

1
2
3
4
5
6
7
8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 FRANCESCA FORD, ISABEL
12 RODRIGUEZ, individually, and on
13 behalf of the other members of the
14 general public similarly situated,

15 Plaintiffs,

16 vs.

17 CEC ENTERTAINMENT, INC.
18 D/B/A CHUCK E. CHEESE'S, a
19 Kansas Corporation,

20 Defendant.
21

CASE NO. 14-CV-677 JLS (JLB)

**ORDER GRANTING PLAINTIFFS'
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

(ECF No. 36)

22 Presently before the Court is Plaintiffs Motion For Preliminary Approval of
23 Class Action Settlement. (Mot. Prelim. Approval, ECF No. 36.) Having considered
24 Plaintiffs' unopposed motion and the law, the Court **GRANTS** the Motion.

25 **BACKGROUND**

26 This case arises out of Defendant's alleged violations of the Fair Credit
27 Reporting Act ("FCRA"), 15 U.S.C. sections 1681b(b)(2)(A) and 1681d(a); the
28 California Consumer Credit Reporting Agencies Act, Cal. Civ. Code section 1785, *et*

1 *seq.*; and the California Investigative Consumer Reporting Agencies Act, Cal. Civ.
2 Code section 1786, *et seq.* (*Id.* at 9.¹) Plaintiffs allege that Defendant violated the
3 FCRA and related statutes by using background check disclosure forms in its
4 employment applications that contained extraneous information, such that the forms
5 did not solely consist of the disclosure. (*Id.*) Defendant estimates that it procured
6 background checks for approximately 28,500 people who executed these forms
7 (“Settlement Class”). (*Id.*) Plaintiffs also claim that Defendant took adverse
8 employment actions with respect to approximately 440 people as a result of the
9 background checks (“Adverse Action Subclass”). (*Id.*)

10 Plaintiffs now ask the Court to conditionally certify the Class for settlement
11 purposes as the Parties have agreed on a class-wide resolution to the dispute. In its
12 unopposed Motion, Plaintiffs seek an order: (1) granting preliminary approval of class
13 settlement; (2) conditionally certifying the Settlement Class; (3) approving the Parties’
14 proposed form and method of giving Class Members notice of the action and the
15 proposed settlement; (4) appointing Francesca Ford as the class representative; (5)
16 appointing Capstone Law APC as class counsel; (6) appointing Kurtzman Carson
17 Consultants, LLC as the Settlement Administrator; and (7) scheduling a hearing date
18 and briefing schedule for final settlement approval and Plaintiffs’ fee and expense
19 application. (*Id.* at 11.)

20 **TERMS OF THE PROPOSED SETTLEMENT AGREEMENT**

21 The proposed settlement class (the “Settlement Class” or the “Class”) consists
22 of “all individuals for whom CEC obtained a background check from a third-party
23 credit reporting agency between March 24, 2012, and the date of preliminary approval,
24 without fully complying with the disclosure and authorization requirements of the
25 FCRA, the California Consumer Credit Reporting Agencies Act and the California
26 Investigative Consumer Reporting Agencies Act.” (Friedl Decl. 12, ECF No. 36-1.)
27 The adverse action subclass consists of “members of the Settlement Class against
28

¹For ease of reference, all page numbers cited to are those at the top of the page.

1 whom CEC took adverse employment action based on the background check that CEC
2 procured.” (*Id.* at 7.)

3 Defendant has agreed to settle the class claims with Plaintiffs for a Maximum
4 Settlement Sum of \$1,750,500. (Mot. Prelim. Approval 14, ECF No. 36.) This amount
5 includes: “(1) individual settlement payments to the Participating Settlement Class
6 Members and Adverse Action Subclass Members; (2) a class representative
7 enhancement of up to \$5,000 to the Class Representative and a separate enhancement
8 of up to \$2,500 for Plaintiff Isabel Rodriguez; (3) payment to Class Counsel of
9 attorneys’ fees in an amount not to exceed one-third of the Settlement Class Maximum
10 Settlement Sum; (4) Class Counsel’s reasonable, documented expenses attributable to
11 the Settlement Class part of the Settlement; (5) the reasonable fees and expenses of the
12 Settlement Administrator attributable to the administration of the Settlement Class part
13 of the Settlement in an amount not to exceed \$78,500.” (Friedl Decl. 8, 13, ECF No.
14 36-1.) In addition, a portion of the fund - \$40,500 - is allocated to the Adverse Action
15 Subclass from which the Settlement Administrator will pay Subclass members less
16 attorneys’ fees and costs of the amount allocated to the Subclass and settlement
17 administrator costs of no more than \$1500. (*Id.* at 8.) Lastly, CEC has agreed to make
18 changes to its background check and disclosure forms to comply with applicable law
19 and has already implemented new forms in all states in which it does business. (*Id.* at
20 24.)

21 The Parties have negotiated a default automatic payment procedure whereby all
22 Class Members are entitled to receive a check for approximately \$38 without having
23 to submit a claim form. (Mot. Prelim. Approval 15–16, ECF No. 36.) In addition,
24 Adverse Action Subclass Members are entitled to receive approximately \$63 in
25 addition to their class payments. (*Id.*)

26 SETTLEMENT CLASS CERTIFICATION

27 Before granting preliminary approval of a class action settlement agreement, the
28 Court must first determine whether the proposed class can be certified. *Amchem Prods.*

1 v. *Windsor*, 521 U.S. 591, 620 (1997) (indicating that a district court must apply
2 “undiluted, even heightened, attention [to class certification] in the settlement context”
3 in order to protect absentees).

4 Class actions are governed by Federal Rule of Civil Procedure 23. In order to
5 certify a class, each of the four requirements of Rule 23(a) and at least one of the
6 requirements of Rule 23(b) must be met. *Zinser v. Accufix Research Inst., Inc.*, 253
7 F.3d 1180, 1186 (9th Cir. 2001). Rule 23(a) allows a class to be certified only if:

- 8 (1) the class is so numerous that joinder of all members is impracticable;
- 9 (2) there are questions of law or fact common to the class;
- 10 (3) the claims or defenses of the representative parties are typical of the
- 11 claims or defenses of the class; and
- 12 (4) the representative parties will fairly and adequately protect the
- 13 interests of the class.

14 Fed. R. Civ. P. Rule 23(a).

15 In addition to Rule 23(a)’s requirements, the proposed class must satisfy the
16 requirements of one of the subdivisions of Rule 23(b). Here, the parties seek to certify
17 the Settlement Class under subdivision Rule 23(b)(3), which permits certification if
18 “questions of law or fact common to class members predominate over any questions
19 affecting only individual class members,” and “a class action is superior to other
20 available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ.
21 P. 23(b)(3). The Court addresses each of these requirements in turn.

22 **1. Rule 23(a)(1): Numerosity**

23 To satisfy Rule 23(a)(1), a class must be “so numerous that joinder of all
24 members is impracticable.” Fed. R. Civ. P. 23(a)(1). “[C]ourts generally find that the
25 numerosity factor is satisfied if the class comprises 40 or more members and will find
26 that it has not been satisfied when the class comprises 21 or fewer.” *Celano v. Marriott*
27 *Int’l, Inc.*, 242 F.R.D. 544, 549 (N.D. Cal. 2007).

1 Here, the proposed Settlement Class consists of approximately 28,500 members.
2 (Mot. Prelim. Approval 26, ECF No. 36.) Further, of the Settlement Class,
3 approximately 405 persons also belong to the Adverse Action Subclass. Joinder of all
4 members is therefore impracticable for purposes of Rule 23(a)(1), and the numerosity
5 requirement is accordingly satisfied.

6 **2. Rule 23(a)(2): Commonality**

7 Rule 23(a)(2) requires that there be “questions of law or fact common to the
8 class.” Fed. R. Civ. P. 23(a)(2). Commonality requires that “the class members ‘have
9 suffered the same injury.’” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551
10 (2011) (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 (1982)). “The
11 existence of shared legal issues with divergent factual predicates is sufficient, as is a
12 common core of salient facts coupled with disparate legal remedies within the class.”
13 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998).

14 Here, each Settlement Class Member executed a form disclosing the employer’s
15 intent to obtain a credit report or background check on a current or prospective
16 employee that contained a release of liability. (Mot. Prelim. Approval 27, ECF No.
17 36.) One common question resolves the dispute: did Defendant willfully violate the
18 law by using these forms? (*Id.*) Accordingly, this common question predominates this
19 action. In addition, with respect to the Adverse Action Subclass, the answer to whether
20 Defendant took adverse action against them based on a background check or report
21 obtained by a third party will drive the resolution of the dispute. Thus, it is appropriate
22 for these issues to be adjudicated on a class-wide basis. For the aforementioned
23 reasons, Rule 23(a)(2) is satisfied.

24 **3. Rule 23(a)(3): Typicality**

25 To satisfy Rule 23(a)(3), Plaintiffs’ claims must be typical of the claims of the
26 Class. The typicality requirement is “permissive” and requires only that Plaintiffs’
27 claims “are reasonably coextensive with those of absent class members.” *Hanlon*, 150
28 F.3d at 1020. “The test of typicality ‘is whether other members have the same or

1 similar injury, whether the action is based on conduct which is not unique to the named
2 plaintiffs, and whether other class members have been injured by the same course of
3 conduct.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (quoting
4 *Schwartz v. Harp*, 108 F.R.D. 279, 282 (C.D. Cal. 1985)). “[C]lass certification should
5 not be granted if ‘there is a danger that absent class members will suffer if their
6 representative is preoccupied with defenses unique to it.’” *Id.* (citation omitted).

7 Here, Plaintiffs’ claims allegedly arise out of the same underlying conduct as
8 those pertaining to the proposed Settlement Class. Like the members of Settlement
9 Class, Plaintiff was allegedly harmed by Defendant’s unlawful use of the disclosure
10 form. (Mot. Prelim. Approval 28, ECF No. 36.) Accordingly, Plaintiffs’ claims are
11 typical of the claims of the members of the proposed Settlement Class, satisfying Rule
12 23(a)(3).

13 **4. Rule 23(a)(4): Adequacy**

14 Rule 23(a)(4) requires that the named representatives fairly and adequately
15 protect the interests of the class. “To satisfy constitutional due process concerns,
16 absent class members must be afforded adequate representation before entry of
17 judgment which binds them.” *Hanlon*, 150 F.3d at 1020 (citing *Hansberry v. Lee*, 311
18 U.S. 32, 42–43 (1940)). To determine legal adequacy, the Court must resolve two
19 questions: “(1) do the named plaintiffs and their counsel have any conflicts of interest
20 with other class members, and (2) will the named plaintiffs and their counsel prosecute
21 the action vigorously on behalf of the class?” *Id.*

22 Here, there is no reason to believe that Francesca Ford and Class Counsel (“Class
23 Counsel”) have any conflict of interest with the proposed Settlement Class members.
24 There is also no reason to believe that Francesca Ford and Class Counsel have thus far
25 failed to vigorously investigate and litigate this case. Plaintiffs have retained
26 competent counsel, who has conducted extensive investigation, research, and discovery
27 in this case. (Mot. Prelim. Approval 12, ECF No. 36.) Furthermore, Class Counsel has
28 significant class action litigation experience in state and federal court. (Friedl Decl.

64–73, ECF No. 36-1.) Thus, Francesca Ford and Class Counsel adequately represent the proposed Settlement Class members, and Rule 23(a)(4)’s adequacy requirement is met.

5. Rule 23(b)(3)

Rule 23(b)(3) permits certification if “questions of law or fact common to class members predominate over any questions affecting only individual class members,” and “a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

A. Predominance

“The Rule 23(b)(3) predominance inquiry tests whether the proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods.*, 521 U.S. at 623. “Rule 23(b)(3) focuses on the relationship between the common and individual issues.” *Hanlon*, 150 F.3d at 1022.

Here, the common issue of whether Defendant willfully violated the relevant laws predominates over any individual issue because proof of actual injury for this statutory cause of action is not necessary. (Mot. Prelim. Approval 29, ECF No. 36.) Further, for purposes of settlement, Class Members are not required to prove any evidentiary or factual issues that could arise in litigation. Accordingly, the predominance requirement of Rule 23(b)(3) is satisfied.

B. Superiority

The final requirement for certification pursuant to Rule 23(b)(3) is “that a class action [be] superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). The superiority inquiry requires the Court to consider the four factors listed in Rule 23(b)(3):

(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;

1 (C) the desirability or undesirability of concentrating the litigation of the
2 claims in the particular forum; and
3 (D) the likely difficulties in managing a class action.

4 Fed. R. Civ. P. 23(b)(3); *see also Zinser*, 253 F.3d at 1190. A court need not consider
5 the fourth factor, however, when certification is solely for the purpose of settlement.
6 *See True v. Am. Honda Motor Co.*, 749 F. Supp. 2d 1052, 1066 n.12 (C.D. Cal. 2010);
7 *see also Amchem*, 521 U.S. at 620 (“Confronted with a request for settlement-only class
8 certification, a district court need not inquire whether the case, if tried, would present
9 intractable management problems, for the proposal is that there be no trial.”). The
10 superiority inquiry focuses ““on the efficiency and economy elements of the class
11 action so that cases allowed under [Rule 23(b)(3)] are those that can be adjudicated
12 most profitably on a representative basis.”” *Zinser*, 253 F.3d at 1190 (quoting 7A
13 CHARLES ALAN WRIGHT, ARTHUR R. MILLER, & MARY KAY KANE, FEDERAL PRACTICE
14 AND PROCEDURE § 1780, at 562 (2d ed. 1986)). A district court has “broad discretion”
15 in determining whether class treatment is superior. *Kamm v. Cal. City Dev. Co.*, 509
16 F.2d 205, 210 (9th Cir. 1975).

17 Here, Class Members claims involve the same issues arising from the same
18 factual bases. If class members’ claims were considered on an individual basis, more
19 than 28,000 cases would follow a similar trajectory, and each would come to a similar
20 result. Furthermore, individual cases would consume a significant amount of the
21 Court’s and the class members’ resources. It is also likely that Class Members would
22 likely not pursue litigation on an individual basis due to the high costs of pursuing
23 individual claims. The interests of the Settlement Class members in individually
24 controlling the litigation are minimal, and it is desirable to concentrate the litigation in
25 a single forum. Accordingly, class treatment is the superior method of adjudicating this
26 controversy, and the superiority requirement of Rule 23(b)(3) is met.

1 **6. Conclusion**

2 For the reasons stated above, the Settlement Class is hereby certified for
3 settlement purposes only. The Court finds certification of the Settlement Class proper
4 under Rule 23(b)(3).

5 **PRELIMINARY FAIRNESS DETERMINATION**

6 Having certified the Settlement Class, the Court must next make a preliminary
7 determination as to whether the proposed settlement is “fair, reasonable, and adequate”
8 pursuant to Rule 23(e)(1)(C). Relevant factors to this determination include:

9 The strength of the plaintiffs’ case; the risk, expense, complexity, and
10 likely duration of further litigation; the risk of maintaining class action
11 status throughout the trial; the amount offered in settlement; the extent
12 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.

13 *Hanlon*, 150 F.3d at 1026. Furthermore, “settlement approval that takes place prior to
14 formal class certification requires a higher standard of fairness.” *Id.*

15 Here, the Settlement is the result of arms’-length negotiations conducted over
16 several months, including three Early Neutral Evaluation sessions before Magistrate
17 Judge Burkhardt. (Mot. Prelim. Approval 18, ECF No. 36.)

18 **1. Strength of Plaintiffs’ Case**

19 In order to succeed on the merits, Plaintiffs would have to prove that Defendant’s
20 violations were “willful.” (*Id.* at 19–20.) This defense coupled with Plaintiffs’ burden
21 of proof would make it difficult to prove liability. (*Id.* at 20.) In addition, some courts
22 have categorically rejected the theory of liability in this case, thus Plaintiffs face a
23 substantial risk of complete loss. (*Id.* at 20–21.) Accordingly, in light of the
24 challenges Plaintiffs would face moving forward, the proposed settlement represents
25 a fair and adequate resolution of Plaintiffs’ claims.

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

27 Class Counsel believes that settling this matter will substantially benefit the
28 Class, especially considering “the uncertain legal landscape,” substantial costs of such

1 complex litigation with more than 28,000 members, and Defendant's potential liability
2 were the case to succeed on the merits. (*Id.* at 22.) In addition, the risk of change in
3 case law or statutory enactments favors settlement. (*Id.*) Lastly, the potential for
4 lengthy and protracted litigation is a potential risk for this type of trial. (*Id.*)
5 Accordingly, this factor weighs in favor of settlement.

6 **3. Risk of Maintaining Class Action Status Throughout Trial**

7 The Parties also argue that there is a risk that the class ultimately would not be
8 certified, or, if the class was certified, that Defendants would appeal the certification
9 or that the class might later be de-certified. (*Id.* at 21–22.) Weighed against the fact
10 that Defendants do not object to a finding that the class elements are met for the
11 purposes of this settlement, this factor also weighs in favor of settlement.

12 **4. Amount Offered in Settlement**

13 The FCRA provides for statutory damages between \$100 and \$1,000 for a willful
14 violation. 15 U.S.C. § 1781n(a)(1)(A). As discussed above, it is unclear whether
15 Plaintiffs would be able to prove that Defendant's actions were willful. And, without
16 actual injury, it is unlikely that Class Members would receive the maximum statutory
17 damages. The Settlement Agreements requires Defendants to pay a total of \$1,750,000.
18 The Class Members will receive \$36 in actual cash payments without having to file a
19 claim. (Mot. Prelim. Approval 23, ECF No. 36.) In addition, the Adverse Action
20 Subclass will receive additional cash payment of \$63. Class members will receive
21 monetary compensation, rather than a coupon or an in-store gift card. Given the risks
22 of litigation and the potential statutory damages, the amount offered in settlement is fair
23 and reasonable, and this factor weighs in favor of settlement.

24 **5. Extent of Discovery Completed and Stage of Proceedings**

25 Prior to agreeing to settle this matter, the parties engaged in substantial
26 discovery, which included reviewing background check disclosures, authorization and
27 release forms, and background check policies and handbooks. (*Id.* at 25.) In addition,
28 Plaintiffs deposed Defendant and obtained class information from Defendant's credit

1 reporting agency. The case also went through the Early Neutral Evaluation process
2 which encouraged the settlement. Class Counsel gained significant knowledge of the
3 relevant facts and law throughout the discovery process and through its independent
4 investigation and evaluation. Accordingly, this factor weighs in favor of settlement.

5 **6. Experience and Views of Counsel**

6 Class Counsel believes the Settlement Agreement is fair, reasonable, and
7 adequate and in the best interest of the Settlement Class. (*Id.*) “The recommendations
8 of plaintiffs’ counsel should be given a presumption of reasonableness.” *Boyd v.*
9 *Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979). Here, the presumption of
10 reasonableness is warranted based on Class Counsel’s expertise in complex litigation,
11 familiarity with the relevant facts and law, and significant experience negotiating other
12 class and collective action settlements. According the appropriate weight to the
13 judgment of these experienced counsel, the Court concludes that the settlement is fair,
14 reasonable, and adequate.

15 **7. Conclusion**

16 For the reasons stated above, Plaintiffs’ Unopposed Motion for Preliminary
17 Approval of Class Settlement is **GRANTED**.

18 **ATTORNEY’S FEES AND INCENTIVE AWARDS**

19 Pursuant to the Settlement Agreement, Defendant has agreed not to object to or
20 oppose Plaintiffs’ application for attorneys’ fees and litigation expenses, provided that
21 Plaintiffs’ Counsel seeks no more than one-third of the \$1,750,000 Maximum
22 Settlement Fund. (Friedl Decl. 25, ECF No. 36-1.) In addition, the Settlement
23 Agreement provides for up to a \$5,000 incentive payment to Francesca Ford and a
24 \$2,500 incentive payment to Isabel Rodriguez. (*Id.* at 24.) Given that these awards are
25 included in the Settlement Agreement, they are included in the Court’s preliminary
26 determination that the Settlement Agreement is fair, reasonable, and adequate.

27 Incentive awards are meant to compensate named plaintiffs for the services they
28 provided and the risks they incurred during the course of the class action litigation.

1 The Court finds that these modest incentives awards are reasonable. In regard to the
2 attorneys' fees, the Court has discretion to award attorneys' fees based on "the
3 percentage-of-the-fund or the lodestar method." *In re Wash. Pub. Power Supply Sys.*
4 *Sec. Litig.*, 19 F.3d 1291, 1295-96 (9th Cir. 1994). The Ninth Circuit has routinely
5 applied the percentage-of-the-fund approach. *In re Pacific Enterprises Securities*
6 *Litigation*, 47 F.3d 373, 378-79 (9th Cir. 1994). Counsel seeks up to one-third of the
7 Maximum Settlement Fund, which is in line with other attorneys' fees awards in
8 California.² Class Counsel's requested fees are reasonable and are preliminarily
9 approved pending an application to and final approval by the Court per Fed. R. Civ. P.
10 23(h).

11 NOTICE OF CLASS CERTIFICATION AND SETTLEMENT

12 Pursuant to Rule 23(c)(2)(B), "[f]or any class certified under Rule 23(b)(3) the
13 court must direct to class members the best notice that is practicable under the
14 circumstances, including individual notice to all members who can be identified
15 through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B).³ Because the Court has
16

17 ²Various courts in the Ninth Circuit have awarded attorneys' fees valued at one third
18 of the Gross Settlement Value, including "*In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454,
19 457, 463 (9th Cir. 2000) (affirming award of fees equal to one-third of total recovery); *In re*
20 *Public Ser. Co. of New Mexico*, 1992 WL 278452, at *1, *12 (S.D. Cal. July 28, 1992
(awarding one-third); [and] *Antonopoulos v. North American Thoroughbreds, Inc.*, 1991 WL
427893, at *1, *4 (S.D. Cal. May 6, 1991) (awarding one-third)." (Mot. Prelim. Approval 31,
ECF No. 13-4.)

21 ³ Rule 23(c)(2)(B) further provides:

22 The notice must clearly and concisely state in plain, easily understood
23 language:

- 24 (i) the nature of the action;
- (ii) the definition of the class certified;
- 25 (iii) the class claims, issues, or defenses;
- (iv) that a class member may enter an appearance through an
26 attorney if the member so desires;
- (v) that the court will exclude from the class any member who
27 requests exclusion;
- (vi) the time and manner for requesting exclusion; and
- 28 (vii) the binding effect of a class judgment on members under Rule
23(c)(3).

1 determined that certification is appropriate under Rule 23(b)(3), the mandatory notice
2 procedures required by Rule 23(c)(2)(B) must be followed.

3 Where there is a class settlement, Rule 23(e)(1) requires the court to “direct
4 notice in a reasonable manner to all class members who would be bound by the
5 proposal.” Fed. R. Civ. P. 23(e)(1). “[T]he mechanics of the notice process are left to
6 the discretion of the court subject only to the broad ‘reasonableness’ standards imposed
7 by due process.” *Grunin v. Int’l House of Pancakes*, 513 F.2d 114, 120 (8th Cir. 1975).

8 The parties have agreed to notify the Class in writing by mailing all class
9 members a notice of class certification. (Mot. Prelim. Approval 31, ECF No. 36.)
10 Defendant will prepare, pay for, and send the notice with the assistance of a Settlement
11 Administrator within 30 days of the court’s entry of the Preliminary Approval Order.
12 (*Id.* at 16.) The proposed notice includes “a description of the action and Class claims,
13 as well as the Class Members’ right to opt out of, object to, or comment on the
14 proposed Settlement, including any application for attorneys’ fees, costs, and service
15 awards.” (*Id.*; Friedl Decl. 40–48, ECF No. 36-1.) The Notice provides clear
16 instructions on how to opt-out of the Settlement Agreement, which requires sending
17 a letter to the Settlement Administrator, and how to object to the Settlement, which
18 requires filing a written objection with the Court and serving counsel. (Friedl Decl.
19 45–46, ECF No. 36-1.) Having thoroughly reviewed the jointly drafted Notice of Class
20 Action Settlement, the Court finds that the method and content of the Notice comply
21 with Rule 23. Thus, the Court approves the Parties’ proposed notification plan.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 _____
Fed. R. Civ. P. 23(c)(2)(B).

CONCLUSION

For the reasons stated above, the Court **GRANTS** Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. The Court hereby **ORDERS** as follows:

1. PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT AGREEMENT:

The Settlement Agreement is preliminarily approved as fair, reasonable, and adequate pursuant to Federal Rule of Civil Procedure 23(e).

2. PRELIMINARY CLASS CERTIFICATION: Pursuant to Federal Rule of Civil

Procedure 23(b)(3), the action is hereby preliminarily certified, for settlement purposes only, as a class action on behalf of the following Settlement Class members with respect to the claims asserted in this Action:

Settlement Class: All persons for whom Defendant ordered or obtained a background check or report of any type (including, without limitation, a credit check or report, a consumer credit report, an investigative consumer report, a criminal history report or a reference check) from any third party, including, without limitation, General Information Services, at any time from March 24, 2012, through and including the Preliminary Approval Date, without complying fully with the disclosure and authorization requirements of the Fair Credit Reporting Act, 15 U.S.C. sections 1681b(b)(2)(A) and 1681d(a), the California Consumer Credit Reporting Agencies Act, California Civil Code section 1785, *et seq.*, the California Investigative Consumer Reporting Agencies Act, California Civil Code section 1786, *et seq.*, or any comparable provision of federal, state, or local law governing background checks, credit checks, consumer credit reports, investigative consumer reports, criminal history reports, or reference checks.

Adverse Action Subclass: All persons that Defendant subjected to adverse employment action (as defined by the FCRA, 15 U.S.C. section 1681, *et seq.*) Including, without limitation, a decision not to offer employment, promotion, or transfer or to terminate employment at any time from March 24, 2012, through and including the Preliminary Approval Date of the Settlement, based in whole or in part, upon a background check or report of any type (including, without limitation, a credit check or report, a consumer credit report, an investigative consumer report, a criminal history report or a reference check) that Defendant ordered or obtained from any third party including, without limitation, General Information Services, Inc. without complying fully with the disclosure and authorization requirements of the Fair Credit Reporting Act, 15 U.S.C. sections 1681b(b)(2)(A) and 1681d(a), the California Consumer Credit Reporting Agencies Act, California Civil Code section 1785, *et seq.*, the California Investigative Consumer Reporting Agencies Act, California Civil Code section 1786, *et seq.*, or any comparable provision of federal, state, or local law governing background checks, credit checks, consumer credit reports, investigative consumer reports, criminal history reports, or reference checks.

1 3. CLASS REPRESENTATIVE, CLASS COUNSEL, AND CLAIMS
2 ADMINISTRATOR: Pursuant to Federal Rule of Civil Procedure 23, the Court
3 preliminarily certifies, for settlement purposes only, Plaintiff Francesca Ford as the
4 Class Representative, and Capstone Law APC as Class Counsel. In addition, the Court
5 approves and appoints Kurtzman Carson Consultants, LLC as the Claims
6 Administrator.

7 4. NOTICE: The Court preliminarily approves the form and substance of the
8 proposed notice set forth in the Settlement Agreement and the Class Notice attached
9 as Exhibit A to the Settlement Agreement. (Friedl Decl. 40, ECF No. 36-1.) The form
10 and method for notifying the Class Members of the Settlement and its terms and
11 conditions satisfies the requirements of Federal Rule of Civil Procedure 23(c)(2)(B)
12 and 23(e). The Court finds that the Notice Procedure submitted by the parties
13 constitutes the best notice practicable under the circumstances. As provided in the
14 Settlement Agreement, the Claims Administrator shall provide notice to the Class by
15 First Class U.S. Mail and respond to Class Member inquiries.

16 *Within thirty (30) days of the date on which this Order is electronically*
17 *docketed*, the parties shall disseminate the Notice in the form attached
18 to as Exhibit A to the Settlement Agreement and in the manner and form
19 set forth in the Settlement Agreement.

20 5. FINAL APPROVAL HEARING: Judge Sammartino shall conduct a Final
21 Approval Hearing on Thursday, December 3, 2015, at 1:30 p.m. at 221 W. Broadway,
22 Courtroom 4A, 4th Floor, San Diego, CA 92101, to consider:

- 23 1. the fairness, reasonableness, and adequacy of the proposed settlement;
- 24 2. Plaintiffs' request for the award of attorneys' fees and costs;
- 25 3. the Class Representative enhancement;
- 26 4. dismissal with prejudice of the class action with respect to Defendants;
- 27 and
- 28 5. the entry of final judgment in this action.

1 At the Final Approval Hearing, the parties also shall be prepared to update the
2 Court on any new developments since the filing of the motion, including any untimely
3 submitted opt-outs, objections, and claims, or any other issues as the Court deems
4 appropriate.

5 The date and time of the Final Approval Hearing shall be included in the Notice
6 to be mailed to all class members.

7 6. MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT: *No*
8 *later than twenty -one (21) days before the Final Approval Hearing*, the parties shall
9 file Motion for Final Approval of Class Action Settlement. The Motion shall include
10 and address any objections received up to the filing date. In addition to the class
11 certification and settlement fairness factors, the motion shall address the number of
12 putative Settlement Class members who have opted out and the number of claims.

13 7. APPLICATION FOR ATTORNEYS' FEES, COSTS, AND CLASS
14 REPRESENTATIVE INCENTIVE AWARDS: *No later than twenty-one (21) days*
15 *before the Final Approval Hearing*, Class Counsel shall file an application for
16 attorneys' fees, costs, and class representative enhancement awards. Class Counsel
17 shall provide documentation detailing the number of hours incurred by attorneys in
18 litigating this action, supported by detailed time records, as well as hourly
19 compensation to which those attorneys are reasonably entitled. Class Counsel should
20 address the appropriateness of any upward or downward departure in the lodestar
21 calculation, as well as reasons why a percentage-of-the-fund approach to awarding
22 attorneys' fees may be more preferable in this case. Class Counsel should be prepared
23 to address any questions the Court may have regarding the application for fees at the
24 Final Approval Hearing.

25 8. MISCELLANEOUS PROVISIONS: In the event the proposed settlement is not
26 consummated for any reason, the conditional class certification shall be of no further
27 force or effect. Should the settlement not become final, the fact that the parties were
28 willing to stipulate to class certification as part of the settlement shall have no bearing

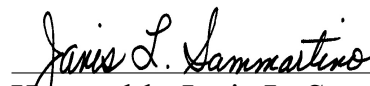
on, nor be admissible in connection with, the issue of whether a class should be certified in a non-settlement context.

9. SCHEDULE: The Court orders the following schedule for further proceedings:

Event	Date
Delivery of Class List to Claims Administrator by Defendants	Within 7 days of the date on which this Order is electronically docketed
Notice sent to Class Members by Claims Administrator	Within 30 days of the date on which this Order is electronically docketed
Last Day for Class Members to File Request for Exclusion from Settlement	No later than 60 days from the date of mailing the Notice
Last Day for Class Members to File Objections to the Settlement	No later than 60 days from the date of mailing the Notice
Parties to File Motion for Final Approval	No later than 21 days before the Final Approval Hearing
Class Counsel to File Motion for Attorneys' Fees and Costs and Incentive Fees	No later than 21 days before the Final Approval Hearing
Final Approval Hearing	Thursday, December 3, 2015, at 1:30 p.m.

IT IS SO ORDERED.

DATED: July 7, 2015



Honorable Janis L. Sammartino
United States District Judge