UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 19-620 JGB (KKx)**	Date	May 7, 2020
Title	***Harry Noriesta v. Konica Minolta Business Solutions U.S.A., Inc.***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter
Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: Order (1) GRANTING Plaintiff's Motion for Preliminary Approval of Class Action Settlement (Dkt. No. 38) (IN CHAMBERS)

Before the Court is Plaintiff's motion for preliminary approval of class action settlement. ("Motion," Dkt. No. 38.) The Court finds this matter appropriate for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. After considering the papers filed in support of and in opposition to the matter, the Court GRANTS the Motion.

I. BACKGROUND

On April 5, 2019, Plaintiff Harry Noriesta filed this action on behalf of himself and the putative classes of similarly situated individuals. ("Complaint," Dkt. No. 1.) The Court granted in part and denied in part Defendant's motion to dismiss on July 8, 2019, ("MTD Order," Dkt. No. 27), and Plaintiff filed an amended complaint on August 5, 2019. ("FAC," Dkt. No. 32.) The FAC alleges violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(b)(2)(A), ("FCRA"); the California Investigative Consumer Reporting Agencies Act, California Civil Code § 1786 et seq., ("ICRAA"); and the California Consumer Credit Reporting Agencies Act, California Civil Code § 1785 et seq., ("CCRAA"). (Id.) Plaintiff alleges that before conducting a background check on applicants Defendant failed to provide applicants with a stand-alone document that consists solely of the background check disclosure, as required by law. (Id.)

Plaintiff filed the Motion on March 30, 2020. (Mot.) In support of the Motion, Plaintiff filed the declaration of Douglas Han, ("Han Declaration," Dkt. No. 38-1), which contains the parties' joint stipulation of class action settlement agreement and release of claims, ("Agreement," Han Decl., Ex. 1), a proposed notice of class action settlement, ("Notice," Han

Decl., Ex. A), and a request for exclusion form, ("Exclusion Form," Han Decl., Ex. B). The Motion is not opposed.

II. LEGAL STANDARD

Approval of a class action settlement requires certification of a settlement class. La Fleur v. Med. Mgmt. Int'l, Inc., 2014 WL 2967475, at *2–3 (C.D. Cal. June 25, 2014) (internal quotation marks omitted). A court may certify a class if the plaintiff demonstrates the class meets the requirements of Federal Rules of Civil Procedure 23(a) and at least one of the requirements of Rule 23(b).[1] See Fed. R. Civ. P. 23; see also Valentino v. Carter-Wallace, Inc., 97 F.3d 1227, 1234 (9th Cir. 1996). Rule 23(a) contains four prerequisites to class certification: (1) the class must be so numerous that joinder is impracticable; (2) there must be questions of law or fact common to the class; (3) the claims of the class representative must be typical of the other class members; and (4) the representative parties must fairly and adequately protect the interests of the class. See Fed. R. Civ. P. 23(a). Rule 23(b) requires one of the following: (1) prosecuting the claims of class members separately would create a risk of inconsistent or prejudicial outcomes; (2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive or declaratory relief benefitting the whole class is appropriate; or (3) common questions of law or fact predominate so that a class action is superior to another method of adjudication. Fed. R. Civ. P. 23(b).

Class action settlements must be approved by the court. See Fed. R. Civ. P. 23(e). At the preliminary approval stage, the Court "must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms." Id. "The settlement need only be potentially fair, as the Court will make a final determination of its adequacy at the hearing on Final Approval." Acosta v. Trans Union, LLC, 243 F.R.D. 377, 386 (C.D. Cal. 2007) (emphasis in original). To determine whether a settlement agreement is potentially fair, a court considers the following factors: the strength of the plaintiff's case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement. Staton v. Boeing Co., 327 F.3d 938, 959 (9th Cir. 2003).

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[1] All references to "Rule" in this Order refer to the Federal Rules of Civil Procedure unless otherwise noted.

III. CONDITIONAL CERTIFICATION OF THE PROPOSED SETTLEMENT CLASS

The proposed settlement involves three classes:

"FRCA Class": All United States unique job applicants on whom Defendant procured a consumer report for employment purposes based upon the same disclosure form provided to Plaintiff. Class membership begins on April 5, 2014 and continues through July 1, 2018. Defendant estimates that the FCRA Class has 5,748 members. (Agreement § 1.6.1.)

"ICRAA Class": All unique job applicants on whom Defendant procured a consumer report for employment purposes based upon the same disclosure form provided to Plaintiff and who provided a California address as their address of residence. Class membership begins on April 5, 2014 and continues through July 1, 2018. Defendant estimates that the ICRAA Class has 682 members. (Agreement § 1.6.2.)

"CCRAA Class": All unique job applicants on whom Defendant procured a consumer report for employment purposes containing consumer credit information based upon the same disclosure form provided to Plaintiff and who provided a California address as their address of residence. Class membership begins on April 5, 2012 and continues through July 1, 2018. Defendant estimates that the CCRAA class has 643 members. (Agreement § 1.6.3.)

The Court first addresses the Rule 23(a) requirements and then turns to the Rule 23(b) requirements.

A. Requirements of Rule 23(a)

1. Numerosity

A class satisfies the prerequisite of numerosity if it is so large that joinder of all class members is impracticable. Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998). To be impracticable, joinder must be difficult or inconvenient, but need not be impossible. Keegan v. Am. Honda Motor Co., 284 F.R.D. 504, 522 (C.D. Cal. 2012). There is no numerical cutoff for sufficient numerosity. Id. However, 40 or more members will generally satisfy the numerosity requirement. Id. A plaintiff has the burden to establish that this requirement is satisfied. United Steel, Paper & Forestry, Rubber, Mfg. Energy v. Conoco Phillips Co., 593 F.3d 802, 806 (9th Cir. 2010). Here, Defendant estimates 7,073 Class Members fall within the class definition. (Mot. at 21.) Accordingly, the Court concludes that the numerosity requirement is satisfied.

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2. Commonality

The commonality requirement is satisfied when plaintiffs assert claims that "depend upon a common contention . . . capable of classwide resolution—which means that a determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011).

Here, each Class Member executed a form disclosing the employer's intent to obtain a credit report or background check on a current or prospective employee. (Mot. at 22.) The common question resolving the dispute is whether Defendant violated the law by using the form and whether the violation was willful. (Id.) Class Members' claims therefore turn on the same factual and legal question. Accordingly, Plaintiff has established commonality.

3. Typicality

"The purpose of the typicality requirement is to assure that the interest of the named representative aligns with the interests of the class." Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992). "The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiff, and whether other class members have been injured by the same course of conduct." Wolin v. Jaguar Land Rover No. Am., 617 F.3d 1168, 1175 (9th Cir. 2010) (quoting Hanon, 976 F.2d at 508). Because typicality is a permissive standard, the claims of the named plaintiff need not be identical to those of the other class members. Hanlon, 150 F.3d at 1020. Here, each Class Member's claim arises form the same underlying conduct: Defendant's alleged failure to use a lawful disclosure form. Accordingly, the Court is satisfied that Plaintiff has met the typicality requirement.

4. Adequacy

In determining whether a proposed class representative will adequately protect the interests of the class, the court should ask whether the proposed class representative and her counsel have any conflicts of interest with any class member and whether the proposed class representative and her counsel will prosecute the action vigorously on behalf of the class. Johnson v. General Mills, Inc., 275 F.R.D. 282, 288 (C.D. Cal. 2011).

Plaintiff maintains there is no conflict of interest between himself and members of the proposed settlement classes, as his and their interests in this litigation are aligned. (Mot. at 23.) Plaintiff is also represented by competent counsel with experience in class actions and who do not have a conflict of interest with the classes. (Id.; Han Decl. ¶ 19.) Thus, Plaintiff does not have a conflict of interest with the classes that might prevent him from vigorously representing the interests of class members who suffered the alleged violations. Finally, Class Counsel is experienced in litigating wage and hour class actions. (See Hill Declaration ¶¶ 3–7, 33–35.) Accordingly, the Court concludes both the class representative and Class Counsel will adequality represent the interests of the proposed classes.

B. Requirements of Rule 23(b)

"In addition to satisfying Rule 23(a)'s prerequisites, parties seeking class certification must show that the action is maintainable under Rule 23(b)(1), (2), or (3)." Amchem Prod., Inc. v. Windsor, 521 U.S. 591, 614 (1997). Here, Plaintiff asserts the Agreement satisfies the requirements of Rule 23(b)(3). (Motion at 23-24.)

Rule 23(b)(3) requires (1) issues common to the whole class to predominate over individual issues and (2) that a class action be a superior method of adjudication for the controversy. See Fed. R. Civ. P. 23(b)(3). As to predominance, the "inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." Hanlon, 150 F.3d at 1022 (quoting Amchem, 521 U.S. at 623). "[T]he examination must rest on 'legal or factual questions that qualify each class member's case as a genuine controversy, questions that preexist any settlement.'" Id. (same). A class should not be certified if the issues of the case require separate adjudication of each individual class member's claims. Id.

Here, adjudication by representation is warranted because questions common to the settlement classes represent a significant aspect of the case and can be resolved for all members of each class in a single adjudication. Specifically, Plaintiff contends that common issues predominate because the claims of both Plaintiff and the proposed classes stem from Defendant's use of a specific background check form. (Mot. at 24.) The Court is satisfied that the common questions predominate.

A class action must also be superior to other methods of adjudication for resolving the controversy. Fed. R. Civ. P. 23(b)(3). To determine superiority, a court's inquiry is guided by the following pertinent factors:

(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.

Fed. R. Civ. P. 23(b)(3)(A)–(D). However, "[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." Amchem, 521 U.S. at 620.

Here, Plaintiff notes the class mechanism provides an effective mechanism for vindicating the claims of class members because many class members lack the resources to shoulder the burden and expense necessary to prosecute their claims. (Mot. at 24-25.) Individual actions are

unlikely for willful FRCA violations where the penalties available range from $100 to $1,000. (Id.) Accordingly, the Court concludes the superiority requirement is satisfied.

IV. SETTLEMENT AGREEMENT

A. Settlement Summary

Below is an overview of the financial terms of the Agreement:

- Gross settlement amount: $636,570.00
- Attorneys' fees, not to exceed 33% of gross settlement: $210,068.10
- Out of pocket costs: $15,000.00
- Service award to class representative: $10,000.00
- Payment to settlement administrator, estimated not to exceed: $35,000.00
- Estimated net settlement amount: $366,501.90

The $636,570.00 gross settlement amount is non-reversionary, so no amount will be returned to Defendant. (Mot. at 8.) If a check remains uncashed 180 days after the final distribution, the settlement administrator will direct funds from the uncashed check to the cy pres beneficiary. (Id. at 20.) The cy pres beneficiary will be specified prior to final approval and approved by the Court. (Id. at 8.)

B. Financial Terms

1. Payment and Distribution of Funds

Within 21 calendar days of the effective date of the Agreement (after final approval and the exhaustion of appeal) Defendant will deposit the gross settlement amount into an escrow account established by the third-party settlement administrator for the purposes of administering the settlement. (Agreement § 5.8.) No later than 30 days after the effective date, the administrator will issue the checks constituting the individual settlement payments. (Id. § 5.7.) All payments to the Settlement Class Members will be mailed by the administrator by check and delivered by first-class U.S. mail.

2. Class Members

Under the Agreement, all Settlement Class Members who do not submit a valid and timely Request for Exclusion will receive a settlement cash payment. (Mot. at 7.) Each Class Member will be eligible to receive an equal pro rata portion of the net settlement amount for each Class in which each Class Member qualifies for membership. (Id.) Given that all Class Members would have, in theory, suffered the same alleged "injury" if Plaintiff prevailed on a class-wide basis, but some may have different recourses under the ICRAA and CCRAA claims, the net settlement amount will be divided equally among all Class Members within each Class, with the

Class Members eligible to recover a pro rata share for each Class in which they are a member. (Agreement § 5.5.1.)

3. Class Representatives

The Agreement provides for an incentive payment of $10,000 to Plaintiff for his participation and risks undertaken in this action, and for a general release of claims, annexed as Exhibit C. (Agreement § 5.3.)

4. Settlement Administration Costs

The Parties request that the Court appoint JND Legal Administration as settlement administrator. (Agreement § 3.1.) The Parties agree that settlement administration costs shall not "unreasonably exceed" $35,000.00, based on a written bid received from the administrator, and propose that disputes regarding the administrator be referred to the Court after good faith efforts by the parties to resolve the disputes. (Id.)

5. Attorneys' Fees and Costs

The Agreement provides that Class Counsel may apply for attorneys' fees not to exceed to 33% of the Gross Settlement Amount, or $210,068.10, and reasonable out-of-pocket costs incurred in this action, up to $15,000. (Agreement § 5.2.)

C. Injunctive Relief

The Agreement does not appear to include any injunctive relief.

D. Release

In exchange for the benefits of the Agreement, Settlement Class Members that do not timely opt out of the settlement will release Defendant from:

> all claims, damages, losses, demands, penalties, liabilities, fees, interest, causes of action, complaints or suits that were or could have been brought in the Action relating to background checks including but not limited to claims under the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq., the Investigative Consumer Reporting Agencies Act, Cal. Civ. Code § 1786 et seq., the Consumer Credit Reporting Agencies Act, Cal. Civ. Code § 1785 et seq., California Business & Professions Code §§ 17200 et seq., and similar claims under state law which any Class Member has ever had, or hereafter may claim to have against the Released Parties as of the Effective Date. As to all other FCRA claims, past or present, the class members also waive and release their rights to be a class representative in a class action, or to seek punitive damages from KMBS, as of the Effective Date of the settlement.

(Agreement § 1.33.) Plaintiff will also execute a general release of known and unknown claims he may have and against Defendant in consideration for his receipt of the incentive award payment contemplated by the Agreement. (Mot. at 8.)

E. Notice

Within 30 calendar days of preliminary approval of the Agreement by the Court, Defendant will provide to the settlement administrator a Class List with class information including: (1) the name of each Class Member; and (2) the most current known address of each Class Member, as reflected in Defendant's records at the time of entry of the Court's Preliminary Approval Order. (Agreement § 3.2) Within 21 calendar days of receiving the Class List from Defendant, the administrator will send the Class Notice, and Request for Exclusion (attached as Exhibits A and B to Agreement) to Class Members via First Class U.S. Mail, using the most current known address of each Class Member, as reflected in Defendant's records at the time of entry of the Court's Preliminary Approval Order. (Id. § 3.4.) Upon receipt of this information from Defendant, the administrator will perform a search based on the National Change of Address Database maintained by the United States Postal Service to update and correct any known or identifiable address changes. (Id.)

In the event that a Class Notice is returned to the administrator with a forwarding address, the administrator will re-send the Class Notice to the forwarding address affixed thereto. (Id. § 3.4.1) If no forwarding address is provided, then the administrator will promptly conduct a "standard search," sometimes called, "Skip Traces" or "Credit Header" searches, to locate a better address. (Id.) If an alternate address is found, the administrator will promptly re-send the Class Notice. (Id.) If the standard search does not provide an alternate address or the Class Notice is returned a second time without a forwarding address, the administrator will perform a manual "in-depth search" to locate a better address. (Id.) If another address is found, the administrator will promptly re-send the Class Notice. (Id.)

Class Members will have sixty (60) calendar days from the date of mailing of the Class Notice to opt-out of the Agreement. (Agreement § 4.2.) Responses from Class Members must be postmarked for mail with the U.S. Postal Service, and responses sent by fax, email, or other forms of electronic transmission will not be considered. (Id. § 4.1.)

Defendant has the right, at its sole option, to withdraw from the Agreement if the number of Class Members opting out exceeds two percent (2%) of the total number of Class Members. (Id. § 4.2.3) This right to withdraw is a material term of the Agreement and Defendant has the right, at its sole option, to withdraw from this Agreement if the material terms of the Agreement are not approved by the Court. (Id.) If Defendant exercises this right to withdraw, it will be responsible for all administration costs incurred by the administrator. (Id.)

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V. PRELIMINARY APPROVAL OF THE SETTLEMENT

"[Rule 23] requires the district court to determine whether a proposed settlement is fundamentally fair, adequate, and reasonable." Hanlon, 150 F.3d at 1026. To determine whether a settlement agreement meets these standards, the court considers a number of factors, including "the strength of the plaintiff's case, the risk, expense, complexity, and likely duration of further litigation, the risk of maintaining class action status throughout trial, the amount offered in settlement, the extent of discovery completed, and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." Stanton, 327 F.3d at 959 (internal citations omitted). The settlement may not be a product of collusion among the negotiating parties. In re Mego Fin, Corp. Sec. Litig., 213 F.3d 454, 458 (9th Cir. 2000) (citing Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1290 (9th Cir. 1992)).

"At the preliminary approval stage, some of the factors cannot be fully assessed. Accordingly, a full fairness analysis is unnecessary." Litty v. Merrill Lynch & Co., 2015 WL 4698475, *8 (C.D. Cal. Apr. 27, 2015). Rather, the court need only decide whether the settlement is potentially fair, Acosta, 243 F.R.D. at 386, in light of the strong judicial policy in favor of settlement of class actions. Class Plaintiffs, 955 F.2d 1276. "[T]he 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." Hanlon, 15 F.3d at 1027.

A. Extent of Discovery and Stage of the Proceedings

For a court to approve a proposed settlement, "[t]he parties must . . . have engaged in sufficient investigation of the facts to enable the court to intelligently make an appraisal of the settlement." Acosta, 243 F.R.D. at 396 (internal quotation marks omitted). Here, the work by Class Counsel includes drafting pleadings, propounding written discovery, reviewing documents produced by Defendant, working up and drafting a mediation brief, working with an expert to analyze the data produced by Defendant, opposing Defendant's motion to dismiss, and opposing Defendant's motion to transfer venue. (Han Decl. ¶ 17.) The Parties attended a mediation on January 20, 2020, with a well-regarded class action mediator. (Id. ¶ 7.) Under the auspices of the mediator, the parties reached settlement after a full day of negotiations. (Id.) Because Plaintiff participated in mediation and significant investigation, the Court finds each side has a clear idea of the strengths and weaknesses of its respective cases, and concludes that the extent of discovery and the stage of proceedings weigh in favor of preliminary approval.

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B. Amount Offered in Settlement

In determining whether the amount offered in settlement is fair, a court compares the settlement amount to the parties' estimates of the maximum amount of damages recoverable in a successful litigation. In re Mego, 213 F.3d at 459.

The gross settlement amount is $636,570.00. Plaintiff explains that in a typical FCRA case, "a prevailing plaintiff will receive statutory damages of between $100 and $1,000, if the plaintiff can establish the violation was willful. (Mot. at 1, 17.) Here, Defendant estimates there are 7,073 Settlement Class Members. Thus assuming a willful violation, Defendant's maximum liability would be more than seven million dollars, or $1,000 per Settlement Class Member. Here, the Court estimates that $51 dollars will be available per Class Member, assuming a net settlement amount of $366,501.90.

Although the settlement amount represents a small fraction of the maximum value of this litigation, "'[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.'" In re Mego, 213 F.3d at 459 (quoting Officers for Justice v. Civil Serv. Comm'n, 688 F.2d 615, 628 (9th Cir. 1982)). In In re Mego, the Ninth Circuit considered the difficulties in proving the case and determined the settlement amount, which was one-sixth of the potential recovery, was fair and adequate. Id. Given the difficulties posed to each individual of pursuing his or her claim, the Court finds the settlement amount is potentially fair.

C. Strength of Case and Risk, Expense, Complexity, and Likely Duration of Litigation

Plaintiff admits this case is not factually complex, but states the uncertain legal landscape creates substantial risk of proceeding to certification and trial. (Mot. at 16.) The risk of incurring expense of trial without recovery is high, given that Defendant could argue class members incurred no actual damages. (Id.)

The Court believes the risk, expense, and likely duration of further litigation weigh in favor of preliminary approval. Without the Settlement Agreement, the parties would be required to litigate class certification, as well as the ultimate merits of the case—a process which the Court acknowledges is long and expensive. Overall, these factors weigh in favor of preliminary approval.

D. Experience and Views of Counsel

"Great weight is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation." Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 528 (C.D. Cal. 2004) (internal citation and quotation marks omitted). Here, the parties reached settlement after review of their claims and defenses, with the assistance of a mediator, and Plaintiff's Counsel recommends approval of the Agreement. (Mot. at 20.) The Court finds this factor weighs in favor of preliminary approval.

E. Collusion Between the Parties

"To determine whether there has been any collusion between the parties, courts must evaluate whether 'fees and relief provisions clearly suggest the possibility that class interests gave way to self interests,' thereby raising the possibility that the settlement agreement is the result of overt misconduct by the negotiators or improper incentives for certain class members at the expense of others." Litty, 2015 WL 4698475, at *10 (quoting Staton, 327 F.3d at 961).

As an initial matter, the Court notes that settlement negotiations were conducted at arms-length. The parties engaged in a mediation session with an experienced and respected mediator. (Han Decl. ¶ 7.) The use of a mediator experienced in the settlement process tends to establish that the settlement process was not collusive. See, e.g., Satchell v. Fed Ex. Corp., 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007). The Court thus turns to the financial terms of the Settlement Agreement.

A court may grant a modest incentive award to class representatives, both as an inducement to participate in the suit and as compensation for the time spent in litigation activities. See In re Mego, 213 F.3d at 463 (finding the district court did not abuse its discretion in awarding an incentive award to the class representatives). Plaintiff requests an incentive fee award of $10,000 for his service, involvement, and risk in connection with being a class representative and for a more general release of claims. (Han Decl. ¶ 20; Agreement § 5.3.) The incentive payment is in addition to the individual payment allocated to Plaintiff under the Agreement. (Id.)

Plaintiff provides no concrete information about his role in the mediation, time spent participating in the litigation, or information regarding whether he was guaranteed to receive benefits. The Court therefore finds the requested service award only potentially reasonable and may not grant it in full should it finally approve the settlement. For final fairness approval, the Court advises Plaintiff to provide greater detail. See Clesceri v. Beach City Investigations & Protective Servs., Inc., 2011 WL 320998, at *2, 9, 12 (C.D. Cal. Jan. 27, 2011) (preliminarily approving an incentive award of $3,000 each to the two named plaintiffs when the gross settlement amount was $100,000); Vanwagoner v. Siemens Indus., Inc., 2014 WL 1922731, at *2 (E.D. Cal. May 14, 2014) (preliminarily approving $5,000 as an incentive award when the maximum settlement amount was $225,000).

Generally, courts in the Ninth Circuit find that a benchmark of 25% of the common fund is a reasonable fee award. Hanlon, 150 F.3d at 1029 ("This circuit has established 25% of the common fund as a benchmark award for attorney fees."); Paul, Johnson, Alston & Hunt v. Graulty, 866 F.3d 258, 272 (9th Cir. 1989) (the 25% benchmark can be adjusted in either direction "to account for any unusual circumstances[,]" but the justification for adjustment must be apparent); Monterrubio v. Best Buy Stores, L.P., 291 F.R.D. 443, 455 (E.D. Cal. 2013) (citing Six (6) Mexican Workers v. Arizona Citrus Growers, 904 F.2d 1301, 1311 (9th Cir. 1990)) ("In applying this method, courts typically set a benchmark of 25% of the fund as a reasonable fee

award, and justify any increase or decrease from this amount based on circumstances in the record.").

The Court, in its discretion, may award attorneys' fees in a class action by applying either the lodestar method or the percentage-of-the-fund method. Fischel v. Equitable Life Assurance Soc'y of U.S., 307 F.3d 997, 1006 (9th Cir. 2002). The Court determines the lodestar amount by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. McGrath v. Cnty. of Nev., 67 F.3d 248, 252 (9th Cir. 1995). The hourly rates used to calculate the lodestar must be "in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." Blum v. Stenson, 465 U.S. 886, 895 n.11 (1984). Next, the Court must decide whether to adjust the 'presumptively reasonable' lodestar figure based upon the factors listed in Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 69–70 (9th Cir. 1975), abrogated on other grounds by City of Burlington v. Dague, 505 U.S. 557 (1992), that have not been subsumed in the lodestar calculation. See Caudle v. Bristow Optical Co., Inc., 224 F.3d 1014, 1028–29 (9th Cir. 2000).[2]

Here, Plaintiff's Counsel plans to petition for attorneys' fees not to exceed 33% of the gross settlement amount, and specifies a cost limit of 15,000. (Agreement § 5.2.) Plaintiff does not offer a lodestar calculation. The Court finds 33% is on the high side of fair, but is potentially reasonable. Without justifying documentation and examples of similar awards, the Court may need to adjust the amount at the final approval stage.

F. Remaining Factors

In addition to the factors discussed above, the Court may consider the risk of maintaining class action status throughout the trial, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. Staton, 327 F.3d at 959 (internal citations omitted). At this stage, the Court cannot fully analyze the remaining factors. For example, there is no governmental participant in this action. Additionally, the Settlement Class members have yet to receive notice of the Settlement Agreement and have not had an opportunity to comment or object to its terms. The Court directs Plaintiff, in the motion for final approval, to provide briefing on these issues.

[2] In Kerr, the Ninth Circuit adopted the 12–factor test articulated in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974) which identified the following factors for determining reasonable fees: (1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the "undesirability" of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. Kerr, 526 F.2d at 70.

On balance the factors support preliminary approval of the Agreement. The Agreement is potentially fair, adequate, and reasonable.

VI. CONCLUSION

For the foregoing reasons, the Court GRANTS Plaintiff's Motion for Preliminary Approval. The Court ORDERS as follows:

1. The Settlement Agreement is preliminarily approved as potentially fair, reasonable, and adequate for members of the Settlement Classes. However, in their motion for final approval, Plaintiff shall address each of the concerns raised above.

2. The following Settlement Classes are certified for settlement purposes only:

   FRCA Class: All United States unique job applicants on whom Defendant procured a consumer report for employment purposes based upon the same disclosure form provided to Plaintiff. Class membership begins on April 5, 2014 and continues through July 1, 2018.

   ICRAA Class: All unique job applicants on whom Defendant procured a consumer report for employment purposes based upon the same disclosure form provided to Plaintiff and who provided a California address as their address of residence. Class membership begins on April 5, 2014 and continues through July 1, 2018.

   CCRAA Class: All unique job applicants on whom Defendant procured a consumer report for employment purposes containing consumer credit information based upon the same disclosure form provided to Plaintiff and who provided a California address as their address of residence. Class membership begins on April 5, 2012 and continues through July 1, 2018.

3. The Court appoints Douglas Han, of Justice Law Corporation, to serve as counsel on behalf of the Settlement Classes for purposes of settlement only.

4. Plaintiff Harry Noriesta is appointed as the representative of the Settlement Classes for purposes of settlement only.

5. The Court appoints JND Legal Administrator as the settlement administrator.

6. The Notice and Exclusion Form are approved.

7. The Court authorizes mailing of Notice to the Settlement Class members by first-class regular mail and pursuant to the Settlement Agreement.

8. The hearing date for the Final Fairness Hearing is hereby set for **Monday, October 19, 2020** at 9:00 a.m. in Courtroom 1 of the United States District Court for the Central District of California, Eastern Division located at 3470 12th Street, Riverside, California 92501.

IT IS SO ORDERED.