

1 Erika Angelos Heath (SBN 304683)
2 FRANCIS MAILMAN SOUMILAS, P.C.
3 369 Pine Street, Suite 410
4 San Francisco, CA 94104
5 Tel: (628) 246-1352
6 Fax: (215) 940-8000
7 eheath@consumerlawfirm.com

8 James A. Francis*
9 John Soumilas*
10 Lauren KW Brennan*
11 Edward H. Skipton*
12 FRANCIS MAILMAN SOUMILAS, P.C.
13 1600 Market Street, Suite 2510
14 Philadelphia, PA 19110
15 T: (215) 735-8600
16 F: (215) 940-8000
17 jfrancis@consumerlawfirm.com
18 jsoumilas@consumerlawfirm.com
19 lbrennan@consumerlawfirm.com
20 eskipton@consumerlawfirm.com

21 *Admitted *pro hac vice*

22 *Attorneys for Plaintiff
23 and the Settlement Class*

24 **UNITED STATES DISTRICT COURT**
25 **NORTHERN DISTRICT OF CALIFORNIA**

26 DAVID EDWARD WATSON,

27 *Plaintiff,*

28 v.

CHECKR, INC.,

Defendant.

Case No. 3:19-CV-03396-EMC

**MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: May 27, 2021
Time: 1:30 p.m.
Crtrm: virtual
Judge: Hon. Edward M. Chen

TABLE OF CONTENTS

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

TABLE OF AUTHORITIESiiii

NOTICE OF MOTION AND MOTION 1

MEMORANDUM OF POINTS AND AUTHORITIES 3

I. INTRODUCTION 3

II. BACKGROUND 4

A. The Continuous Check Arrest Record Product..... 4

B. The Experience of the Representative Plaintiff 5

C. The Proposed Settlement Class 5

III. THE PROPOSED SETTLEMENT..... 6

A. Class Certification. 7

B. Class Representation. 8

C. Relief to the Settlement Class. 8

1. Injunctive Relief..... 8

2. Monetary Relief. 9

D. The Settlement Administrator..... 10

E. Class Notice. 10

F. Class Members’ Right to Opt Out and to Object. 11

G. Class Member Payments and *Cy Pres* Awards 11

H. Release. 11

I. Service Award and Attorney’s Fees and Expenses..... 12

IV. LEGAL STANDARD 13

V. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED AND NOTICE SHOULD BE SENT TO THE CLASS..... 14

A. Class Representative and Class Counsel Have Adequately Represented the Class..... 15

B. The Settlement Negotiations Were at Arm’s Length 15

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

C.	The Relief Provided for the Class Is Adequate	16
1.	The Risks of Continued Litigation	16
2.	The Effectiveness of Proposed Method of Class Distribution	18
3.	Terms of Proposed Award of Attorneys’ Fees	18
4.	The Proposal Treats Class Members Equitably	19
VI.	THE SETTLEMENT CLASS SATISFIES RULE 23	20
A.	The Class Is Sufficiently Numerous	20
B.	There are Questions of Law and Fact That Are Common to the Class	20
C.	Plaintiff’s Claims Are Typical of the Proposed Class	21
D.	Plaintiff and His Counsel Will Adequately Represent the Class	22
E.	The Class Meets the Requirements of Rule 23(b)	23
1.	Rule 23(b)(2) Is Satisfied	23
2.	Rule 23(b)(3) Is Satisfied	23
VII.	CONCLUSION	25

TABLE OF AUTHORITIES

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

Page(s)

CASES

Abbas v. Early Warning Services, LLC,
No. 2:15-cv-01976-DLR (D. Ariz.)..... 9

Adams v. Inter-Con Sec. Sys. Inc.,
No. C-06-5428 MHP, 2007 WL 3225466 (N.D. Cal. Oct. 30, 2007) 16

Alberto v. GMRI, Inc.,
252 F.R.D. 652 (E.D. Cal. 2008)..... 14

Amchem Prods., Inc. v. Windsor,
521 U.S. 591 (1997)..... 23

Barel v. Bank of America,
255 F.R.D. 393 (E.D. Pa. 2009)..... 22

Beck-Ellman v. Kaz USA, Inc.,
No. 10-cv-02134, 2013 WL 1748729 (S.D. Cal. Jan. 7, 2013)..... 14

Berry v. LexisNexis Risk & Information Analytics Group, Inc.,
2014 WL 4403524 (E.D. Va. Sept. 5, 2014) 23

Berry v. Schulman,
807 F.3d 600 (4th Cir. 2015) 12, 19, 23

Blackie v. Barrack,
524 F.2d 891 (9th Cir. 1975) 21

Bonett v. Education Debt Services, Inc.,
2003 WL 21658267 (E.D. Pa. 2003) 15

Chakejian v. Equifax Info. Services, LLC,
256 F.R.D. 492 (E.D. Pa. 2009)..... 15

Churchill Village, LLC v. General Electric,
361 F.3d 566 (9th Cir. 2004) 16

In re Domestic Air Transp. Antitrust Litig.,
148 F.R.D. 297 (N.D. Ga. 1993) 20

In re Employee Benefit Plans Secs. Litig.,
1993 WL 330595 (D. Minn. June 2, 1993)..... 16

Giddiens v. First Advantage LNS Screening Solutions, Inc.,
No. 2:12-cv-2624 (ECF 55) (E.D. Pa. Jan. 20, 2015)..... 15

1 *Hanlon v. Chrysler Corp.*,
150 F.3d 1011 (9th Cir. 1998) 20, 21, 22

2 *Hanon v. Dataproducts Corp.*,
3 976 F.2d 497 (9th Cir. 1992) 21-22

4 *Hansen v. Ticket Track, Inc.*
5 213 F.R.D. 412 (W.D. Wash. 2003) 22

6 *Jones v. Midland Funding, LLC*,
7 No. 3:08-cv-802-RNC (ECF 82) (D. Conn. Oct. 13, 2009) 15

8 *Jordan v. Commonwealth Financial Systems, Inc.*,
237 F.R.D. 132 (E.D. Pa. 2006)..... 15

9 *LaRocque v. TRS Recovery Services, Inc.*,
285 F.R.D. 139 (D. Me. 2012)..... 15

10 *Leo v. AppFolio*,
11 No. 3:17-cv-05771-RJB (ECF 62) (W.D. Wash.) 9

12 *Leo v. AppFolio*,
13 No. 3:17-cv-05771-RJB (ECF 61) (W.D. Wash.) 17

14 *Leo v. AppFolio, Inc.*,
15 No. 3:17-cv-05771-RJB (ECF 66) (W.D. Wash.) 21

16 *Lerwill v. Inflight Motion Pictures, Inc.*,
582 F.2d 507 (9th Cir. 1978) 22

17 *Linney v. Cellular Alaska P’ship*,
18 151 F.3d 1234 (9th Cir. 1998) 14

19 *Local Joint Exec. Bd. Of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*,
20 244 F.3d 1152 (9th Cir. 2001) 24

21 *McCluskey v. Trustees of Red Dot Corp. Employee Stock Ownership Plan & Trust*,
268 F.R.D. 670 (W.D. Wash. 2010) 20

22 *Nat’l Rural Telecomm. Coop. v. DIRECTV, Inc.*,
23 221 F.R.D. 523 (C.D. Cal. 2004)..... 15

24 *In re Netflix Privacy Litig.*,
25 No. 5:11-cv-00379 EJD, 2012 WL 2598819 (N.D. Cal. July 5, 2012) 16

26 *In re Omnivision Tech., Inc.*,
559 F. Supp. 2d 1036 (N.D. Cal. 2008)..... 18-19

27 *Parra v. Bashas’, Inc.*,
28 536 F.3d 975 (9th Cir. 2008) 21

1 *Patel v. Trans Union, LLC*,
 308 F.R.D. 292 (N.D. Cal. 2015)..... 21, 24

2 *Patel v. Trans Union, LLC*,
 3 No. 3:14-cv-0522-LB (ECF 159) (N.D. Cal.) 9, 17

4 *Patel v. Trans Union, LLC*,
 5 3:14-cv-00522-LB (ECF 159-1) (N.D. Cal.)..... 9

6 *Ramirez v. Trans Union, LLC*,
 301 F.R.D. 408 (N.D. Cal. 2014)..... 21, 24

7 *Rodriguez v. Hayes*,
 8 591 F.3d 1105 (9th Cir. 2010) 23

9 *Rodriguez v. W. Publ’g Corp.*,
 10 563 F.3d 948 (9th Cir. 2009) 14

11 *Romero v. Producers Dairy Foods, Inc.*,
 235 F.R.D. 474 (E.D. Cal. 2006)..... 24

12 *Safeco Insurance Co. of America v. Burr*,
 13 551 U.S. 47 (2007)..... 17, 18

14 *Sapp v. Experian Info. Solutions*,
 2013 WL 2130956 (E.D. Pa. May 15, 2013)..... 15

15 *Serrano v. Sterling Testing Systems, Inc.*,
 16 711 F. Supp. 2d 402 (E.D. Pa. 2010)..... 15

17 *Summerfield v. Equifax Info. Services, LCC*,
 18 264 F.R.D. 133 (D. N.J. 2009)..... 15

19 *In re Tableware Antitrust Litig.*,
 241 F.R.D. 644 (N.D. Cal. 2007)..... 24

20 *In re Tableware Antitrust Litig.*,
 21 484 F. Supp. 2d 1078 (N.D. Cal. 2007)..... 14

22 *Van Bronkhorst v. Safeco Corp.*,
 23 529 F.2d 943 (9th Cir. 1976) 14

24 *In re Wash. Pub. Power Supply Sys. Sec. Litig.*,
 19 F.3d 1291 (9th Cir. 1994) 18

25 *White v. Experian Info. Solutions*,
 26 993 F. Supp. 2d 1154 (C.D. Cal. 2014)..... 15, 23

27 *Wills v. Starbucks Corp.*,
 1:17-cv-03654-CAP (ECF 55) (N.D. Ga.)..... 10

28

STATUTES & FEDERAL RULES

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

CAFA, 28 U.S.C. § 1711, *et seq.*..... 10

Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681x..... *passim*

 15 U.S.C. § 1681e(b)..... *passim*

 15 U.S.C. § 1681i(a)..... 3

 15 U.S.C. § 1681n..... 9, 17

 15 U.S.C. § 1681n(a)(1)(A)..... 17

 15 U.S.C. §§ 1681o..... 17

Fed. R. Civ. P. 23..... *passim*

 Fed. R. Civ. P. 23(a) 1, 23

 Fed. R. Civ. P. 23(a)(2)..... 20, 21

 Fed. R. Civ. P. 23(a)(3)..... 21

 Fed. R. Civ. P. 23(a)(4)..... 22

 Fed. R. Civ. P. 23(b) 23

 Fed. R. Civ. P. 23(b)(2) 3, 4, 8, 12, 23

 Fed. R. Civ. P. 23(b)(3) *passim*

 Fed. R. Civ. P. 23(c)(2)..... 2

 Fed. R. Civ. P. 23(e) 13

 Fed. R. Civ. P. 23(e)(1)..... 2

 Fed. R. Civ. P. 23(e)(1)(A) 13

 Fed. R. Civ. P. 23(e)(1)(B) 4, 13, 14

 Fed. R. Civ. P. 23(e)(2)..... 4, 13, 14

 Fed. R. Civ. P. 23(e)(2)(C)(ii) 18

 Fed. R. Civ. P. 23(e)(3)..... 13

OTHER AUTHORITIES

Herbert B. Newberg & Alba Conte, *NEWBERG ON CLASS ACTIONS* (4th ed. 2002) 13, 14, 15

1 MANUAL FOR COMPLEX LITIGATION (4th ed. 2004) 13, 14

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

NOTICE OF MOTION AND MOTION

1
2 PLEASE TAKE NOTICE that on May 27, 2021 at 1:30 p.m., or as soon thereafter as the
3 matter may be heard, in Courtroom 3 of the United States District Court for the Northern District
4 of California, located at 450 Golden Gate Avenue, San Francisco, California, 94102, before the
5 Honorable Edward M. Chen, Plaintiff David Watson (“Plaintiff”) on behalf of himself and the
6 proposed Settlement Class will respectfully move this Court for preliminary approval of the
7 settlement Plaintiff has reached with Defendant Checkr, Inc. (“Defendant” or “Checkr”). In
8 particular, Plaintiff will move this Court:

- 9 1. To preliminarily approve the Settlement Agreement and Release of Claims (the
10 “Settlement Agreement” or “Agreement”) between Plaintiff and Defendant;
11 2. To certify under Fed. R. Civ. P. 23(a) & (b)(3), for settlement purposes only, two
12 settlement class subgroups defined as follows:

13 a. **The “Mismatch Subgroup”**: all natural persons residing in the United States
14 who: (1) were subject to at least one Continuous Check arrest record report (“CC
15 Arrest Report”) from July 1, 2018 to the date that the Court enters its Preliminary
16 Approval Order, where (2) Checkr’s records for the CC Arrest Reports reflect that
17 the name in the Checkr name field of the CC arrest report did not have the same
18 characters as the characters in the vendor name field of the CC arrest report, and
19 where (3) the four digit year of birth in the Checkr date of birth field of the CC
20 arrest report did not have the same characters as a four digit year of birth in the
21 vendor date of birth field of the CC arrest report.

22 b. **The “Dispute Subgroup”**: all natural persons residing in the United States who
23 (1) were subject to at least one CC Arrest Report between July 1, 2018 to the date
24 that the Court enters its Preliminary Approval Order, where (2) Checkr’s records
25 pertaining to disputes reasonably indicate that the consumer may have disputed
26 with Checkr that the arrest record contained in the CC Arrest Report did not
27 belong to them, and where (3) by the date that the Court enters its Preliminary
28

1 Approval Order, Checkr’s records reflect that the consumer’s dispute of the CC
2 Arrest Report resulted in a changed CC Arrest Report.

- 3 3. To appoint the named Plaintiffs as Settlement Class Representatives and Plaintiffs’
4 attorneys as Settlement Class Counsel.
- 5 4. To approve the proposed notices to be distributed to Class Members under Fed. R. Civ.
6 P. 23(c)(2) and (e)(1).
- 7 5. To set a fairness hearing consistent with the schedule for class notice, objections, and
8 requests for exclusions, as set forth in this Motion

9 This motion is based on the accompanying Memorandum of Points and Authorities; the
10 Settlement Agreement and exhibits (including the Proposed Class Notices, attached as Exhibits
11 F and G); such other documents as may be submitted in support of this Motion; such oral
12 argument as may be heard by the Court; and all other papers on file in this action.

13

14 Dated: April 19, 2021

Respectfully submitted,

FRANCIS MAILMAN SOUMILAS P.C.

16 By: /s/ John Soumilas
 John Soumilas

17 Attorneys for Plaintiff and the Class

18

19

20

21

22

23

24

25

26

27

28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

1
2
3 This class action lawsuit has been brought under the Fair Credit Reporting Act (“FCRA”),
4 15 U.S.C. §§ 1681-1681x. Defendant Checkr, Inc. (“Defendant” or “Checkr”) is a consumer
5 reporting agency (“CRA”) regulated by the FCRA, and regularly prepares and sells consumer
6 reports containing public record items, also known as background checks.

7 This case addresses certain practices with respect to a background check product Checkr
8 began offering to Uber in or about July 2018, which sought to monitor individuals already
9 working after passing a background check before starting to drive for Uber. Through the product,
10 Continuous Check Arrest Reports (“CC Arrest Reports”) Checkr delivered subsequent reports
11 when Checkr identified an arrest record it attributed to a particular individual.

12 Plaintiff’s allegation is that the CC Arrest Report product relied upon incomplete data
13 and inadequate matching logic, resulting in the sale of certain inaccurate reports that cause
14 individuals such as Plaintiff to be immediately suspended from their jobs as Uber drivers.
15 Plaintiff asserts that Checkr’s procedures for preparing these CC Arrest Reports violate the
16 FCRA’s mandate that CRAs “follow reasonable procedures to assure maximum possible
17 accuracy of the information” included on a report. 15 U.S.C. § 1681e(b). Plaintiff Watson
18 disputed the error on his report pursuant to 15 U.S.C. § 1681i(a), and Checkr corrected the same,
19 but not before Plaintiff lost approximately one month of income as an Uber driver. Plaintiff
20 brought this case on behalf of himself and other similarly situated drivers, who were the subject
21 of a CC Arrest Report prepared by Checkr for Uber which contained an inaccurate arrest record.

22 The parties have successfully negotiated in a single comprehensive Settlement
23 Agreement what amounts to two separate class-wide forms of relief which addresses Plaintiff’s
24 claims in vital ways. The overall Settlement Agreement provides for both (1) injunctive relief
25 under Rule 23(b)(2) and separately (2) monetary relief under Rule 23(b)(3). On balance the
26 settlement in this matter, presented here for approval, is fair, reasonable and adequate.

27 First, with respect to the injunctive relief, Checkr has agreed to make important and
28

1 specific changes, enforced through a Consent Order entered by the Court, to its practices for
 2 attributing arrest records to consumers in connection with the CC Arrest Report product. The
 3 practices changes were separately and vigorously negotiated, and are expected to correct errors
 4 *before the data is provided to Uber* such as that error which negatively impacted Plaintiff Watson
 5 and others. There is a significant, tangible benefit in this Rule 23(b)(2) settlement alone, both
 6 for the settlement groups defined below and for Uber drivers in general.

7 Second, Class Members will be provided a significant monetary recovery under Rule
 8 23(b)(3). Those persons who were the subject of an inaccurate CC Arrest Report like Watson's
 9 will receive compensation within the FCRA's range of statutory damages of \$100-\$1,000, and
 10 likely *above* that range depending on the claim rate of one class, as discussed below. Most FCRA
 11 class action settlements under Rule 23(b)(3) are within the statute's statutory damages range.

12 Securing these benefits on a class-wide basis is particularly valuable in light of the parties'
 13 dispute regarding whether an arbitration clause prohibiting class resolution applies to Plaintiff's
 14 claim here, as well as disagreements regarding the merits and under Rule 23.

15 By this motion, Plaintiff respectfully requests that this Court preliminarily approve the
 16 Settlement Agreement by entering an Order: (1) finding that it will likely be able to approve the
 17 proposed settlement under Fed. R. Civ. P. 23(e)(2), as amended, and certify the proposed
 18 Settlement Class for purposes of judgment; (2) approving the form, content, and method of
 19 delivering notice to the Class as set out in the Settlement Agreement, attached hereto as Appendix
 20 I, and the exhibits attached thereto; and (3) scheduling a final approval hearing.¹

21 **II. BACKGROUND**

22 **A. The Continuous Check Arrest Record Product**

23 Checkr began offering its CC Arrest Report product in July 2018, advertising the product
 24 as a way for companies to stay informed of changes to a worker's background after they are

25 _____
 26 ¹ This motion reflects amendments to Fed. R. Civ. P. 23 which took effect on December 1, 2018.
 27 The amendments clarified the requirements for court review and approval of class action
 28 settlements. Fed. R. Civ. P. 23(e)(1)(B). Consistent with this District's procedural guidance for
 class action settlements, this motion continues to refer to this process as "preliminary approval"
 of the settlement.

1 hired. CC Arrest Reports include, among other data, a “real-time” arrest record feed obtained
2 from a vendor. Uber subscribed to the CC Arrest Report product and provided Checkr with its
3 roster of drivers about whom it wants to receive further background checks. Checkr then
4 passes on this information to its vendor, and the vendor reports to Checkr (who in turn reports
5 to Uber) when the personal information of the employee purportedly matches an arrest record.

6 Based upon his pre-suit investigation and upon the significant exchange of information
7 and discovery, Plaintiff contends that the real-time arrest data Checkr obtains from its vendor
8 can in certain instances be incomplete, omitting middle names, social security numbers, and
9 month and day of birth. Additionally, Plaintiff contends that the matching logic that permits a
10 “match” between a consumer to an arrest record can lead to a mismatch between one or even two
11 available identifiers.

12 **B. The Experience of the Representative Plaintiff**

13 Plaintiff David Watson applied to drive for Uber in March 2018. He satisfied all of
14 Uber’s screening requirements and began to drive for Uber in March 2018. On or about
15 November 28, 2018, Checkr prepared a CC Arrest Report about Plaintiff and delivered it to Uber.
16 The November 28, 2018 Checkr report showed an arrest and charge for “POSSESSION OF
17 CONTROLLED SUBSTANCE” in Madison County, Illinois, far from Mr. Watson’s home in Wichita,
18 Kansas. The report listed the name of the arrested person as “DAVID EARL WATSON” and listed
19 a year of birth of 1958. Plaintiff’s year of birth is 1978, and he has never had a middle name of
20 or gone by the name “Earl.” The date of the reported arrest was November 28, 2018, the same
21 as the date of the report. The resulting report was a mismatch.

22 As a result, Uber immediately suspended Plaintiff’s account, and he was unable to
23 conduct any work for Uber. Plaintiff disputed the inaccurate report with Checkr, and Checkr
24 corrected the report by removing the arrest record, but not before Plaintiff lost approximately one
25 month of income. The typical dispute-correction process under the FCRA can take up to 30 days.

26 **C. The Proposed Settlement Class**

27 The parties have agreed to settle the claims of individuals who were similarly situated to
28

1 Plaintiff – those about whom Checkr prepared a CC Arrest Report that contained a real-time
2 arrest record that pertained to a different person. Discovery has identified two groups of
3 individuals who are highly likely to meet that definition.

4 First, discovery has identified 237 individuals who, like Plaintiff, disputed the appearance
5 of an arrest record on a CC Arrest Report, and Checkr removed the record as a result of its
6 investigation. These individuals make up the “Dispute Subgroup” of the proposed Settlement
7 Class.

8 Second, discovery has identified 712 individuals about whom Checkr included an arrest
9 record on a Continuous Check report, where, as with the report about Plaintiff, there was a
10 mismatch of two different items of personal identifying information – specifically, neither the
11 name nor the year of birth was a character-for-character match. These individuals make up the
12 “Mismatch Subgroup” of the proposed Settlement Class.

13 **III. THE PROPOSED SETTLEMENT**

14 The parties reached the proposed overall settlement after more than two full days of
15 mediation with the assistance of an experienced JAMS mediator, Hon. Diane M. Welsh (Ret.).
16 See, <https://www.jamsadr.com/welsh/>. Before the mediation, the parties engaged in an extensive
17 exchange of information regarding relevant facts, including regarding the Continuous Check
18 product’s functionalities, the role of the vendor Checker uses for the arrest data at issue, available
19 data about groups of Uber drivers who ended up comprising the settlement groups here, Uber
20 driver income data, and facts regarding Plaintiff’s specific circumstances.

21 The mediations took place on June 17, 2020, and August 27, 2020. Despite the parties’
22 best efforts, no resolution was reached during either session. However, the parties continued to
23 exchange information and continued to negotiate towards a resolution with the assistance of
24 Judge Welsh, and a settlement in principle was reached in late September 2020 at the
25 recommendation of Judge Welsh. The settlement was conditioned upon the completion of
26 confirmatory discovery regarding Checkr’s procedures and the composition of the proposed
27 Settlement Class, which was completed during the subsequent months. During that time the
28

1 parties continued to negotiate the specific terms of the settlement and drafted the Settlement
2 Agreement and notices to Class Members. The final comprehensive Agreement was executed on
3 April 19, 2021.

4 Thus, the parties reached a comprehensive deal only after reviewing and analyzing the
5 legal and factual issues presented in this action, the risks and expenses involved in pursuing the
6 litigation to conclusion, including the threat of Checkr’s arbitration provision and class action
7 ban, the likelihood of a damage award negotiated in the settlement, the protracted nature of the
8 litigation, and the likelihood, costs and possible outcomes of one or more procedural and
9 substantive appeals. The parties negotiated the Agreement in good faith and at arm’s length,
10 both during and subsequent to the mediation.

11 The key terms of the Agreement are as follows:

12 **A. Class Certification.**

13 The parties have stipulated to certification of a Settlement Class, pursuant to Federal Rule
14 of Civil Procedure 23 for settlement purposes, consisting of:

15 The “Mismatch Subgroup,” defined in the Settlement Agreement as follows:
16 All natural persons residing in the United States who: (1) were subject to at
17 least one Continuous Check arrest record report (“CC Arrest Report”) from
18 July 1, 2018 to the date that the Court enters its Preliminary Approval Order,
19 where (2) Checkr’s records for the CC Arrest Reports reflect that the name
20 in the Checkr name field of the CC arrest report did not have the same
characters as the characters in the vendor name field of the CC arrest report,
and where (3) the four digit year of birth in the Checkr date of birth field of
the CC arrest report did not have the same characters as a four digit year of
birth in the vendor date of birth field of the CC arrest report.

21 *See* Agreement, ¶ 2.2(b).²

22 And also the “Dispute Subgroup,” defined in the Settlement Agreement as follows:
23 all natural persons residing in the United States who (1) were subject to at
24 least one CC Arrest Report between July 1, 2018 to the date that the Court
enters its Preliminary Approval Order, where (2) Checkr’s records pertaining
25 to disputes reasonably indicate that the consumer may have disputed with

26 ² This is substantively the same class as plead in the Complaint, ECF 1 at ¶ 37(a). The
27 difference in the time period reflects the fact that Checkr launched the CC Arrest Report product
28 on July 1, 2018. Furthermore, the criteria was changed from “any personal identifying
information” to name and year of birth to reflect available data about both Plaintiff and other
individuals.

1 Checkr that the arrest record contained in the CC Arrest Report did not
2 belong to them, and where (3) by the date that the Court enters its Preliminary
3 Approval Order, Checkr's records reflect that the consumer's dispute of the
4 CC Arrest Report resulted in a changed CC Arrest Report.

5 *See* Agreement, ¶ 2.2(c).³ Class Members will be counted only once for purposes of the
6 settlement – individuals such as Plaintiff who meet both definitions shall be considered
7 members of the Dispute Subgroup. *Id.*, at ¶ 2.2(a).

8 **B. Class Representation.**

9 The parties have further agreed, subject to court approval, that Plaintiff will be the Class
10 Representative, and that Plaintiff's attorneys, Francis Mailman Soumilas, P.C., will be Class
11 Counsel. *Id.*, ¶¶ 1.4, 1.14.

12 **C. Relief to the Settlement Class.**

13 **1. Injunctive Relief.**

14 Defendant has agreed to the entry of consent order requiring that, as a final step in its
15 quality control procedures with respect to CC Arrest Reports, a Checkr employee who has been
16 trained in the FCRA's accuracy requirements manually review the report to ensure that there is
17 no mismatch between the personal identifying information provided to Checkr and any of the
18 identifiers provided by any vendor Checkr uses to obtain arrest record information. *See*
19 Agreement, Exhibit C (Proposed Consent Order). In the event the manual review reveals a
20 mismatch with any item of personal identifying information, the injunctive relief order prohibits
21 Checkr from including the arrest record on the report without taking appropriate additional steps
22 to confirm that the record pertains to the consumer before providing the report to the third party,
23 such as contacting the underlying source of the information to obtain additional information. *Id.*
24 Further, Defendant has agreed to pay Plaintiff's counsel fees for this Rule 23(b)(2) relief, which
25 is estimated to be \$125,000 on a lodestar basis – expected to be approximately half of counsel's
26 overall lodestar in this matter. Agreement, ¶ 2.4.

27 ³ This is the same class as plead in the Complaint, ECF 1 at ¶ 37(b), with the same time
28 period adjustment reference in fn. 2 above.

1 **2. Monetary Relief.**

2 Defendant will pay a further amount of \$670,000 (for a total cash outlay by Defendant of
3 \$795,000) to fund the costs of notice and administration of the settlement, to pay an individual
4 settlement and service award of \$10,000 to the Class Representative, and to pay the remaining
5 attorneys' fees and expenses for this Rule 23(b)(3) relief (estimated at approximately \$134,000,
6 and capped at no more than 25% of the Rule 23(b)(3) fund). Agreement, ¶ 2.4.

7 Payments to Class Members will be made on a *pro rata* basis. Members of the Dispute
8 Subgroup whose notices are not returned as undeliverable and who do not opt out will receive a
9 payment without the need to make a claim. Members of the Mismatch Subgroup can receive a
10 *pro rata* payment by submitting a timely, complete and valid Claim Form affirming that the CC
11 Arrest Report prepared about them was inaccurate. These *pro rata* payments to Class Members
12 will be made from the approximate \$670,000 fund designated for Rule 23(b)(3) Class Member
13 monetary relief and other expenses per the terms of the Agreement. Agreement, ¶ 2.4.

14 Class Counsel expects the claims rate to be approximately 10-20% based upon prior
15 similar cases.⁴ Thus, payments to Class Members are expected to be with the FCRA statutory
16 range of \$100-\$1,000, 15 U.S.C. § 1681n, and can likely be in excess of \$1,100, and potentially
17 as much as \$1,500 per Class Member.

18 Given the risks associated with Defendant's pending motion to compel arbitration, and
19 with pressing the claims in the case through trial, Class Counsel with the assistance of Judge
20 Welsh determined that the settlement is fair, reasonable, and adequate for the Class because the
21 injunctive relief will benefit the Class as well as future applicants, and Class Members will have
22

23 _____
24 ⁴ See *Patel v. Trans Union, LLC*, 3:14-cv-00522-LB (N.D. Cal.) at ECF 159-1 (declaration of
25 administrator in 2018 settlement of FCRA claims documenting 9% claims rate out of
26 approximately 10,000 potential claimants); *Abbas v. Early Warning Services, LLC*, No. 2:15-cv-
27 01976-DLR (D. Ariz.) at ECF 50-1 (declaration of administrator in 2017 settlement of FCRA
28 section 1681e(b) claim documenting 19% claims rate out of 83 potential claimants); *Leo v.*
AppFolio, No. 3:17-cv-05771-RJB (W.D. Wash.) at ECF 61 (declaration of administrator in 2019
settlement of FCRA section 1681e(b) claim with similar structure, showing 1.3% claims rate out
of over 250,000 potential claimants). See also Appendix II (summary chart of *Patel*, *Abbas*, and
Leo settlements)

1 the opportunity to receive a substantial monetary payment, some without the need to take any
2 action.

3 **D. The Settlement Administrator.**

4 Class Counsel have retained the services of JND, a professional third-party class action
5 settlement administrator. JND will administer the class notice, claims process, and payments
6 from the Net Settlement Fund. Class Counsel selected JND after soliciting and reviewing two
7 different estimates for notice and administration in this matter, and selected the proposal with the
8 lower cost, which is not expected to exceed \$29,000. *See* Agreement at 2.4.1(a)(3). Class
9 Counsel have not previously engaged JND directly, in connection with administration of a
10 settlement but have worked with them on one previous document management project unrelated
11 to a settlement, and JND was selected as the administrator by a defendant in another class
12 settlement where Class Counsel represented the settlement class. *See Wills v. Starbucks Corp.*,
13 1:17-cv-03654-CAP (N.D. Ga.) at ECF 55 p. 5 & n.1. Although the class size here is relatively
14 small, many of the costs of notice and administration, such as establishing a website and
15 providing notice pursuant to CAFA, 28 U.S.C. § 1711, *et seq.*, are fixed costs. Additionally, the
16 substantial payments provided here will require additional tax reporting activities. In Class
17 Counsel's experience and judgment, the costs of notice here are justified in light of the substantial
18 benefits provided in the settlement.

19 **E. Class Notice.**

20 Within twenty-five days of the Court's Order granting preliminary approval of the
21 Settlement, the Settlement Administrator will provide notice to the Class by sending an
22 appropriate Notice of Proposed Class Action Settlement and Hearing by electronic mail to the
23 Class Member at the email address available from the records of the Defendant, or via first class
24 mail if no email address is available. *Id.*, ¶¶ 4.2, 4.3. The notice to the Dispute Subgroup
25 Settlement Class Members (attached as Exhibit G to the Agreement) will notify them of their
26 right to object or opt out of the Settlement and their right to a Class Member Payment. The notice
27 to the Mismatch Subgroup Settlement Class Members (attached as Exhibit F to the Agreement)
28

1 will notify them of their right to object, opt out, or submit a claim in order to receive a Class
2 Member Payment. Both notices will include a brief description of the non-monetary injunctive
3 relief that all Settlement Class Members will obtain as a result of the Agreement.

4 **F. Class Members' Right to Opt Out and to Object.**

5 Any member of the Class may request to be excluded from the Agreement and the
6 settlement by opting out of the Class within sixty days from the date of the Notice, and any
7 member of the Class may file an objection to the settlement within the same time frame. *Id.*, ¶
8 4.4, 4.8, 4.9. Any member who timely opts out of the Class shall not be bound by any prior Court
9 order or the terms of the Agreement and shall not be entitled to any of the monetary benefits set
10 forth in the Agreement. *Id.*, ¶ 4.8.

11 **G. Class Member Payments and *Cy Pres* Awards**

12 After the Settlement becomes final and any appeals have been disposed of, the Claims
13 Administrator shall distribute the settlement funds to Settlement Class Members, pay all Court
14 approved attorneys' fees, costs, and expenses to Class Counsel, and pay the Court-approved
15 Service Award to the Class Representative. No unclaimed funds will revert back to Defendant,
16 and instead will be distributed to Bay Area Legal Aid as *cy pres* beneficiary, subject to this
17 Court's approval. Agreement, ¶ 2.4.4.

18 **H. Release.**

19 In consideration of the relief provided by the settlement, as detailed in the Agreement,
20 the Class will release all claims that arise out of or relate to the facts alleged or which could have
21 been alleged or asserted in the action under the FCRA. Agreement, ¶ 3.1. The release is broader
22 than the section 1681e(b) claim plead in the Complaint in recognition of the substantial monetary
23 relief available, which will likely be greater than the maximum statutory damages prescribed in
24 the FCRA as well as the substantial risk associated with the possibility of no class at all, given
25 the arbitration provision at issue here. Furthermore, the facts developed in confirmatory
26 discovery indicate that Class Members are unlikely to possess other FCRA claims against
27 Checkr. The release specifically excludes employers and other users of the Continuous Check
28

1 product, preserving all Class Members' ability to make claims against such users for any
2 improper use of the reports at issue. *Id.*, ¶ 1.24,

3 **I. Service Award and Attorney's Fees and Expenses.**

4 The Agreement provides that Plaintiff may apply for an individual settlement and service
5 award of \$10,000 for serving as the Class Representative, and in exchange for the full general
6 release he provides, which is broader than the class release. *Id.* ¶¶ 3.2, 7.2. As noted above,
7 Class Counsel may apply for an award of \$125,000 in attorneys' fees calculated on a lodestar
8 basis in conjunction with their work in obtaining the injunctive relief component of the settlement
9 under Rule 23(b)(2) (*Id.* ¶ 2.4.1(a)), as well as no more than 25% of the Net Settlement Amount,
10 expected to be approximately \$134,000, in conjunction with Class Counsel's work in obtaining
11 the monetary components of the settlement under Rule 23(b)(3). *Id.* at ¶ 2.4.1(b)(4). This hybrid
12 approach to attorneys' fees is appropriate given the dual benefits achieved by the settlement, and
13 has been approved over objections in the FCRA class action settlement context. *Berry v.*
14 *Schulman*, 807 F.3d 600, 618 n.10 (4th Cir. 2015). Furthermore, as Plaintiff will show in his fee
15 petition, the total fee request is reasonable in light of the lodestar Class Counsel have incurred
16 and are expected to incur through final judgment in order to achieve this successful settlement
17 here. Finally, as will also be discussed further in the fee petition, the injunction will provide
18 substantial financial and other benefits to Class Members (who will continue to be subject to
19 future possible Continuous Check reports while they remain employed by Uber), as well as
20 numerous other consumers.

21 Class Counsel will submit an application for the individual settlement and service award
22 and for attorneys' fees, costs and expenses of the litigation at least ten (10) days prior to the
23 deadline for Class Members to submit objections to the settlement, detailing their lodestar and
24 expenses, and providing further support for the reasonableness of both requested awards. A copy
25 of the application shall be made available to Class Members on the settlement website.

IV. LEGAL STANDARD

1 Under Rule 23(e) of the Federal Rules of Civil Procedure, a class settlement may be
2 approved if the settlement is “fair, reasonable, and adequate.” Under the recent amendments to
3 Rule 23, the first step in the process is a preliminary fairness determination. Specifically, counsel
4 submit the proposed terms of settlement to the district court, along with “information sufficient
5 to enable [the court] to determine whether to give notice of the proposal to the class.” Fed. R.
6 Civ. P. 23(e)(1)(A) (2018). This is so that the Court may make “a preliminary determination on
7 the fairness, reasonableness, and adequacy of the settlement terms[.]” MANUAL FOR COMPLEX
8 LITIGATION § 21.632 (4th ed. 2004); *see also* Herbert B. Newberg & Alba Conte, NEWBERG ON
9 CLASS ACTIONS § 11.25 (4th ed. 2002) (“NEWBERG”).

10 The new Rule calls for front-loaded scrutiny of a proposed settlement so that any issues
11 are identified *before* notice goes out to the class. The new Fed. R. Civ. P. 23(e) states that grounds
12 exist for class notice where the parties show that “the court will likely be able to (i) approve the
13 proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.”
14 Fed. R. Civ. P. 23(e)(1)(B). To that end, where, as here, the proposed settlement would bind class
15 members, it may only be approved after a hearing and a finding that it is fair, reasonable, and
16 adequate, based on the following factors:

- 17 (A) the class representatives and class counsel have adequately represented the class;
18 (B) the proposal was negotiated at arm’s length;
19 (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks,
20 and delay of trial and appeal; (ii) the effectiveness of any proposed method of
21 distributing relief to the class, including the method of processing class-member
22 claims; (iii) the terms of any proposed award of attorney’s fees, including timing
23 of payment; and (iv) any agreement required to be identified under Rule 23(e)(3);
24 and
25 (D) the proposal treats class members equitably relative to each other.

26 Fed. R. Civ. P. 23(e)(2). If the court preliminarily finds that the settlement is fair,
27 adequate, and reasonable, it then “direct[s] the preparation of notice of the certification, proposed
28

1 settlement, and date of the final fairness hearing.” MANUAL FOR COMPLEX LITIGATION, § 21.632;
2 Fed. R. Civ. P. 23(e)(1)(B). The second step in the process is a final fairness hearing. Fed. R.
3 Civ. P. 23(e)(2).

4 As explained below, consideration of these factors supports preliminarily approving the
5 Settlement, conditionally certifying the Settlement Class, and issuing notice.

6 **V. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED**
7 **AND NOTICE SHOULD BE SENT TO THE CLASS**

8 The Ninth Circuit has a “strong judicial policy that favors settlements, particularly where
9 complex class action litigation is concerned.” *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234,
10 1238 (9th Cir. 1998) (quoting *Class Plaintiffs v. Seattle*, 995 F.2d 1268, 1276 (9th Cir. 1992));
11 *see also* NEWBERG, § 11.41 (“By their very nature, because of the uncertainties of outcome,
12 difficulties of proof, length of litigation, class action suits lend themselves readily to
13 compromise.”). There is an “overriding public interest in settling and quieting litigation,” *Van*
14 *Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976), and the Ninth Circuit “has long
15 deferred to the private consensual decision of the parties” to settle, *Rodriguez v. W. Publ’g Corp.*,
16 563 F.3d 948, 965 (9th Cir. 2009) *vacated on other grounds* 688 F.3d 645.

17 Where, as here, the parties propose to resolve the claims of a class through settlement,
18 they must obtain the court’s approval. *See* Fed. R. Civ. P. 23(e)(2). Plaintiff asks that the Court
19 enter an Order preliminarily approving the parties’ settlement and directing notice to the Class.

20 At this stage, the Court “must make a preliminary determination of the fairness,
21 reasonableness, and adequacy of the settlement terms and must direct preparation of notice of the
22 certification, proposed settlement, and date of the final fairness hearing.” MANUAL FOR COMPLEX
23 LITIGATION, § 21.632. Courts should grant preliminary approval and direct notice to the class if
24 the settlement has no obvious deficiencies and “falls within the range of possible judicial
25 approval.” *Beck-Ellman v. Kaz USA, Inc.*, No. 10-cv-02134, 2013 WL 1748729, at *5 (S.D. Cal.
26 Jan. 7, 2013); *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. 2008); *In re Tableware*
27 *Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007); NEWBERG, *supra*, § 11.25.

1 **A. Class Representative and Class Counsel Have Adequately Represented the Class**

2 Before engaging in settlement negotiations, Class Counsel undertook considerable factual
3 investigation regarding class certification, liability, and damages. Class Counsel reviewed
4 documents produced in discovery and undertook a significant amount of confirmatory discovery
5 regarding the product at issue and its application to consumers, including through taking detailed,
6 written testimony after a settlement in principle was reached. Counsel analyzed all this
7 information in light of relevant rulings by federal District Courts within California, and by the
8 Ninth Circuit. Accordingly, Class Counsel made informed decisions when negotiating the
9 proposed settlement.

10 In negotiating the proposed settlement, Plaintiff had the benefit of highly skilled and
11 experienced counsel. Class Counsel have broad experience litigating and trying consumer and
12 class action cases on behalf of plaintiffs.⁵ In their view, the settlement provides substantial
13 benefits to the Class, especially when one considers the attendant expense, risks, delays, and
14 uncertainties of litigation, trial and post-trial proceedings.

15 **B. The Settlement Negotiations Were at Arm's Length**

16 Typically, “[t]here is a presumption of fairness when a proposed class settlement, which
17 was negotiated at arm’s-length by counsel for the class, is presented for Court approval.”
18 NEWBERG, *supra*, §11.41; *see also Nat'l Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D.
19 523, 528 (C.D. Cal. 2004) (great weight given to the recommendation of counsel who are the

20 ⁵ *See Ramirez v. Trans Union, LLC*, No. 3:12-cv-632 (N.D. Cal.); *White v. Experian Info.*
21 *Solutions*, 993 F. Supp. 2d 1154, 1169, 1172 (C.D. Cal. 2014) (finding Francis Mailman
22 Soumilas (formerly Francis & Mailman) “FCRA specialists” and appointing firm and its team as
23 interim class counsel over objections from competing group because their team’s “credentials
24 and experience [we]re significantly stronger in class action and FCRA litigation.”), *aff'd sub*
25 *nom. Radcliffe v. Experian Info. Solutions, Inc.*, 818 F.3d 537, 548 (9th Cir. 2016); *Sapp v.*
26 *Experian Info. Solutions*, No. 10-4312, 2013 WL 2130956 (E.D. Pa. May 15, 2013); *LaRocque*
27 *v. TRS Recovery Services, Inc.*, 285 F.R.D. 139 (D. Me. 2012) (certifying firm of Francis
28 Mailman Soumilas as class counsel in consumer class action); *accord, Giddiens v. First*
Advantage LNS Screening Solutions, Inc., No. 2:12-cv-2624 (ECF 55) (E.D. Pa. Jan. 20, 2015)
(order granting final approval and certifying Francis Mailman Soumilas as class counsel);
Serrano v. Sterling Testing Systems, Inc., 711 F. Supp. 2d 402, 412 (E.D. Pa. 2010); *Summerfield*
v. Equifax Info. Services, LCC, 264 F.R.D. 133 (D. N.J. 2009); *Chakejian v. Equifax Info.*
Services, LLC, 256 F.R.D. 492 (E.D. Pa. 2009); *Jones v. Midland Funding, LLC*, No. 3:08-cv-
802-RNC (ECF 82) (D. Conn. Oct. 13, 2009); *Jordan v. Commonwealth Financial Systems, Inc.*,
237 F.R.D. 132 (E.D. Pa. 2006); *Bonett v. Education Debt Services, Inc.*, No. 01-6528, 2003 WL
21658267, at *3 (E.D. Pa. 2003).

1 most closely acquainted with the facts of the litigation); *In re Employee Benefit Plans Secs. Litig.*,
2 No. 3-92-708, 1993 WL 330595, at *5 (D. Minn. June 2, 1993) (same).

3 There is no doubt that the proposed settlement was reached through arm's length
4 bargaining. With sufficient information to make the process meaningful, the Parties engaged in
5 two formal, day-long, mediations before a well-respected mediator, armed with sufficient
6 discovery and well-researched and thought-out assessments of the likelihood of success of their
7 respective claims and defenses. Though the parties were at an impasse at the conclusion of each
8 mediation, the parties continued to negotiate towards a resolution, which was reached almost
9 three months after the conclusion of the second formal mediation session, which resulted in a
10 written term sheet and ultimately resulting in the formal settlement agreement that is attached
11 hereto as Appendix I.

12 Additionally, the fact that the settlement process and the progress made at that session
13 was overseen by an experienced mediator indicates the settlement was anything but collusive.
14 *See, e.g., Adams v. Inter-Con Sec. Sys. Inc.*, No. C-06-5428 MHP, 2007 WL 3225466, at *3 (N.D.
15 Cal. Oct. 30, 2007); *see also In re Netflix Privacy Litig.*, No. 5:11-cv-00379 EJD, 2012 WL
16 2598819, at *1, 2 (N.D. Cal. July 5, 2012).

17 **C. The Relief Provided for the Class Is Adequate**

18 **1. The Risks of Continued Litigation**

19 The Settlement provides all of the significant benefits described above to the Class
20 without the risks, costs, and delays inherent in continued litigation, trial, and possible appeal of
21 Plaintiff's claims. The expense, complexity, and duration of litigation are important factors
22 considered in evaluating the reasonableness of a settlement. *Churchill Village, LLC v. General*
23 *Electric*, 361 F.3d 566, 577 (9th Cir. 2004). Litigating this class action through trial would be
24 time-consuming and expensive. As with most class actions, the claims at issue are complex and
25 risky.

26 The largest risk posed to class recovery in this matter is Defendant's pending motion to
27 compel arbitration. ECF 39. If the arbitration provision is found to apply, no class recovery
28

1 would be possible because the provision contains a class action waiver. ECF 39-1. Although
2 Plaintiff believes there are strong arguments against application of the arbitration provision, the
3 motion presents substantial risk. Even if Plaintiff successfully kept the claims in this Court, and
4 passed the liability hurdle, a battle would likely ensue concerning whether Plaintiff and other
5 Class Members have sustained damages and, if so, the proper measure of those damages,
6 requiring yet more expert testimony and entailing further risks to Plaintiff's and the Class's
7 chances of recovery. Although Plaintiff is, and remains, confident in the strength of his case, and
8 is prepared to litigate it through trial at all times, the risks are numerous and real. The battles
9 would be fought not only at trial but also on appeal.

10 By contrast, the settlement provides significant cash benefits to the Class in the form of
11 FCRA damages. Under the FCRA, a prevailing plaintiff in a class action may obtain, *inter alia*,
12 actual damages or between \$100 and \$1,000 in statutory damages for each member of a class.
13 15 U.S.C. § 1681n(a)(1)(A). At this stage of litigation, a likely recovery of over \$1,000 for
14 Settlement Class Members whose CC Arrest Reports are confirmed to be inaccurate through a
15 dispute or successful claim represents a substantial benefit. Such an award is likely to be in
16 excess of the maximum statutory range, and compares highly favorably to other cases addressing
17 violations of FCRA section 1681e(b). *See, e.g. Patel v. Trans Union, LLC*, No. 3:14-cv-0522-
18 LB (N.D. Cal.) at ECF 159 p. 6 (\$1,100 payments for successful claimants); *Leo v. AppFolio,*
19 *Inc.*, No. 3:17-cv-05771-RJB (W.D. Wash.) at ECF 62 p. 7 (\$425 for successful claimants).

20 While Plaintiff's counsel firmly believes in the merits of the Class's claims,
21 demonstrating liability is not at all a certainty. Liability under the FCRA is not strict and only
22 arises upon a finding of negligence or willful failure to comply. 15 U.S.C. §§ 1681n and 1681o.
23 Defendant contests liability in all regards. Further, unless there is a finding of willful
24 noncompliance,⁶ Plaintiff (and thus the Class) must establish actual damages. Consequently,

25 ⁶ In *Safeco Insurance Co. of America v. Burr*, 551 U.S. 47, 69 (2007), the Supreme Court considered the
26 standard for whether a defendant "willfully" violates the FCRA, including whether willfulness also
27 includes "recklessness." *Id.* at 52. While it held that the former encompassed the latter, the Court also
28 concluded that this willfulness standard is not met "unless the action is not only a violation [of the FCRA]

1 absent approval of the Settlement, Plaintiff will be put to challenging proofs, including as to
2 issues of willfulness, and all Parties face the prospect of a long and expensive litigation which
3 will likely culminate in a trial on a class-wide basis and, thereafter, a lengthy appeal.

4 **2. The Effectiveness of Proposed Method of Class Distribution**

5 “[T]he effectiveness of any proposed method of distributing relief to the class, including
6 the method of processing class-member claims,” is also a relevant factor in determining the
7 adequacy of relief. Fed. R. Civ. P. 23(e)(2)(C)(ii).

8 This settlement provides for a cash payment to Class Members for whom it is confirmed
9 that CC Arrest Report was inaccurate, in one of two possible forms. For Class Members of the
10 Dispute Subgroup, the inaccuracy of the report was confirmed by Checkr’s removal of the arrest
11 record from the report after the Class Member’s dispute. For members of the Mismatch
12 Subgroup, in addition to the evidence from Checkr’s records that there was a mismatch in two
13 items of personal identifying information between the Class Member and the arrest record, each
14 Class Member will affirm through submission the Claim Form that the reported arrest record did
15 not pertain or belong to them. Once inaccuracy is established as set forth in the Agreement, Class
16 Members will be treated equally for purposes of distribution – all Class Member payments will
17 be in an equal *pro rata* amount.

18 The methodology for class distribution of funds to Class Members is simple,
19 straightforward and will be effective in ensuring payment to the Settlement Class.

20 **3. Terms of Proposed Award of Attorneys’ Fees**

21 District courts have the discretion to award attorneys’ fees based on a percentage of the
22 common fund or based on the lodestar method. *See In re Wash. Pub. Power Supply Sys. Sec.*
23 *Litig.*, 19 F.3d 1291, 1295 (9th Cir. 1994). Additionally, attorneys may recover their reasonable
24 litigation expenses from a common fund. *See In re Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036,
25 _____
26 under a reasonable reading of the statute’s terms, but shows that the company ran a risk of violating the
27 law substantially greater than the risk associated with a reading that was merely careless.” *Id.* at 69.
28 To overcome this hurdle, it is the plaintiff’s burden to prove that a defendant’s attempts to comply with
the FCRA were “objectively unreasonable.” *Id.*

1 1042 (N.D. Cal. 2008). Here, Class Counsel will apply to the Court for an award of attorneys'
2 fees and expenses at least ten (10) days prior to the deadline for Class Members to object to the
3 Settlement, setting forth in detail their basis for the fees and expenses sought. Class Members
4 will have sufficient time to review the fee request, which will be published on the settlement
5 website. Counsel's lodestar through the time of final judgment is expected to be at or above the
6 fees requested here. The percentage of the Rule 23(b)(3) common fund sought as fees and costs
7 combined will not exceed the Ninth Circuit benchmark of 25% for fees alone. The model of
8 dividing fees between injunctive and monetary relief has also been approved before in FCRA
9 class litigation. *See Berry v. Schulman*, 807 F.3d 600, 618 n.10 (4th Cir. 2015). In sum, the fees
10 and litigation expenses sought are reasonable.

11 **4. The Proposal Treats Class Members Equitably**

12 The Agreement provides meaningful relief to the Settlement Class and treats all Class
13 Members equitably relative to each other. All Settlement Class Members will benefit from
14 implementation of the practice changes provided by the injunctive relief provision of the
15 Settlement Agreement.

16 Under the Agreement, all Class Members will receive an equal Class Member Payment
17 on a *pro rata* basis, upon confirmation that the CC Arrest Report sold about them was inaccurate.
18 Furthermore, this confirmation comes in the form of both affirmative action by the consumer and
19 evidence from Checkr's records, for Class Members in both subgroups. For members of the
20 Dispute Subgroup, the Class Member took affirmative action to notify Checkr of the inaccuracy
21 by disputing, and Checkr's records confirm the inaccuracy by removing the arrest record after a
22 reinvestigation. For members of the Mismatch Subgroup, Checkr's records show a potential
23 inaccuracy because two items of personal identifying information on the arrest record do not
24 match character for character to the individual's identifying information, and the Class Member
25 must take affirmative action to confirm the inaccuracy by submitting a Claim Form.
26 Furthermore, all Class Members will provide the same release of claims, which does not favor
27 or disfavor certain groups of Class Members over others.
28

1 The proposed settlement falls within “a range of reasonableness with respect to a
 2 settlement—a range which recognizes the uncertainties of law and fact in a particular case and
 3 the concomitant risks and costs necessarily inherent in taking any litigation to completion.” *In re*
 4 *Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 323 (N.D. Ga. 1993); *see also id.* at 326
 5 (A court “should consider the vagaries of litigation and compare the significance of immediate
 6 recovery by way of the compromise to the mere probability of relief in the future, after protracted
 7 and expensive litigation.”). Indeed, “it has been held proper to take the bird in the hand instead
 8 of a prospective flock in the bush.” *Id.* (internal citation omitted).

9 VI. THE SETTLEMENT CLASS SATISFIES RULE 23

10 A. The Class Is Sufficiently Numerous

11 “The prerequisite of numerosity is discharged if ‘the class is so large that joinder of all
 12 members is impracticable.’” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998)
 13 (quoting Fed. R. Civ. P. 23(a)(1)). Classes with as few as twenty-seven members have been
 14 found to be sufficient to meet the numerosity requirement.” *McCluskey v. Trustees of Red Dot*
 15 *Corp. Employee Stock Ownership Plan & Trust*, 268 F.R.D. 670, 673-74 (W.D. Wash. 2010)
 16 (collecting cases).

17 Between July 2018, when Checkr launched the Continuous Check product, and March 8,
 18 2021, Defendant sold CC Arrest Reports about 237 individuals meeting the definition of the
 19 Dispute Subgroup, and 712 CC Arrest Reports meeting the definition of the Mismatch Subgroup.
 20 Together, they make up the Settlement Class of approximately 949, which is sufficiently
 21 numerous for certification purposes.⁷

22 B. There are Questions of Law and Fact That Are Common to the Class

23 Fed. R. Civ. P. 23(a)(2) requires that there be a common question of law or fact.
 24 Rule 23(b)(3) requires that the questions of law or fact common to all members of the class

25 _____
 26 ⁷ To the extent any individual meets the definition of both the Dispute Subgroup and the
 27 Mismatch Subgroup, that Class Member will be treated as a member of the Dispute Subgroup
 28 and will not be required to submit a Claim Form in order to recover. Agreement at ¶ 2.2(a). The
 extent of any overlap between the subgroups is not currently know, but even if it were complete,
 the Settlement Class would still be numerous of purposes of Rule 23.

1 predominate over questions pertaining to individual members. The commonality requirement is
2 satisfied if there are common questions linking the class members that are substantially related
3 to the outcome of the litigation. *Blackie v. Barrack*, 524 F.2d 891, 910 (9th Cir. 1975).

4 Rule 23 contains two related commonality provisions: Rule 23(a)(2) and Rule 23(b)(3).
5 Rule 23(a)(2) requires that there be “questions of law or fact common to the class,” but class
6 certification is not precluded if fewer than all questions of law or fact are common to the class:

7 The commonality preconditions of Rule 23(a)(2) are less rigorous than the
8 companion requirements of Rule 23(b)(3). Indeed, Rule 23(a)(2) has been
9 construed permissively. All questions of fact and law need not be common to satisfy
10 the rule. The existence of shared legal issues with divergent factual predicates is
11 sufficient, as is a common core of salient facts coupled with disparate legal
12 remedies within the class.

13 *Hanlon*, 150 F.3d at 1019. “Where the circumstances of each particular class member vary but
14 retain a common core of factual or legal issues with the rest of the class, commonality exists.”
15 *Parra v. Bashas’, Inc.*, 536 F.3d 975, 978-79 (9th Cir. 2008).

16 Courts in this Circuit have regularly recognized the existence of commonality in class
17 actions asserting violations of the FCRA’s accuracy requirement, both on contest and in the
18 settlement context. *See Ramirez v. Trans Union, LLC*, 301 F.R.D. 408, 417-419 (N.D. Cal. 2014)
19 (finding that FCRA section 1681e(b) claim presented common questions, and certifying class);
20 *Patel v. Trans Union, LLC*, 308 F.R.D. 292, 304-05 (N.D. Cal. 2015) (same); *see also Leo v.*
21 *AppFolio, Inc.*, No. 3:17-cv-05771-RJB (W.D. Wash.) at ECF 66. (final approval order certifying
22 settlement class).

23 Here, all members of the proposed Settlement Class were subjected to Checkr’s
24 standardized procedures for including arrest record information on CC Arrest Reports.

25 **C. Plaintiff’s Claims Are Typical of the Proposed Class**

26 The typicality requirement is satisfied if “the claims or defenses of the representative
27 parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). The typicality
28 test asks “whether other members have the same or similar injury, whether the action is based on
conduct which is not unique to the named plaintiffs, and whether other class members have been
injured by the same course of conduct.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th

1 Cir. 1992) (citation omitted).

2 Plaintiff Watson’s claims are typical of those of the Class. Like all other Class Members,
3 Checkr prepared a CC Arrest Report about Watson using its procedures for attributing arrest
4 record information to individuals. Like all members of the Mismatch Subgroup, two items of
5 personal identifying information on the arrest record did not match Watson’s personal identifiers
6 – for Watson, year of birth and middle name did not match. And like all members of the Dispute
7 Subgroup, Plaintiff disputed the accuracy of the report to Checkr, which subsequently removed
8 the arrest record. Thus, the typicality requirement is satisfied.

9 **D. Plaintiff and His Counsel Will Adequately Represent the Class**

10 Rule 23(a)(4) requires that class representatives, the named plaintiff and his or her
11 counsel, must “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4).
12 “Legal adequacy is satisfied if: (1) if there are no antagonistic or conflicting interests between
13 the named plaintiffs and their counsel, and the absent class members; and (2) the named plaintiffs
14 and their counsel will vigorously prosecute the action on behalf of the class.” *Hansen v. Ticket*
15 *Track, Inc.* 213 F.R.D. 412, 415 (W.D. Wash. 2003) (citing *Hanlon*, 150 F.3d at 1020); *see also*,
16 *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978).

17 Plaintiff is familiar with the facts underlying this case and has actively participated in the
18 prosecution of the case and he understands his obligation to represent the class. There is no
19 indication that Mr. Watson has any conflict with any class member.

20 Plaintiff has secured representation by counsel with significant experience in this type of
21 litigation. Plaintiff is represented by Francis Mailman Soumilas, P.C., which has been found to
22 be well-qualified to represent consumer classes by courts in many other districts and has been
23 certified as class counsel on over thirty occasions. *See, e.g., Barel v. Bank of America*, 255 F.R.D.
24 393, 398-99 (E.D. Pa. 2009) (finding Francis Mailman Soumilas, P.C. “to be competent,
25 experienced and well-qualified to prosecute class actions” and noting that class counsel “have
26 done an excellent job in representing the class in the instant litigation.”). The firm has been
27 appointed class counsel over objection and competing counsel’s challenge in interim
28

1 appointment litigation. *See, e.g., White*, 993 F. Supp. 2d at 1169, 1175, 1178 (C.D. Cal. May 1,
2 2014) (finding Francis Mailman Soumilas, P.C. “FCRA specialists” and appointing firm and its
3 team as interim class counsel over objections from competing group because their team’s
4 “credentials and experience [we]re significantly stronger in class action and FCRA litigation.”);
5 *Berry v. LexisNexis Risk & Information Analytics Group, Inc.*, No. 3:11-cv-754, 2014 WL
6 4403524, at *11 (E.D. Va. Sept. 5, 2014) (finding Francis Mailman Soumilas, P.C. and its team
7 adequate class counsel in contested settlement appeal).

8 Accordingly, Plaintiff and his counsel will adequately protect the interests of the class.

9 **E. The Class Meets the Requirements of Rule 23(b)**

10 After satisfying the requirements of Rule 23(a), a plaintiff must also show that at least
11 one of the three requirements of Rule 23(b) is satisfied before the court can certify the class.
12 *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614-15 (1997). The proposed settlement meets
13 both the requirements of Rule 23(b)(2) and Rule 23(b)(3), making certification appropriate both
14 with respect to the injunctive relief and the monetary recovery secured for Class Members.

15 **1. Rule 23(b)(2) Is Satisfied**

16 Certification of a class is appropriate under Rule 23(b)(2) where “the party opposing the
17 class has acted or refused to act on grounds that apply generally to the class, so that final
18 injunctive relief or corresponding declaratory relief is appropriate respecting the class as a
19 whole.” Where a defendant has acted uniformly with respect to class members, certification of
20 a Rule 23(b)(2) settlement class is appropriate. *Rodriguez v. Hayes*, 591 F.3d 1105, 1125 (9th
21 Cir. 2010); *Berry v. Schulman*, 807 F.3d 600, 609-10 (4th Cir 2015) (certifying FCRA
22 settlement). Plaintiff alleges that Checkr used the same standardized procedures to create the CC
23 Arrest Report about him and all other Class Members, making the negotiated injunctive relief to
24 improve those procedures an appropriate remedy for the Settlement Class as a whole.

25 **2. Rule 23(b)(3) Is Satisfied**

26 Pursuant to Rule 23(b)(3), the court must find that the questions of law or fact common
27 to the class predominate over any questions affecting only individual class members, and that a
28

1 class action is superior to other available methods for the fair and efficient adjudication of the
2 controversy. Fed. R. Civ. P. 23(b)(3). The matters pertinent to a finding under Rule 23(b)(3)
3 include: (a) the interest of class members in individually controlling the prosecution or defense
4 of separate actions; (b) the extent and nature of any litigation concerning the controversy already
5 commenced by or against class members; (c) the desirability or undesirability of concentrating
6 the litigation of the claims in the particular forum; and (d) the difficulties likely to be encountered
7 in the management of a class action. *Id.*

8 The objective behind the two requirements of Rule 23(b)(3) is the promotion of economy
9 and efficiency. *In re Tableware Antitrust Litig.*, 241 F.R.D. 644, 651 (N.D. Cal. 2007) (citing
10 advisory committee notes). When common issues predominate, class actions achieve these
11 objectives by minimizing costs and avoiding the confusion that would result from inconsistent
12 outcomes. *Id.* Because no precise test can determine whether common issues predominate, the
13 court must pragmatically assess the entire action and the issues involved. *Romero v. Producers*
14 *Dairy Foods, Inc.*, 235 F.R.D. 474, 489 (E.D. Cal. 2006).

15 The predominance requirement of Rule 23(b)(3) is satisfied here because the common
16 questions present a significant aspect of the case and can be resolved for all members of each
17 Settlement Class in a single adjudication. *See* Fed. R. Civ. P. 23(b)(3); *see also Local Joint Exec.*
18 *Bd. Of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir.
19 2001); *Ramirez*, 301 F.R.D. at 419-20 (finding that FCRA section 1681e(b) claims presents
20 predominating questions, and certifying class); *Patel*, 308 F.R.D. at 307-09 (same).

21 Class treatment is a superior method of resolving this case, as required by Rule 23(b)(3).
22 Because the claims here are being certified for purposes of settlement, there are no issues with
23 manageability, and resolution of nearly a thousand claims in a single adjudication is superior to
24 individual lawsuits and promotes consistency and efficiency of adjudication. *See* Fed. R. Civ. P.
25 23(b)(3). Particularly in light of Checkr's assertion that an arbitration clause and class action
26 waiver cover the claims in this case, many class members would never be compensated for the
27 violations alleged in this case, and consumers more broadly would not get the benefit of the
28

1 practice changes without the Agreement. Accordingly, certification of this class action is favored
2 as the superior method of adjudicating this controversy.

3 **VII. CONCLUSION**

4 For all the foregoing reasons, Plaintiff respectfully requests that this Court grant his
5 motion for preliminary approval of the settlement, and direct that notice be sent to the Settlement
6 Class.

7 RESPECTFULLY SUBMITTED AND DATED this 19th day of April, 2021.

8 By: /s/ John Soumilas

9 James A. Francis*

10 John Soumilas*

11 Lauren KW Brennan*

12 Edward H. Skipton*

13 FRANCIS MAILMAN SOUMILAS, P.C.

14 1600 Market Street, Suite 2510

15 Philadelphia, PA 19110

16 T: (215) 735-8600

17 F: (215) 940-8000

18 jfrancis@consumerlawfirm.com

19 jsoumilas@consumerlawfirm.com

20 lbrennan@consumerlawfirm.com

21 eskipton@consumerlawfirm.com

22 Erika Angelos Heath (SBN 304683)

23 FRANCIS MAILMAN SOUMILAS, P.C.

24 369 Pine Street, Suite 410

25 San Francisco, CA 94104

26 Tel: (628) 246-1352

27 Fax: (215) 940-8000

28 eheath@consumerlawfirm.com

*Admitted *pro hac vice*

*Attorneys for Plaintiff
and the Settlement Class*

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was electronically filed and served, via the Court’s ECF system, on this 19th day of April, 2021. The Court’s ECF system will generate a Notice of Electronic Filing upon all counsel.

/s/ John Soumilas
John Soumilas