

1 Fred W. Schwinn (SBN 225575)  
2 Raeon R. Roulston (SBN 255622)  
3 Matthew C. Salmonsén (SBN 302854)  
4 CONSUMER LAW CENTER, INC.  
5 38 West Santa Clara Street  
6 San Jose, California 95113-1806  
7 Telephone Number: (408) 294-6100  
8 Facsimile Number: (408) 294-6190  
9 Email Address: fred.schwinn@sjconsumerlaw.com

10 Attorneys for Plaintiff  
11 PAMELA SHEREÉ CHAMBERS

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **COUNTY OF SANTA CLARA**

14 PAMELA SHEREÉ CHAMBERS,  
15 individually and on behalf of all others  
16 similarly situated,

17 Plaintiff,

18 v.

19 CROWN ASSET MANAGEMENT, LLC,  
20 a Georgia limited liability company; and  
21 DOES 1 through 10, inclusive,

22 Defendants.

23 Case No. 18CV338800  
24 (Unlimited Civil Case)

25 Assigned for All Purposes to  
26 The Honorable Theodore C. Zayner

27 **ORDER GRANTING PRELIMINARY**  
28 **APPROVAL OF CLASS ACTION**  
**SETTLEMENT**

Hearing Date: December 13, 2023  
Hearing Time: 1:30 p.m.  
Hearing Dept.: 19  
Hearing Location: 161 North First Street  
San Jose, California

29 The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on  
30 December 13, 2023, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

31 **I. INTRODUCTION**

32 This is a putative consumer class action brought pursuant to the California Fair Debt Buying  
33 Practices Act, Civil Code sections 1788.50-1788.64 (“CFDBPA”). According to the Class Action  
34 Complaint for Statutory Damages (“Complaint”), filed on December 4, 2018, plaintiff Pamela Shereé  
35 Chambers (“Plaintiff”) seeks statutory damages against defendant Crown Asset Management, LLC  
36

1 (“Defendant”) arising from its routine practice of sending initial written communications in smaller  
2 than 12-point type. (Complaint, ¶ 1.) The Complaint sets forth a single cause of action under the  
3 CFDBPA.

4 On December 27, 2022, the court granted Plaintiff’s motion for class certification.

5 On January 10, 2023, the court entered a Stipulation Regarding Type Size and Order Thereon,  
6 which provides that the collection letter attached as Exhibit 1 to the Complaint provided the notice  
7 required by Civil Code section 1788.52, subdivision (d)(1) in 10-point type size.

8 The parties have reached a settlement. Plaintiff and Defendant jointly moved for preliminary  
9 approval of the settlement.  
10

11 On October 4, 2023, the court continued the motion for preliminary approval to December 13,  
12 2023. In its minute order, the court asked Plaintiff’s counsel to submit a supplemental declaration  
13 estimating Defendant’s maximum potential liability for statutory damages to the class and explaining  
14 how the estimate was reached given Defendant’s net worth.  
15

16 On October 16, 2023, Plaintiff’s counsel filed a supplemental declaration in support of the  
17 motion.  
18

## 19 **II. LEGAL STANDARD**

20 Generally, “questions whether a settlement was fair and reasonable, whether notice to the class  
21 was adequate, whether certification of the class was proper, and whether the attorney fee award was  
22 proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple Computer, Inc.*  
23 (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th  
24 1794 (*Dunk*)).  
25

26 In determining whether a class settlement is fair, adequate and reasonable, the trial court  
27 should consider relevant factors, such as “the strength of plaintiffs’ case, the risk,  
28 expense, complexity and likely duration of further litigation, the risk of maintaining  
class action status through trial, the amount offered in settlement, the extent of discovery

1 completed and the stage of the proceedings, the experience and views of counsel, the  
2 presence of a governmental participant, and the reaction of the class members to the  
3 proposed settlement.”

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

6 “The list of factors is not exclusive and the court is free to engage in a balancing and weighing  
7 of factors depending on the circumstances of each case.” (*Wershba, supra*, 91 Cal.App.4th at p. 245.)

8 The court must examine the “proposed settlement agreement to the extent necessary to reach a reasoned  
9 judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the  
10 negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all  
11 concerned.” (*Ibid.*, quoting *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers, supra*, 688 F.2d at p.  
12 625, internal quotation marks omitted.)

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

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

### 20 **III. DISCUSSION**

#### 21 **A. Provisions of the Settlement**

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

23 All persons with addresses in California to whom McCarthy, Burgess & Wolff, Inc.,  
24 sent, or caused to be sent, an initial written communication in the form of Exhibit “1”  
25 [attached to the Complaint] on behalf of [Defendant] in an attempt to collect a charged-  
26 off consumer debt originally owed to Synchrony Bank, which was sold or resold to  
27 [Defendant] on or after January 1, 2014, which were not returned as undeliverable by the  
28 U.S. Post Office during the period December 4, 2017, through the date of class  
certification.

(Declaration of Fred W. Schwinn in Support of Joint Motion for Preliminary Approval of Class Action

1 Settlement and Provisional Class Certification (“Schwinn Dec.”), Ex. A (“Settlement Agreement”), ¶  
2 2.3.)

3 According to the terms of settlement, Defendant will pay a non-reversionary amount of  
4 \$158,095 to the class (i.e., no less than \$35 to each of the estimated 4,517 class members). (Settlement  
5 Agreement, ¶¶ 4.1, 4.3, 4.4.) In addition to the class fund, Defendant will pay all costs associated with  
6 settlement administration, statutory damages in the amount of \$1,000 to Plaintiff, a service award not to  
7 exceed \$3,500 to Plaintiff, and attorney fees and costs not to exceed \$250,000. (Settlement Agreement,  
8 ¶¶ 4.2, 4.5-4.7.)

9  
10 The class fund will be distributed to the class members on a pro rata basis. (Settlement  
11 Agreement, ¶ 4.3.) Settlement checks will become void 90 days after mailing and funds from uncashed  
12 checks will be distributed to the Katherine & George Alexander Community Law Center. (Settlement  
13 Agreement, ¶¶ 4.3, 4.4.) The cy pres recipient is approved.

14  
15 In exchange for the settlement, class members agree to release Defendant, and related persons  
16 and entities, from all claims alleging a violation of Civil Code section 1788.52, subdivision (d)(1) or  
17 similar or related claims or causes of action, arising from or relating to collection letters mailed on  
18 behalf of Defendant in the form attached as Exhibit 1 to the Complaint during the class settlement  
19 period. (Settlement Agreement, ¶¶ 2.16., 7.1)

20  
21 **B. Fairness of the Settlement**

22 The parties assert that the settlement is fair, reasonable, and adequate, given Defendant’s net  
23 worth, the strength of Plaintiff’s claim, the inherent risks of litigation, and the costs of pursuing  
24 litigation. The parties actively litigated this case and conducted substantial formal discovery, and the  
25 court heard several dispositive motions. The parties point out that Civil Code section 1788.62,  
26 subdivision (b) provides for statutory damages to the class in an amount not to exceed the lesser of  
27  
28

1 \$500,000 or 1 percent of the net worth of the debt buyer. However, in their moving papers, the parties  
2 do not provide any information regarding Defendant's net worth or an estimate of Defendant's  
3 maximum potential liability for statutory damages to the class. Rather, Plaintiff's counsel represents  
4 that Defendant disclosed financial information to Plaintiff and Plaintiff's counsel believes the  
5 settlement is fair given Defendant's net worth. The parties also set forth reasons why the value of the  
6 claim should be discounted.  
7

8 Plaintiff's counsel has now provided a supplemental declaration stating that Defendant provided  
9 discovery responses and financial statements, which demonstrate that Defendant's net worth is  
10 \$18,799,775. (Supplemental Declaration of Fred W. Schwinn in Support of Joint Motion for  
11 Preliminary Approval of Class Action Settlement, ¶¶ 4-6.) In light of Defendant's net worth, the  
12 maximum potential recovery for Plaintiff's claim is \$187,997.75. (Id. at ¶ 7.) The proposed settlement  
13 amount represents 84 percent of the maximum possible recovery. (*Ibid.*)  
14

15 Consequently, the court finds that the settlement is fair. It provides for a significant recovery  
16 and eliminates the risk and expense of continued litigation.  
17

### 18 **C. Incentive Award, Fees and Costs**

19 Plaintiff requests a service award in the amount of \$3,500.

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

(*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks,

1 brackets, ellipses, and citations omitted.)

2 Prior to the final approval hearing, the class representative shall file a declaration specifically  
3 detailing her participation in the action and an estimate of time spent. The court will make a  
4 determination at that time.

5 The court also has an independent right and responsibility to review the requested attorney fees  
6 and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular*  
7 *Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff's counsel will seek attorney fees of  
8 \$250,000. Plaintiff's counsel shall submit lodestar information (including hourly rates and hours  
9 worked) prior to the final approval hearing in this matter so the court can compare the lodestar  
10 information with the requested fees. Plaintiff's counsel shall also submit evidence of actual costs  
11 incurred.  
12

13  
14 **D. Conditional Certification of Class**

15 Rule 3.769(d) of the California Rules of Court states that “[t]he court may make an order  
16 approving or denying certification of a provisional settlement class after [a] preliminary settlement  
17 hearing.” California Code of Civil Procedure Section 382 authorizes certification of a class “when the  
18 question is one of a common or general interest, of many persons, or when the parties are numerous,  
19 and it is impracticable to bring them all before the court ...” As interpreted by the California Supreme  
20 Court, Section 382 requires: (1) an ascertainable class; and (2) a well-defined community of interest  
21 among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.)  
22

23 The “community-of-interest” requirement encompasses three factors: (1) predominant questions  
24 of law or fact; (2) class representatives with claims or defenses typical of the class; and, (3) class  
25 representatives who can adequately represent the class. (*Sav-On Drug Stores, Inc. v. Superior Court*,  
26 *supra*, 34 Cal.4th at p. 326.) “Other relevant considerations include the probability that each class  
27  
28

1 member will come forward ultimately to prove his or her separate claim to a portion of the total  
2 recovery and whether the class approach would actually serve to deter and redress alleged  
3 wrongdoing.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of  
4 establishing that class treatment will yield “substantial benefits” to both “the litigants and to the court.”  
5 (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)  
6

7 As explained by the California Supreme Court,

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

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

15 Here, the court has already certified the class, named Plaintiff as class representative, and  
16 Plaintiff’s counsel as class counsel. Thus, the elements of class certification are met for purposes of the  
17 settlement.

18 **E. Class Notice**

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

22 The notice complies with the requirements for class notice. (Settlement Agreement, Ex. 1.) It  
23 provides basic information about the settlement, including the settlement terms, and procedures to  
24 object or request exclusion. The notice is, therefore, approved.  
25

26 ///

27 ///

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IV. CONCLUSION**

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

The final fairness hearing is set for June 12, 2024, at 1:30p.m. in Department 19.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Theodore C. Zayner  
Judge of the Superior Court