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

Case No.	**EDCV 20-214 JGB (KKx)**	Date	October 21, 2022
Title	***Martin Martinez Soto v. O Reilly Auto Enterprises, LLC, et al.***		

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. 56); and (2) VACATING the October 24, 2022 hearing (IN CHAMBERS)**

Before the Court is Plaintiff's unopposed motion for preliminary approval of class action settlement. ("Motion," Dkt. No. 56.) 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 the Motion, the Court **GRANTS** the Motion and **VACATES** the October 24, 2022 hearing.

I. BACKGROUND

On January 31, 2020, Plaintiff Martin Martinez Soto ("Soto" or "Plaintiff") filed this action on behalf of himself and a putative class. ("Complaint," Dkt. No. 1.) On April 17, 2020, Plaintiff filed an amended complaint. ("FAC," Dkt. No. 15.) The FAC alleges: (1) violation of the Fair Credit Reporting Act ("FCRA") for failure to make proper disclosures, 15 U.S.C. § 1681b(b)(2)(A)(i); and (2) violation of the FCRA for failure to obtain proper authorization, 15 U.S.C. § 1681b(b)(2)(A)(ii). (Id.) Plaintiff alleges that he completed an employment application to work for O'Reilly ("Defendant" or "O'Reilly") and the application included an FCRA form authorizing O'Reilly to obtain a consumer report as part of a background check of Plaintiff. (FAC ¶¶ 12, 20.) Plaintiff alleges that the form violates the FCRA for two reasons: first, the disclosure contains extraneous language and is not in a standalone document that consists solely of the disclosure; and second, the disclosure violates the clear and conspicuous disclosure requirement. (FAC ¶¶ 6-7.) The Court denied Defendant's motion to dismiss on June 11, 2020. ("MTD Order," Dkt. No. 22.)

Plaintiff filed the Motion on September 22, 2020. (See Mot.) In support of the Motion, Plaintiff filed the declaration of Kelsey M. Szamet, ("Szamet Declaration," Dkt. No. 56-1), which contains the parties' joint stipulation of class action settlement agreement ("Agreement," Szamet Decl., Ex. 1) and proposed notice to class, ("Class Notice," Szamet Decl., Ex. A). 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 parties seek certification of the proposed settlement class for purposes of the Agreement. (Mot. at 7.) The Agreement defines the settlement class as follows: "all employees in the United States who completed O'Reilly Auto Enterprises, LLC's disclosure, authorization, and digital signature forms in its job application and for whom a consumer report was procured during the Class Period." (Agreement ¶ I.11.) 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, but 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, the proposed class includes approximately 169,383 class members ("FCRA Class Members").[2] (Mot. at 8.) Accordingly, the Court concludes that the numerosity requirement is satisfied.

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 FCRA Class Member, in connection with their application for employment with Defendant, completed Defendant's standard form purporting to authorize a consumer report verifying their background and experience. (Mot. at 9.) The common question resolving the dispute is whether Defendant violated the law by using the form. Class members' claims therefore turn on the same factual and legal question. Accordingly, Plaintiff has established commonality.

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[2] See definition of FCRA Class Members infra Section IV.B.1.

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 FCRA Class Member's claim arises from the same underlying conduct: Defendant's alleged failure to use a lawful disclosure form. (Mot. at 9.) O'Reilly allegedly required all employment applicants to complete a form that violated FCRA's prohibition against including extraneous information in a required disclosure. (Id.) 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 and his attorneys of record ("Class Counsel") do not have interests antagonistic to those of the settlement class. (Szamet Decl. ¶ 25.) Plaintiff maintains that he shares the same interest as those of the settlement class—recovering damages resulting from alleged violations of Defendant's FCRA obligations. (Id.) Plaintiff is also represented by competent counsel with experience in wage and hour and consumer class actions. (Id. ¶ 33.) Class Counsel's firm currently serves as class counsel for dozens of pending class action lawsuits throughout California. (Mot. at 10.) 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). (Mot. at 10-12.)

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 the fundamental questions surrounding Defendant's liability can be established through generalized evidence: the class's claims arise from Defendant's alleged uniform policy of providing the class members with a standardized form facially violating the FCRA. (Mot. at 11.) Plaintiff's claim is based on factual and legal questions about Defendant's policy that are not only common to the class members, but predominate under FRCP 23(e). (Id.) 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 that litigating each claim individually would not be economical for individual class members because the expense of litigation would surpass the potential recovery. (Mot. at 11-12.) Accordingly, the Court concludes the superiority requirement is satisfied.

IV. SETTLEMENT AGREEMENT

A. Settlement Summary

The Agreement provides a maximum recovery of $950,000,00 (the "Maximum Settlement Amount"). (Mot. at 4.) The Maximum Settlement Amount will be used to pay the following:

- $495,044.36 for estimated settlement funds to the settlement class (the "Net

- Settlement Amount");
- $197,455.64 for administration costs regarding the settlement;
- $7,500.00 for a Service Award to Plaintiff; and
- $237,500.00 for attorneys' fees and $12,500 in litigation costs (the "Class Counsel Award").

(Id.) The amount of the Net Settlement Amount is contingent on the number of Participating FCRA Class Members (i.e., those who do not opt of the Settlement). (Id.) Based on Defendant's class data, Defendant has determined that there are 169,383 FCRA Class Members. (Id.) Based on this data, the Parties anticipate the approximate gross payment per class member on average will be $5.61 with an approximate net payment on average of $2.92. (Id.)

This is a non-reversionary, total payout settlement. (Id.) Any funds remaining in the Maximum Settlement Amount due to uncashed settlement checks (after a 160-day negotiability period) will be remitted to United Way, a 501c(3) non-profit organization. (Id. at 4-5.) Participating FCRA Class Members wanting to participate in the settlement need not do anything. (Id. at 5.)

B. Financial Terms

1. FCRA Class Members

"FCRA Class Members" are defined as "all employees in the United States who completed O'Reilly Auto Enterprises, LLC's disclosure, authorization, and digital signature forms in its job application and for whom a consumer report was procured during the Class Period." (Agreement § I.11.) The "Class Period" or "Covered Period" is the time period from January 31, 2015 to February 17, 2021. (Id. § 8.) "Participating FCRA Class Members" means those class members who did not submit a valid and timely request for exclusion pursuant to the Agreement. (Id. § 17.)

2. Payment and Distribution of Funds

No later than 20 days after the effective date (after final approval and exhaustion of appeal), Defendant will provide the Maximum Settlement Amount to the Settlement Administrator to fund the settlement. (Id. §§ I.10, III.14.) FCRA Class Member settlement payments will be paid from the Net Settlement Amount. (Id. § III.16.) Payments to each Participating FCRA Class Member will be paid in the form of a check and will be mailed by regular first-class U.S. mail to each member's last known mailing address within seven calendar days after Defendant makes the final settlement payment. (Id.) Each Participating FCRA Class Member will receive an equal share of the Net Settlement Amount. (Id. § III.17.)

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3. Class Representative

The Agreement provides for a service award of $7,500 to Plaintiff in exchange for his time and effort in bringing and prosecuting this matter, and for a release of his claims. (Id. § III.19.) This award will be paid from the Maximum Settlement Amount at the same time that participating settlement class members' checks are mailed out. (Id.)

4. Settlement Administration Costs

The Parties request that the Court appoint ILYM Group, Inc. as Settlement Administrator ("Settlement Administrator"). (Mot. at 6.) The Parties agree to allocate up to $197,455.64 of the Maximum Settlement Amount for settlement administrator costs. (Agreement § III.21.) The actual cost of settlement administration is expected to be $216,723.96 but the parties have agreed for Defendant to pay $19,268.32 of this amount to the Settlement Administrator separately from the Maximum Settlement Amount. (Id.)

5. Attorneys' Fees and Costs

The Agreement provides that Class Counsel will be paid $237,500 for attorneys' fees, which is 25% of the $950,000 common fund, and $12,500 in litigation costs. (Mot. at 4; Agreement § III.20.)

C. Injunctive Relief

The Agreement does not appear to include any injunctive relief.

D. Release

In exchange for the benefits of the Agreement, Participating FCRA Class Members will release Released Parties from:

> any and all claims arising out of the allegations made in the operative complaint on file in the Action, or that could have arisen based on the facts alleged in the Action, including, but not limited to, claims arising from the procurement of background checks, reference checks, investigations, and/or consumer reports or investigative consumer reports of any kind by any of the Released Parties, and any other claims for violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681b, et seq., (including 15 U.S.C. § 1681n and 1681o) or related federal, state, and/or local laws, including the California Consumer Reporting Agencies Act, the California Investigative Consumer Reporting Agencies Act, and California Business and Professions Code § 17200, et seq., whether willful or otherwise, for declaratory, injunctive and equitable relief or restitution, statutory damages, actual and compensatory damages, punitive damages, and costs and attorney's fees, during the Covered Period.

(Agreement § I.21.) The "Released Parties" are the following:

> Defendant, its parents, subsidiaries, and affiliates and all of their shareholders, officers, directors, agents, attorneys, insurers, reinsurers, investors, successors and assigns, owners, officials, partners, assigns, principals, heirs, representatives, predecessors in interest, beneficiaries, executors, members, privies, administrators, fiduciaries, and trustees and any individual or entity which could be jointly liable with Defendant.

(Id. § I.22.)

E. Notice

Within 14 days of the Court granting preliminary approval of the Agreement, Defendant will provide the Settlement Administrator with the class information for purposes of mailing the Class Notice to the FCRA Class Members. (Id. § III.6.) No later than three days after receipt of the class information, the Settlement Administrator will notify the parties' counsel that the list has been received and state the number of FCRA Class Members. (Id.)

Upon receipt of the class information, the Settlement Administrator will perform a search based on the national change of address database to update and correct any known or identifiable address changes. (Id. § III.7.) Within 30 days of the Court granting preliminary approval of the settlement, the Settlement Administrator will mail copies of the Class Notice to all FCRA Class Members via regular first-class U.S. mail. (Id.) The Settlement Administrator will exercise its best judgment to determine the current mailing address for each FCRA Class Member, including performing a skip-trace to identify any updated addresses. (Id.) The address identified by the Settlement Administrator as the current mailing address will be presumed to be the best mailing address for each FCRA Class Member. (Id.)

After the Class Notice is mailed, FCRA Class Members will have 60 days to object to, or opt out of, the settlement. (Mot. at 6.) The settlement provides that it will become effective only after the Court holds a final "fairness" hearing and approves the settlement. (Id.) The proposed Class Notice advises the FCRA Class Members about the fairness hearing and their opportunity to attend and be heard. (Id. at 7.)

Any class notice returned to the Settlement Administrator as undeliverable on or before the response deadline (60 days after the Settlement Administrator mails the Class Notice to FCRA Class Members) will be re-mailed once to the forwarding address affixed thereto. (Agreement §§ I.24, III.8.) If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine a correct address by use of skip-tracing, or other search using the name, address and/or social security number of the FCRA Class Member whose notice was undeliverable, and will then re-mail all returned, undelivered mail within 10 days of receiving notice that a notice was undeliverable. (Id. § III.8.) FCRA Class Members who receive a re-

mailed class notice will have their response deadline extended 20 days from the original response deadline. (Id.)

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 parties engaged in "formal discovery to understand the nature of the allegations and the scope of potential liability." (Mot. at 2; Szamet Decl. ¶ 9.) Defendant provided Plaintiff's counsel with "documents and pertinent data for the FCRA Class Members so that the [p]arties could fully investigate the claims at issue and understand their strengths and weaknesses." (Szamet Decl. ¶ 10.) On January 13, 2021, the parties "attended private mediation with Tripper Ortman, a well-regarded and experienced employment class action mediator with specific expertise mediating these types of claims. Although a settlement wasn't reached that day, the [p]arties continued their settlement efforts post-mediation with the aid of Mr. Ortman and were able to reach a proposed class action settlement." (Id. ¶ 11.)

Because Plaintiff participated in investigation and mediation, 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. See Lewis v. Starbucks Corp., 2008 WL 4196690, at *6 (E.D. Cal. Sept. 11, 2008) ("[A]pproval of a class action settlement is proper as long as discovery allowed the parties to form a clear view of the strengths and weaknesses of their cases.").

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 Net Settlement Amount is $495,044.36. (Mot. at 4.) This amount is contingent on the number of Participating FCRA Class Members. (Id.) Based on Defendant's class data, Defendant estimates that there are 169,383 FCRA Class Members. (Id.) Based on the number of FCRA Class Members, the parties anticipate the approximate gross payment per class member on average will be $5.61 with an approximate net payment on average of $2.92. (Id.) To ensure the FCRA Class Members are adequately compensated, the parties agree that the Maximum Settlement Amount may be increased if data reflects the total number of FCRA Class Members is more than 10% above 169,383. (Id.) Plaintiff contends that the present value of the settlement far exceeds what the settlement class would have likely received if the underlying claims were fully litigated. (Szamet Decl. ¶ 48.)

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 argues that Defendant's likely arguments posed significant risks in continued litigation, including the prospect that a class might not be certified, or a certified class may be significantly smaller than proposed. (Mot. at 17.) Plaintiff contends that Defendant likely would have advanced arguments that Plaintiff lacked standing based on a mere procedural violation because he did not suffer, or allege, a concrete injury. (Id. at 17-20 (citing Spokeo, Inc. v. Robins, 13 S. Ct. 1540 (2016) (holding that a consumer could not satisfy the injury-in-fact demands of Article III standing by only alleging a procedural violation of the FCRA) and TransUnion LLC v. Ramirez, 141 S. Ct. 2190 (2021) (holding that consumers other than named plaintiff lacked Article III standing to pursue claims under FCRA because there was no evidence of harm)).)

Plaintiff also argues that Defendant would have likely advanced an argument that Plaintiff's claims were time-barred because he allegedly knew or should have known that a background check was conducted at the time he applied for employment with Defendant in February 2016, yet he did not bring this case until 2020. (Mot. at 20.) Additionally, Plaintiff contends that Defendant would have argued that because the alleged violations were technical, Plaintiff is not entitled to damages. (Id. at 20-21.)

The Court believes the risk, expense, and likely duration of further litigation weigh in favor of preliminary approval. Without the 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 7; Szamet Decl. ¶¶ 3, 48.) 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 mediation with an experienced and well-regarded mediator. (Szamet Decl. ¶ 11.) 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 a service award of $7,500 for his time, involvement, and risk in connection with being a class representative and for

his release of claims. (Mot. at 16) The service award payment is in addition to Plaintiff's payment as an FCRA Class Member. (Agreement § III.19.)

Plaintiff provides no concrete information about his time spent participating in the litigation, or information regarding whether he was guaranteed to receive benefits. Plaintiff vaguely contends that he provided information to Class Counsel, compiled documents, participated in meetings to discuss the status of the case, and reviewed relevant documents. (Mot. at 16.) The Court therefore finds the requested service award only potentially reasonable and may not grant it in full should it finally approve the settlement. 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). For final fairness approval, the Court advises Plaintiff to provide greater detail. See Radcliffe v. Experian Info. Sols. Inc., 715 F.3d 1157, 1165 (9th Cir. 2013) (stating that there is a "serious question whether [a] class representative[] could be expected to fairly evaluate whether awards ranging from $26 to $750 is a fair settlement when [the class representative] would receive $5,000" in an incentive award).

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).

Here, Plaintiff's counsel requests a fee award in the amount of $237,500 which represents 25% of the $950,000 common fund. (Mot. at 15.) Plaintiff's counsel will also provide a lodestar cross-check at final approval. (Id. at 16.) The Court finds Plaintiff's request for attorneys' fees potentially reasonable.

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.

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

2. The following settlement classes is certified for settlement purposes only:

   FCRA Class: All employees in the United States who completed O'Reilly Auto Enterprises, LLC's disclosure, authorization, and digital signature forms in its job application and for whom a consumer report was procured during the Class Period.

3. The Court appoints Kelsey M. Szamet, of Kingsley & Kingsley, to serve as counsel on behalf of the settlement classes for purposes of settlement only.

4. Plaintiff Martin Martinez Soto is appointed as the representative of the settlement class for purposes of settlement only.

5. The Court appoints ILYM Group, Inc. as the settlement administrator.

6. The Class Notice form is approved.

7. The Court authorizes mailing of notice to the settlement class members by first-class regular mail and pursuant to the Agreement.

8. The hearing date for the Final Fairness Hearing is hereby set for **Monday, March 6, 2023** 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.