The Case Management Conference set for January 11, 2023 is vacated.

27 The court will prepare the final order if this tentative ruling is not contested.

28 **NOTICE:** Remote appearances are mandatory for complex civil matters in  
Department 3. (See Public Notice – June 10, 2022, Remote Appearance –  
Downtown and Historic Courthouses, available at  
<https://www.scscourt.org/documents/DTSPublicNotice061022.pdf>.) Effective  
August 15, 2022, Department 3 will be using TEAMS for all remote hearings,



1 unless otherwise ordered by the court. Instructions for appearing remotely and the  
2 necessary TEAMS link for Department 3 can be found at  
3 [https://www.scsccourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml).

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6 hearing.

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8 litigation departments. Any party wishing to retain a court reporter to report a  
9 hearing may do so in compliance with this court's October 13, 2020 Policy  
10 Regarding Privately Retained Court Reporters. The court reporter may participate  
11 remotely and need not be present in the courtroom.  
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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA**

DAVID CHAI, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

VELOCITY INVESTMENTS, LLC, a New Jersey limited liability company; VELOCITY PORTFOLIO GROUP, INC., a Delaware corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No. 20CV373916

**TENTATIVE RULING RE: MOTION FOR LEAVE TO FILE SECOND AMENDED ANSWERS**

The above-entitled action comes on for hearing before the Honorable Patricia M. Lucas on January 11, 2023, at 1:30 p.m. in Department 3. The court now issues its tentative ruling as follows:

**I. INTRODUCTION**

Plaintiff David Chai (“Chai”) brings this putative consumer class action pursuant to the California Fair Debt Buying Practices Act (“CFDBPA”) against defendants Velocity Investments, LLC and Velocity Portfolio Group, Inc. (collectively, “Defendants”). According to the allegations of the Class Action Complaint (“Complaint”), filed on December 7, 2020, Plaintiff incurred debt with Citibank, N.A. (“Citibank”) for personal, family, or household

1 purposes. (Complaint, ¶ 15.) Thereafter, Citibank removed the debt from its books as an asset  
2 and treated it as a loss or expense. (*Id.* at ¶ 16.) Sometime after January 1, 2014, the debt was  
3 sold or resold to Defendants for collection purposes. (*Id.* at ¶ 17.)

4 Defendants hired, contracted, or otherwise engaged Convergent Outsourcing, Inc.  
5 (“Convergent”) to collect the debt from Plaintiff on their behalf. (Complaint, ¶ 19.) On or about  
6 September 23, 2020, Convergent sent, or caused to be sent, a written communication to Plaintiff  
7 regarding the debt on Defendants’ behalf. (*Id.* at ¶¶ 21-22 & Ex. 1.) The communication is  
8 attached to the Complaint as Exhibit 1. This was the first written communication from  
9 Defendants to Plaintiff regarding the debt. (*Ibid.*) The written communication did not contain  
10 the notice required by Civil Code section 1788.52, subdivision (d)(1). (*Id.* at ¶ 23.)

11 Plaintiff alleges that it is Defendants’ standard practice and policy to send, or cause to be  
12 sent, initial collection communications in the form of Exhibit 1, which seek to collect charge-off  
13 consumer debts incurred for personal, family, or household purposes. (Complaint, ¶ 26.)  
14 Furthermore, it is Defendants’ standard practice and policy to send initial collection  
15 communications in the form of Exhibit 1, which fail to contain the notice required by the  
16 CFDBPA. (*Id.* at ¶ 27.)

17 Based on these allegations the Complaint sets forth a single cause of action for violation  
18 of the CFDBPA.

19 On June 4, 2021, Defendants filed their Answers to the Complaint.

20 Subsequently, on July 12, 2021, Defendants filed their First Amended Answers to the  
21 Complaint.

22 Now before the court is Defendants’ motion for leave to file their respective Second  
23 Amended Answers. The motion is unopposed.

## 24 **II. MOTION FOR LEAVE TO FILE SECOND AMENDED ANSWERS**

### 25 **A. LEGAL STANDARD**

26 The court may, in furtherance of justice, and on any terms as may be proper,  
27 allow a party to amend any pleading or proceeding by adding or striking out the  
28 name of any party, or by correcting a mistake in the name of a party, or a mistake  
in any other respect; and may, upon like terms, enlarge the time for answer or  
demurrer. The court may likewise, in its discretion, after notice to the adverse

1 party, allow, upon any terms as may be just, an amendment to any pleading or  
2 proceeding in other particulars; and may upon like terms allow an answer to be  
made after the time limited by this code.

3 (Code Civ. Proc., § 473, subd. (a)(1).)

4 While a motion to permit an amendment to a pleading to be filed is one addressed  
5 to the discretion of the court, the exercise of this discretion must be sound and  
6 reasonable and not arbitrary or capricious. And it is a rare case in which a court  
7 will be justified in refusing a party leave to amend his pleadings so that he may  
8 properly present his case. If the motion to amend is timely made and the granting  
9 of the motion will not prejudice the opposing party, it is error to refuse permission  
to amend and where the refusal also results in a party being deprived of the right  
to assert a meritorious cause of action or a meritorious defense, it is not only error  
but an abuse of discretion.

10 (*Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530, internal citations and quotation  
11 marks omitted.)

12 **B. DISCUSSION**

13 Defendants seek leave to file Second Amended Answers to the Complaint. Defendants  
14 state that their proposed Second Amended Answers add a third affirmative defense, alleging that  
15 the lawsuit has been resolved by a settlement agreement between the parties. (Declaration of  
16 Timothy P. Johnson in Support of Defendants' Motion for Leave to File Second Amended  
17 Answer, ¶¶ 10-11, Exs. 6-7.)

18 Here, Plaintiff does not assert that he will suffer any prejudice due to the new allegations.  
19 Furthermore, there does not appear to have been any significant delay and the case is still in an  
20 early stage of litigation. Courts are bound to apply a policy of great liberality in permitting  
21 amendments to the complaint at any stage of the proceedings. (See *Atkinson v. Elk Corp.* (2003)  
22 109 Cal.App.4th 739, 761.) Therefore, the amendment should be allowed.

23 Accordingly, Defendants' motion for leave to file their Second Amended Answers is  
24 GRANTED. Defendants have ten days' leave to file.

25  
26 The court will prepare the final order if this tentative ruling is not contested  
27  
28

1 **NOTICE:** Remote appearances are mandatory for complex civil matters  
2 in Department 3. (See Public Notice – June 10, 2022, Remote Appearance  
3 – Downtown and Historic Courthouses, available at  
4 <https://www.scsccourt.org/documents/DTSPublicNotice061022.pdf> .)  
5 Effective August 15, 2022, Department 3 will be using TEAMS for all  
6 remote hearings, unless otherwise ordered by the court. Instructions for  
7 appearing remotely and the necessary TEAMS link for Department 3 can  
8 be found at  
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12 in a telephonic hearing.

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14 civil litigation departments. Any party wishing to retain a court reporter to  
15 report a hearing may do so in compliance with this court’s October 13,  
16 2020 Policy Regarding Privately Retained Court Reporters. The court  
17 reporter may participate remotely and need not be present in the  
18 courtroom.



1 services rendered by WebBank.” (*Id.* at ¶ 29.) However, Vincenzi failed to make payments as  
2 agreed and allegedly owes \$5,233.99 on the account. (*Id.* at ¶¶ 13-17.) CKS alleges that the  
3 account was assigned to it and it is the successor in interest to WebBank. (*Id.* at ¶¶ 1-2 & 10.)  
4 CKS further alleges that it “has complied with California Civil Code Section 1788.52”; it “has  
5 attached hereto as Exhibit A and incorporated herein by reference a copy of Billing Statement  
6 and/or Loan File provided to [Vincenzi] while the account was active, demonstrating that the  
7 debt was incurred by [Vincenzi]”; and it “has attached hereto as Exhibit B and incorporated  
8 herein by reference a copy of the Final Billing Statement and/or Transaction History.” (*Id.* at  
9 ¶¶ 19-21.) Based on the foregoing allegations, the Complaint sets forth causes of action for:  
10 (1) Breach of Contract; and (2) Open Book Account.

11 On March 23, 2022, Vincenzi filed a Class Action Cross-Complaint (“Cross-Complaint”)  
12 against CKS, alleging causes of action for: (1) California Fair Debt Buying Practices Act  
13 (“FDBPA”); and (2) Rosenthal Fair Debt Collection Practices Act (“RFDCPA”).

14 On July 20, 2022, the court granted CKS’s special motion to strike the Cross-Complaint  
15 pursuant to Code of Civil Procedure section 425.16.

16 Now before the court is CKS’s motion for attorney fees and costs pursuant to Code of  
17 Civil Procedure section 425.16. Vincenzi opposes the motion.

## 18 **II. DISCUSSION**

19 CKS moves for an award in the amount of \$19,057.70 for attorney fees and costs under  
20 Code of Civil Procedure section 425.16, subdivision (c). In reply, CKS requests an additional  
21 award of \$1,353 in attorney fees and costs.

### 22 **A. LEGAL STANDARD**

23 “The Supreme Court has noted that the anti-SLAPP statute contains provisions designed  
24 to ‘limit the costs of defending’ against a SLAPP lawsuit. [Citation.] And among those  
25 provisions is that a defendant that prevails ‘is entitled to attorney’s fees and costs.’ [Citation.]”  
26 (*Richmond Compassionate Care Collective v. 7 Stars Holistic Foundation* (2019) 33 Cal.App.5th  
27 38, 46 (*Richmond*); *Jackson v. Yarbray* (2009) 179 Cal.App.4th 75, 92 (*Jackson*) citing *Ketchum*  
28 *v. Moses* (2001) 24 Cal.4th 1122, 1131 [“ ‘[A]ny SLAPP defendant who brings a successful

1 motion to strike is entitled to mandatory attorney fees.’ ”). “[O]nly those attorney fees and costs  
2 related to the special motion to strike, not the entire action, may be recovered under section  
3 425.16, subdivision (c).” (*Jackson, supra*, 179 Cal.App.4th at p. 92; *Lafayette Morehouse, Inc.*  
4 *v. Chronicle Publishing Co.* (1995) 39 Cal.App.4th 1379, 1383-1384 (*Lafayette*) [holding that a  
5 prevailing defendant on a motion to strike can recover attorney fees and costs only on the motion  
6 to strike, not the entire suit].)

## 7 **B. ANALYSIS**

8 CKS contends that it is entitled to an award of attorney fees and costs under Code of  
9 Civil Procedure section 425.16, subdivision (c) because it prevailed on its special motion to  
10 strike. In support of its motion, CKS submits declarations from its counsel.

11 First, June D. Coleman (“Coleman”) provides a declaration in connection with CKS’s  
12 moving papers describing her experience and stating that her hourly rate is \$385. (Declaration of  
13 June D. Coleman in Support of Cross Defendant’s Motion for Attorneys’ Fees (“Coleman  
14 Dec.”), ¶¶ 1-12.) Coleman states that she “billed 35.1 hours in extricating Cross-Defendant from  
15 the Cross-Complaint.” (*Id.* at ¶ 13.) Coleman also proffers a spreadsheet breaking down the  
16 35.1 hours. (*Id.* at Ex. D.) Coleman further declares that she spent an additional 3 hours  
17 preparing this motion for attorney fees. (*Id.* at ¶ 14.) Coleman provides a breakdown of incurred  
18 costs. (*Id.* at ¶¶ 16-17, Ex. E.) In connection with CKS’s reply, Coleman declares that she spent  
19 3.5 hours preparing the reply papers. (Supplemental Declaration of June D. Coleman in Support  
20 of Cross-Defendant’s Motion for Attorney Fees, ¶ 4.)

21 Second, Jessica M. Neal (“Neal”) provides a declaration in connection with CKS’s  
22 moving papers describing her experience and stating that her hourly rate is \$325. (Declaration of  
23 Jessica M. Neal in Support of Cross Defendant’s Motion for Attorneys’ Fees and Costs (“Neal  
24 Dec.”), ¶¶ 1-7.) Neal declares that she spent 9.8 hours preparing the moving papers for this  
25 motion. (*Id.* at ¶ 7.)

26 In opposition, Vincenzi does not dispute that CKS is a prevailing defendant for purposes  
27 of Code of Civil Procedure section 425.16, subdivision (c). Instead, Vincenzi argues that the  
28 court should deny the motion, or significantly reduce the requested award because, before this



1 motion was filed, Vincenzi offered to stipulate to an award of attorney fees in the amount of  
2 \$13,513.80 and costs of \$1,138.40, for a total of \$14,652.20. Vincenzi made this offer 17  
3 minutes after receiving from CKS, on the last day for CKS to file this motion and two months  
4 after the court’s order granting CKS’s special motion to strike, an invitation to “meet and confer”  
5 concerning fees incurred by CKS. As CKS requested, Vincenzi presented a written stipulation  
6 the next day.

7 In reply, CKS addresses Vincenzi’s proposed stipulation only by stating that the statute  
8 allows CKS to recover fees incurred in making the motion. CKS does not explain why it waited  
9 until it had already incurred the costs of drafting the motion before inviting a discussion with  
10 Vincenzi, and does not address the authorities bearing on the reasonableness of incurring those  
11 fees given the stipulation.

12 In any event, even if the court considered the fees and costs incurred in making the  
13 motion, only an additional \$23.12 would be justified beyond the amount Vincenzi was willing to  
14 pay without a motion. Assuming that the claimed hourly rates to be reasonable, Exhibit D to  
15 Coleman’s declaration reveals that not all of the work performed by Coleman was related to  
16 CKS’s special motion to strike. For example, Coleman spent 1.2 hours preparing objections to  
17 special interrogatories. (Coleman Dec., Ex. D, p. 1.) The time spent on such tasks is not  
18 recoverable. (See *Jackson, supra*, 179 Cal.App.4th at p. 92; see also *Lafayette, supra*, 39  
19 Cal.App.4th at pp. 1383-1384.) The time spent on nonrecoverable tasks accounts for 12.2 hours  
20 of Coleman’s time.

21 The remainder of the work performed by Coleman is reasonably related to CKS’s special  
22 motion to strike and the time spent on the tasks is reasonable. Thus, the remaining 29.4 hours  
23 billed by Coleman would be recoverable. The 9.8 hours billed by Neal would be recoverable for  
24 the same reasons.

25 With respect to costs, CKS may only recover those costs related to its special motion to  
26 strike such as the court fees incurred for filing the special motion to strike. (Coleman Dec.,  
27 ¶¶ 16-17 & Ex. E.) CKS cannot recover general costs incurred in connection with the entire  
28

1 action such as the \$1,000 complex case filing fee. Consequently, CKS would be entitled to  
2 recover incurred costs in the amount of \$171.32.

3 Accordingly, CKS's motion for attorney fees and costs is GRANTED in the total amount  
4 of \$14,652.20.

5  
6 The court will prepare the final order if this tentative ruling is not contested.  
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8  
9 **NOTICE:** Remote appearances are mandatory for complex civil matters in  
10 Department 3. (See Public Notice – June 10, 2022, Remote Appearance –  
11 Downtown and Historic Courthouses, available at  
12 <https://www.scsccourt.org/documents/DTSPublicNotice061022.pdf>.) Effective  
13 August 15, 2022, Department 3 will be using TEAMS for all remote hearings,  
14 unless otherwise ordered by the court. Instructions for appearing remotely and  
15 the necessary TEAMS link for Department 3 can be found at  
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17 State and local rules prohibit recording of court proceedings without a court order.  
18 These rules apply while in court and also while participating in a telephonic  
19 hearing.  
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21 The court does not provide court reporters for proceedings in the complex civil  
22 litigation departments. Any party wishing to retain a court reporter to report a  
23 hearing may do so in compliance with this court's October 13, 2020 Policy  
24 Regarding Privately Retained Court Reporters. The court reporter may participate  
25 remotely and need not be present in the courtroom.  
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1 Penalties (Lab. Code §§ 201, 202, and 203); and (6) Unfair Competition (Bus. & Prof. Code  
2 §§ 17200, et seq.).

3 On September 29, 2021, Plaintiff filed the operative First Amended Class Action  
4 Complaint, which added a seventh cause of action for Civil Penalties (Lab. Code §§ 2698, et  
5 seq.).

6 David Spivak, Esq. of The Spivak Law Firm and Walter Haines Esq. of The United  
7 Employee Law Group now move to be relieved as counsel of record for Plaintiff. The motion is  
8 unopposed.

## 9 **II. LEGAL STANDARD**

10 California Rules of Court, rule 3.1362 sets forth the requirements for a motion to be  
11 relieved as counsel. That rule provides that “[a] notice of motion and motion to be relieved as  
12 counsel under Code of Civil Procedure section 284(2) must be directed to the client and must be  
13 made on the Notice of Motion and Motion to Be Relieved as Counsel-Civil (form MC-051).”  
14 (Cal. Rules of Ct., rule 3.1362(a).) “[N]o memorandum is required to be filed or served with a  
15 motion to be relieved as counsel.” (Cal. Rules of Ct., rule 3.1362(b).) “The motion to be  
16 relieved as counsel must be accompanied by a declaration on the Declaration in Support of  
17 Attorney’s Motion to Be Relieved as Counsel-Civil (form MC-052),” which “must state in  
18 general terms and without compromising the confidentiality of the attorney-client relationship  
19 why a motion under Code of Civil Procedure section 284(2) is brought instead of filing a consent  
20 under Code of Civil Procedure section 284(1).” (Cal. Rules of Ct., rule 3.1362(c).)

21 “The notice of motion and motion, the declaration, and the proposed order must be served  
22 on the client and on all other parties who have appeared in the case. The notice may be by  
23 personal service, electronic service, or mail.” (Cal. Rules of Ct., rule 3.1362(d).) If the notice is  
24 served on the client by mail, it must be accompanied by a declaration stating facts showing that  
25 either: (1) the service address is the current residence or business address of the client; or (2) the  
26 service address is the last known residence or business address of the client and the attorney has  
27 been unable to locate a more current address after making reasonable efforts to do so within 30  
28 days before the filing of the motion to be relieved. (Cal. Rules of Ct., rule 3.1362(d)(1).) “If the

1 notice is served on the client by electronic service under Code of Civil Procedure section 1010.6  
2 and rule 2.251, it must be accompanied by a declaration stating that the electronic service  
3 address is the client's current electronic service address." (Cal. Rules of Ct., rule 3.1362(d)(2).)  
4 As used in the rule, "current" means that the address was confirmed within 30 days before the  
5 filing of the motion to be relieved. (*Ibid.*)

6 "The proposed order relieving counsel must be prepared on the Order Granting  
7 Attorney's Motion to Be Relieved as Counsel-Civil (form MC-053) and must be lodged with the  
8 court with the moving papers." (Cal. Rules of Ct., rule 3.1362(e).) "The order must specify all  
9 hearing dates scheduled in the action or proceeding, including the date of trial, if known. If no  
10 hearing date is presently scheduled, the court may set one and specify the date in the order."  
11 (*Ibid.*)

12 The determination of whether to grant a motion to withdraw as counsel lies in the sound  
13 discretion of the trial court. (See *Manfredi & Levine v. Superior Court* (1998) 66 Cal.App.4th  
14 1128, 1133; see also *People v. Horton* (1995) 11 Cal.4th 1068, 1106.)

### 15 **III. DISCUSSION**

16 Plaintiff's counsel has submitted a motion to be relieved as counsel on the Notice of  
17 Motion and Motion to Be Relieved as Counsel-Civil (form MC-051), a declaration on the  
18 Declaration in Support of Attorney's Motion to Be Relieved as Counsel-Civil (form MC-052),  
19 and a proposed order relieving counsel on the Order Granting Attorney's Motion to Be Relieved  
20 as Counsel-Civil (form MC-053) in compliance with California Rules of Court, rule 3.1362.  
21 David Spivak ("Spivak") declares that Plaintiff is making it unreasonably difficult to carry out  
22 representation effectively as Plaintiff has refused to respond to counsel's communications with  
23 her about this matter. (Declaration in Support of Attorney's Motion to be Relieved as Counsel,  
24 ¶ 2.) Spivak states that Plaintiff was served by mail at her last known address with copies of the  
25 moving papers. (*Id.* ¶ 2(a).) Spivak further states that he has been unable to confirm that the  
26 address is current or to locate a more current address after calling Plaintiff's last known  
27 telephone number, contacting Plaintiff's emergency contact, and conducting a background search  
28

1 to confirm Plaintiff's mailing address. (*Id.* ¶ 2(b).) Based on the foregoing, the court finds that  
2 Spivak has justified the request to be relieved as counsel.

3 Accordingly, the motion to be relieved as counsel is GRANTED. The Case Management  
4 Conference set for January 11, 2023 is continued to April 19, 2023. The court will correct,  
5 revise, and sign the proposed MC-053, ordering Plaintiff to appear on April 19, 2023, in person  
6 or through new counsel or the court will set the case for dismissal. Plaintiff's counsel shall file a  
7 proof of service of this order and the signed MC-053 within five court days after the orders are  
8 signed.

9  
10 The court will prepare the final order if this tentative ruling is not contested.  
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12  
13 **NOTICE:** Remote appearances are mandatory for complex civil matters in  
14 Department 3. (See Public Notice – June 10, 2022, Remote Appearance –  
15 Downtown and Historic Courthouses, available at  
16 <https://www.scscourt.org/documents/DTSPublicNotice061022.pdf> .) Effective  
17 August 15, 2022, Department 3 will be using TEAMS for all remote hearings,  
18 unless otherwise ordered by the court. Instructions for appearing remotely and the  
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19 These rules apply while in court and also while participating in a telephonic  
20 hearing.

21 The court does not provide court reporters for proceedings in the complex civil  
22 litigation departments. Any party wishing to retain a court reporter to report a  
23 hearing may do so in compliance with this court's October 13, 2020 Policy  
24 Regarding Privately Retained Court Reporters. The court reporter may participate  
25 remotely and need not be present in the courtroom.  
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1 (6) Wage Statement Violations; (7) Unfair Competition; and (8) Civil Penalties Under the  
2 Private Attorneys General Act.<sup>1</sup>

3 The parties have reached a settlement. On April 7, 2022, the court granted preliminary  
4 approval of the settlement and approved the amended class notice.

5 Plaintiff David Jimenez (“Plaintiff”) subsequently moved for final approval of the  
6 settlement.

7 On December 8, 2022, the court entered an order continuing the motion for final approval  
8 to January 11, 2023. The court explained that while it generally remained of the view that the  
9 settlement is fair, the request for exclusion submitted by Felix Baez highlighted a problem with  
10 the structure of the payment calculations. The court instructed the parties to modify the  
11 settlement agreement in order to separately calculate PAGA payments to be made to aggrieved  
12 employees and payments from the settlement of the class action to be made to class members.  
13 The court otherwise approved the requested incentive award, attorney fees, litigation costs, and  
14 settlement administration costs.

15 On January 3, 2023, Plaintiff submitted a supplemental memorandum, a supplemental  
16 declaration from his counsel, and a copy of the parties’ revised settlement agreement.

## 17 **II. LEGAL STANDARD**

18 Generally, “questions whether a settlement was fair and reasonable, whether notice to the  
19 class was adequate, whether certification of the class was proper, and whether the attorney fee  
20 award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*  
21 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.*  
22 (1996) 48 Cal.App.4th 1794 (*Dunk*).

23 In determining whether a class settlement is fair, adequate and reasonable, the  
24 trial court should consider relevant factors, such as “the strength of plaintiffs’  
25 case, the risk, expense, complexity and likely duration of further litigation, the  
26 risk of maintaining class action status through trial, the amount offered in  
27 settlement, the extent of discovery completed and the stage of the proceedings, the  
28 experience and views of counsel, the presence of a governmental participant, and  
the reaction of the class members to the proposed settlement.”

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<sup>1</sup> The FAC also substituted David Jimenez and Karen Embry (“Embry”) for Edgar Hernandez as plaintiffs. On December 30, 2020, at Embry’s request the court dismissed her as well as the second and third causes of action.



1 (*Wershba, supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1801  
2 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d 615, 624  
3 (*Officers*).

4 “The list of factors is not exclusive and the court is free to engage in a balancing and  
5 weighing of factors depending on the circumstances of each case.” (*Wershba, supra*, 91  
6 Cal.App.4th at p. 245.) The court must examine the “proposed settlement agreement to the  
7 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or  
8 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a  
9 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, quoting *Dunk, supra*, 48  
10 Cal.App.4th at p. 1801 and *Officers, supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

11 The burden is on the proponent of the settlement to show that it is fair and  
12 reasonable. However “a presumption of fairness exists where: (1) the settlement  
13 is reached through arm’s-length bargaining; (2) investigation and discovery are  
sufficient to allow counsel and the court to act intelligently; (3) counsel is  
experienced in similar litigation; and (4) the percentage of objectors is small.”

14 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

15 **III. DISCUSSION**

16 The court has now reviewed the revised settlement agreement attached to the  
17 supplemental declaration from Plaintiff’s counsel and finds that it adequately addresses the  
18 payment calculation problem discussed in the prior court order. (Supplemental Declaration of  
19 Marcus J. Bradley in Support of Motion for Final Approval of Class Action Settlement, ¶ 4 & Ex  
20 A, ¶¶ I.C, I.Q, I.R, I.S, I.T, I.Z, I.AA, III.A, III.B, III.D, & III.E.)

21 Accordingly, the motion for final approval of the class action settlement is GRANTED.

22  
23 The court will prepare the final order and judgment if this tentative ruling is not  
24 contested.

25  
26 The court will set a compliance hearing for September 6, 2023 at 2:30 p.m. in  
27 Department 19. At least ten court days before the hearing, class counsel and the settlement  
28 administrator shall submit a summary accounting of the net settlement fund identifying

1 distributions made as ordered herein, the number and value of any uncashed checks, amounts  
2 remitted to Defendant, the status of any unresolved issues, and any other matters appropriate to  
3 bring to the court's attention. Counsel may appear at the compliance hearing remotely.

4  
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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA**

Case No.

The Court will prepare the order.

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA**

Case No.

The Court will prepare the order.