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22 **UNITED STATES DISTRICT COURT**
23 **NORTHERN DISTRICT OF CALIFORNIA**

24 DAVID EDWARD WATSON,
25 *Plaintiff,*

26 v.

27 CHECKR, INC.,
28 *Defendant.*

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

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

Date: Oct. 21, 2021
Time: 1:30 p.m.
Courtroom: 3

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on October 21, 2021 at 1:30 p.m., or as soon thereafter as the matter may be heard, in Courtroom 3 of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California, 94102, before the Honorable Edward M. Chen, Plaintiff David Watson (“Plaintiff”) on behalf of himself and the proposed Settlement Class will respectfully move this Court for final approval of the class action settlement in the instant case.

This motion is based on the accompanying Memorandum of Points and Authorities; the Settlement Agreement (ECF 66-1); such other documents as may be submitted in support of this Motion; such oral argument as may be heard by the Court; and all other papers on file in this action.

Dated: October 11, 2021

Respectfully submitted,

FRANCIS MAILMAN SOUMILAS P.C.

By: /s/ Erika Heath
Erika Angelos Heath

Attorneys for Plaintiff and the Class

I. INTRODUCTION

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

5 As set forth in detail in Plaintiff’s Motion for Preliminary Approval (ECF 66), this case
6 addresses Checkr’s practices with respect to its “Continuous Check” background check product.
7 Plaintiff’s claim under the FCRA is that Checkr’s procedures for preparing Continuous Check
8 reports violate the FCRA’s mandate that CRAs “follow reasonable procedures to assure
9 maximum possible accuracy of the information” included on a report. 15 U.S.C. § 1681e(b).
10 Plaintiff brought this case on behalf of other similarly situated consumers, who were the subject
11 of a “Continuous Check” consumer report prepared by Checkr which contained an inaccurate
12 arrest record.

13 The parties have successfully negotiated a class-wide settlement that both requires Checkr
14 to change its practice for obtaining arrest records and attributing them to consumers in order to
15 improve the accuracy of reports in the future, and also provides monetary recovery for all class
16 members for whom the report was confirmed to be accurate. On June 16, 2021, this Court entered
17 an order granting preliminary approval of the proposed settlement, finding that the parties’
18 settlement was fair, reasonable, and adequate, and finding that the prerequisites for a class action
19 have been satisfied. ECF 73. The Court’s Order further directed the parties to provide notice to
20 the Class. *Id.*

21 The Settlement Administrator, JND Legal Administration LLC (“JND”) has successfully
22 fulfilled its obligations to provide notice to the Class and has provided direct notice to 96% of
23 the Class via email, and also reached 84% of class members with a mailed hard copy notice. The
24 September 9, 2021 deadline for Class Members to opt out and/or object to the settlement has
25 passed, and zero Class Members have elected to opt out or object, reaffirming the fair, reasonable
26 and adequate nature of the parties’ Class Settlement.

1 Given that nothing has occurred since June 16, 2021 to disturb the Court's findings of
2 that date, and given the uniformly positive reaction of the Class Members, Plaintiff respectfully
3 requests that this Court enter an order granting final approval of the proposed Class Settlement
4 of this matter.

5 **II. BACKGROUND**

6 This litigation commenced in 2019 with the filing of Plaintiff's Class Action Complaint,
7 which asserted that Checkr failed to use reasonable procedures to assure the maximum possible
8 accuracy of arrest information included on Continuous Check reports. The parties explored early
9 settlement of this matter, including an intensive exchange of relevant information regarding the
10 Continuous Check product. The parties also exchanged their litigation positions, including
11 Checkr's assertion that a binding arbitration clause with a class action waiver applied to
12 Plaintiff's claims. *See* ECF 39.

13 The parties nevertheless continued their settlement discussions, and despite business
14 disruptions due to the COVID-19 pandemic, were able to reach a settlement with respect to two
15 groups of similarly situated individuals. First, the "Dispute Subgroup," consisting of 247
16 individuals, who, like Plaintiff, disputed the appearance of an arrest record on a Continuous
17 Check report, and Checkr removed the record as result of the dispute. Second, the "Mismatch
18 Subgroup," consisting of 742¹ individuals about whom Checkr prepared a Continuous Check
19 report where, like Plaintiff, neither the name nor the year of birth of the arrest record included on
20 the report was a character-for-character match to the name and year of birth of the individual
21 who was the subject of the report.

22 The class settlement was the result of protracted adversarial negotiations, including two
23 lengthy private mediations with the assistance of Hon. Diane Welsh (Ret.) of JAMS on June 17,
24 2020 and August 27, 2020. The parties reached a settlement in principle in September 2020, and

25 ¹ The Settlement Administrator determined that 21 members of the Mismatch Subgroup
26 were also listed as members of the Dispute Subgroup. ECF 75 at ¶ 7. Pursuant to the terms of
27 the Settlement, these individuals are treated only as members of the Dispute Subgroup. ECF 66-
28 1 at ¶ 2.2 (a). ("A Person who would be included in both the Mismatch Subgroup and the Dispute
Subgroup shall be deemed to be in the Dispute Subgroup for purposes of the relief and procedures
contained herein.").

1 continued to exchange confirmatory discovery and to negotiate regarding the terms of the
2 settlement including the specific terms of the Consent Order mandating changes to Checkr's
3 practices. The final settlement agreement was executed on April 14, 2021. ECF 66-1.

4 **III. THE PROPOSED SETTLEMENT**

5 The settlement provides substantial relief to the Settlement Class as defined in the Order
6 Directing Notice to the Class. ECF 73 at ¶ 1.

7 **A. Injunctive Relief.**

8 The Settlement Agreement includes Defendant's agreement to the entry of a binding court
9 order requiring that, as a final step in its quality control procedures with respect to reports
10 prepared using the Continuous Check product, a U.S.-based Checkr employee who has been
11 trained in the FCRA's accuracy requirements manually review the report to ensure that there is
12 no mismatch between the personal identifying information provided to Checkr and any of the
13 identifiers provided by any vendor Checkr uses to obtain arrest record information. *See* 72-1 at
14 Ex. C (Revised Proposed Consent Order). In the event the manual review reveals a mismatch
15 with any item of personal identifying information, the injunctive relief order prohibits Checkr
16 from including the arrest record on the report without taking appropriate steps to confirm that the
17 record pertains to the consumer before providing the report to the third party, such as contacting
18 the underlying source of the information to obtain additional information. *Id.*

19 **B. Monetary Relief.**

20 The Settlement Agreement further provides for cash payments to Class Members for
21 whom there is confirmed evidence that the arrest record included on the Continuous Check report
22 was inaccurate. For members of the Dispute Subgroup, this evidence already exists in the form
23 of Defendant's record of the report, and its separate record of the consumer's dispute and
24 Defendant's removal of the disputed record. For members of the Mismatch Group, that evidence
25 takes the form of Defendant's record of the report, and the consumer's submission of a claim
26 form affirming that the arrest record on the report was inaccurate. *See* ECF 66-1 at Ex. D (claim
27 form).

1 59 members of the Mismatch Group submitted a timely and valid claim form. *See* ECF
2 75 at ¶ 22. Therefore, these 59 individuals, along with the 235 members of the Dispute Subgroup
3 whose notices were not returned as undeliverable, are entitled to a *pro rata* share of the Net
4 Settlement Amount provided for in the Settlement Agreement. ECF 66-1 at ¶ 2.4. Thus, the
5 \$463,500.00 making up the Net Settlement Fund will be shared by 294 individuals, who will
6 each receive a payment of \$1,575.53. This represents an excellent recovery for class members in
7 an FCRA class action, where even recovery on the merits may fall within the \$100-\$1,000
8 statutory range. 15 U.S.C. § 1681n.

9 **C. The Costs of Notice and Administration.**

10 The Settlement Agreement provides for payment from the Settlement Fund of the costs
11 of notice and administration of the settlement including compilation and de-duplication of the
12 class lists, mailing and emailing class notice, establishing a website and operating a toll-free
13 number, and the provision of notice pursuant to the Class Action Fairness Act, 28 U.S.C. § 1711
14 *et seq.* *See* ECF 75. The Settlement Administrator will also be responsible for tax reporting
15 activities and other logistics associated with the substantial payments at issue here. The costs of
16 notice here are justified in light of the substantial benefits provided in the settlement.

17 **D. Cy Pres Recipient.**

18 The Settlement Agreement precludes any reversion of funds to the Defendant; rather, any
19 amounts paid from the Gross Settlement Amount of \$795,000.00, including any checks to Class
20 Members which are uncashed, shall be distributed to Bay Area Legal Aid as *cy pres* recipient.

21 **E. Release.**

22 In consideration of the relief provided by the settlement, as detailed in the Agreement,
23 the Class will release all claims that arise out of or relate to the facts alleged or which could have
24 been alleged or asserted in the action under the FCRA. The release does not apply to non-FCRA
25 related claims. ECF 66-1 at ¶ 3.1. The release is broader than the section 1681e(b) claim plead
26 in the Complaint in recognition of the substantial monetary relief available, which is greater than
27 the maximum statutory damages prescribed in the FCRA. Furthermore, the facts developed in

1 confirmatory discovery indicate that class members are unlikely to possess other FCRA claims
2 against Checkr. The release specifically excludes employers and other users of the Continuous
3 Check product, preserving all class members' ability to make claims against such users for any
4 improper use of the reports at issue. *Id.*, ¶ 1.24.

5 **F. Service Award and Attorney's Fees and Expenses.**

6 The Agreement provides that Plaintiff may apply for an individual settlement and service
7 award of \$10,000.00 for serving as the Class Representative, and in exchange for the full general
8 release he provides, which is broader than the class release. *Id.* ¶¶ 3.2, 7.2. The Agreement
9 permits Class Counsel to apply for an award of \$125,000 in attorneys' fees calculated on a
10 lodestar basis in conjunction with their work in obtaining the injunctive relief component of the
11 settlement (*Id.* ¶ 2.4.1(a)), as well as 25% of the Net Settlement Amount, in conjunction with
12 Class Counsel's work in obtaining the monetary components of the settlement. *Id.* at ¶
13 2.4.1(b)(4). The application for an individual settlement and service award and for attorneys'
14 fees, costs, and expenses of the litigation was filed on August 30, 2021, ten days prior to the
15 deadline for class members to submit objections to the settlement. ECF 74. A copy of the
16 application was made available to class members on the settlement website. No class member
17 has submitted any objection to the requested service award or the proposed amount of attorneys'
18 fees and costs.

18 **IV. LEGAL STANDARD**

19 The Ninth Circuit maintains "a strong judicial policy" that favors class action settlements.
20 *Allen v. Bedolla*, 787 F.3d 1218, 1223 (9th Cir. 2015).

21 The approval process for a class action settlement takes place in three stages. See
22 *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (describing the three-stage
23 settlement approval process). On June 16, 2021, this Court made an initial finding that the Class
24 Settlement is fair, reasonable, and adequate and that the requirements of Rule 23(a) appear to be
25 met; pursuant to this Court's Order, notice was sent to the class. ECF 73; ECF 75 (Declaration
26 of Settlement Administrator). Thus, the first two stages are complete. The Court now must
27

1 determine whether, in light of all the information learned during the first two stages, final
2 approval is warranted. *See Churchill Vill., L.L.C.*, 361 F.3d at 575.

3 This Court has broad discretion to approve or reject a proposed settlement. *In re Online*
4 *DVD-Rental Antitrust Litig.*, 779 F.3d 934, 942, 944 (9th Cir. 2015) (noting standard of review
5 is “clear abuse of discretion” and emphasizing appellate court’s review is “extremely limited”).
6 When considering a motion for final approval of a class action settlement under Rule 23, a court
7 must determine whether the settlement is “fundamentally fair.” *Hanlon v. Chrysler Corp.*, 150
8 F.3d 1011, 1026 (9th Cir. 1988). A settlement merits final approval, when “the interests of the
9 class as a whole are better served by the settlement than by further litigation.” *Manual for*
10 *Complex Litigation* (Fourth) (“MCL 4th”) § 21.61 (2015).

11 **V. THE SETTLEMENT CLASS SHOULD BE CERTIFIED.**

12 In its June 16, 2021 Order, this Court found, based on its initial review, that class
13 treatment is appropriate for settlement purposes. ECF 73. For all the reasons set forth herein,
14 this Court should certify the Settlement Class for purposes of judgment in connection with the
15 Settlement

16 **A. The Class Is Sufficiently Numerous**

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

23 Between July 1, 2018, the date when Checkr launched the Continuous Check product,
24 and June 16, 2021, Defendant sold Continuous Check Reports about 247 individuals meeting the
25 definition of the Dispute Subgroup, and an additional 721² Continuous Check Reports meeting

26 ² As noted in footnote 1 above, this number was reduced from 742 when the Settlement
27 Administrator determined that 21 individuals on the Mismatch Subgroup class list were also

1 the definition of the Mismatch Subgroup. Together, they make up the class of 968, which is
2 sufficiently numerous for certification purposes.

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

4 Fed. R. Civ. P. 23(a)(2) requires that there be a common question of law or fact.
5 Rule 23(b)(3) requires that the questions of law or fact common to all members of the class
6 predominate over questions pertaining to individual members. The commonality requirement is
7 satisfied if there are common questions linking the class members that are substantially related
8 to the outcome of the litigation. *Blackie v. Barrack*, 524 F.2d 891, 910 (9th Cir. 1975).

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

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

18 *Hanlon*, 150 F.3d at 1019. “Where the circumstances of each particular class member vary but
19 retain a common core of factual or legal issues with the rest of the class, commonality exists.”

20 *Parra v. Bashas’, Inc.*, 536 F.3d 975, 978-79 (9th Cir. 2008).

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

28 _____
listed on the Dispute Subgroup class list, and thus appropriately treated as only members of the
Dispute Subgroup.

1 Here, all members of the proposed class were subjected to Checkr’s standardized
2 procedures for including arrest record information on CC Arrest Reports.

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

4 The typicality requirement is satisfied if “the claims or defenses of the representative
5 parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). The typicality
6 test asks “whether other members have the same or similar injury, whether the action is based on
7 conduct which is not unique to the named plaintiffs, and whether other class members have been
8 injured by the same course of conduct.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th
9 Cir. 1992) (citation omitted).

10 Plaintiff Watson’s claims are typical of those of the class. Like all other Class Members,
11 Checkr prepared a CC Arrest Report about Watson using its standardized procedures for
12 attributing arrest record information to individuals. Like all members of the Mismatch Subgroup,
13 two items of personal identifying information on the arrest record did not match Watson’s
14 personal identifiers – for Watson, year of birth and middle name did not match. And like all
15 members of the Dispute Subgroup, Plaintiff disputed the accuracy of the report to Checkr, which
16 subsequently removed the arrest record. Like all class members, Plaintiff was the subject of a
17 false communication of harmful criminal record information to his current employer, regarding
18 his fitness for continued employment. Thus, the typicality requirement is satisfied.

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

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

26 As set forth in detail in Plaintiff’s Motion for an Order Directing Notice to the Class and
27

1 in the Motion for an Award of Attorneys' Fees, Plaintiff and his counsel have vigorously
2 prosecuted this action on behalf of Settlement Class Members, and no conflicting interests exist.
3 ECF 66 at pp. 6-7, 15-16, 22-23; ECF 74 at pp. 12-16.

4 **E. The Class Meets the Requirements of Rule 23(b)(3)**

5 **1. Common Questions of Law and Fact Predominate**

6 The predominance requirement of Rule 23(b)(3) necessitates that "the common questions
7 must be a significant aspect of the case that can be resolved for all members of the class in a
8 single adjudication." *Berger v. Home Depot USA, Inc.*, 741 F.3d 1061, 1068 (9th Cir. 2014)
9 (internal quotation marks and alterations omitted). Here, the common issues identified above are
10 not just significant – they are the foundational issues in the case.

11 The superiority requirement of Rule 23(b)(3) is satisfied because individual class
12 members do not have an interest in controlling prosecution of this case, where many of them do
13 not, and cannot know, about potential FCRA claims. Class-wide resolution of these claims, and
14 the provision of the important benefits of the settlement, will provide relief for consumers while
15 promoting efficiency and avoiding the potential of a multiplicity of claims. *See Agne v. Papa*
16 *John's Int'l, Inc.*, 286 F.R.D. 559, 571 (W.D. Wash. 2012) (discussing superiority and finding
17 that multiplicity of small lawsuits seeking statutory damages was less efficient method of
18 adjudicating claim and finding class action mechanism superior).

19 For these reasons, and those delineated in Plaintiff's Motion for Order Directing Notice
20 to the Class, this Court should certify this matter as a class action for settlement purposes.

21 **2. A Class Action Is Superior to Other Available Means of
22 Adjudication**

23 Because the claims here are being certified for purposes of settlement, there are no issues
24 with manageability, and resolution of nearly a thousand claims in a single adjudication is superior
25 to individual lawsuits and promotes consistency and efficiency of adjudication. *See Fed. R. Civ.*
26 *P. 23(b)(3)*. Particularly in light of Checkr's assertion that an arbitration clause and class action
27 waiver covers the claims in this case, many class members will never be compensated for the

1 violations alleged in this case, and consumers more broadly will not get the benefit of the practice
2 changes provided for in the Agreement. Accordingly, certification of this class action is favored
3 as the superior method of adjudicating this controversy.

4 **VI. THE SETTLEMENT SHOULD BE APPROVED AS**
5 **FAIR, REASONABLE, AND ADEQUATE**

6 In deciding whether to grant final approval to a class action settlement, courts consider
7 several factors, including: (1) the strength of the Plaintiff's case; (2) the risk, expense,
8 complexity, and likely duration of further litigation; (3) the risk of maintaining class action status
9 throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed
10 and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a
11 government participant; and (8) the reaction of the class members to the proposed settlement.
12 *Churchill*, 361 F.3d at 575. All of these factors support settlement approval here.

13 **A. The Strength of Plaintiff's Case.**

14 Plaintiff continues to believe that he has a very strong case, but also acknowledges a
15 number of obstacles in the way of achieving a successful result through further litigation.

16 Plaintiff is confident of his ability to certify a class of consumers on contest for his claims
17 under sections 1681e(b) of the FCRA. However, Plaintiff is cognizant that before reaching
18 certification issues, he would need to face Defendant's assertion that an arbitration clause and
19 class action waiver apply to his claims. And even if the arbitration clause did not apply and
20 certification of the class was granted, Plaintiff would need to establish liability on the merits for
21 his claim. Moreover, Plaintiff anticipates that the issues would center on whether Checkr acted
22 "willfully," affecting the availability of statutory and punitive damages.

23 The time and expense to try those issues would be considerable. While Plaintiff is
24 confident that he could prove his case, including with respect to willfulness, the risks were
25 significant enough to convince Plaintiff and his counsel that the Class Settlement outweighs the
26 risk and expense of further litigation.

1 **B. The Risk, Expense, Complexity, and Likely Duration of Further Litigation.**

2 If this action were to proceed, litigation would likely be both lengthy and expensive. The
3 parties would need to undertake full briefing on the arbitration issue, including potentially
4 arbitration-specific discovery, additional merits discovery, including depositions, and would
5 likely engage in dispositive motion practice. Furthermore, in the absence of the parties' Class
6 Settlement, the parties would incur very significant expenses in preparing for, and participating
7 in, a trial of this action.

8 Moreover, the parties would have to delve into the complexity of willfulness issues. For
9 Plaintiff to obtain statutory or punitive damages for the Class, he would have to prove that
10 Checkr's conduct was willful. *See Safeco Insurance Co. of America v. Burr*, 551 U.S. 47, 69
11 (2007) (willfulness standard is not met "unless the action is not only a violation [of the FCRA]
12 under a reasonable reading of the statute's terms, but shows that the company ran a risk of
13 violating the law substantially greater than the risk associated with a reading that was merely
14 careless."). The time and expense to investigate those issues would not be inconsiderable.

15 Finally, it could be expected that Defendant would appeal any decisions in Plaintiff's
16 favor, including seeking review of any class certification decision under Fed. R. Civ. P. 23(f).
17 Such appeals would ensure that Settlement Class Members would not receive any relief for years.
18 There is a significant advantage to receiving a benefit now as opposed to later. *See Officers for*
19 *Justice v. Civil Service Comm'n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982); *Marshall*
v. Holiday Magic, Inc., 550 F.2d 1173, 1178 (9th Cir. 1977).

20 **C. The Risk of Maintaining Class Action Status through Trial.**

21 Class certification always poses a risk and often involves a prolonged and expensive
22 battle of experts in connection with certification, merits, and damages issues. If Plaintiff was
23 unable to certify a class, the case would effectively be over, and Class Members would receive
24 nothing. Although the Court was not asked to consider a contested class certification motion,
25 had the case not settled, Defendants would have vigorously disputed that certification of the class
26 was appropriate in this case. Although Plaintiff believes he would have been successful in

1 seeking to certify a class, Defendant likely would have argued that certification is not appropriate
2 under Rule 23. For example, Defendants would have argued that the Class is not ascertainable
3 or that Plaintiff would not be able to demonstrate damages. *See, e.g., Wal-Mart Stores, Inc. v.*
4 *Dukes*, 564 U.S. 338, 351, 131 S. Ct. 2541, 2552 (2011) (requiring “rigorous analysis” to ensure
5 requirements of “Rule 23(a) have been satisfied”); *Comcast Corp. v. Behrend*, 133 S. Ct. 1426,
6 1432 (2013) (same).

7 **D. The Amount Offered in Settlement.**

8 The Settlement Agreement requires Checkr to pay over \$1,500 to each Class Member for
9 whom there is confirmation that the arrest record Checkr reported was inaccurate. This payment
10 is substantial in light of the \$100-\$1,000 statutory range for willful violations. 15 U.S.C. § 1681n.
11 It also compares favorably to the results achieved in other class action settlements of FCRA
12 accuracy claims. *See, e.g. Patel v. Trans Union, LLC*, No. 3:14-cv-0522-LB (N.D. Cal.) at ECF
13 159 p. 6 (\$1,100 payments for successful claimants); *Leo v. AppFolio, Inc*, No. 3:17-cv-05771-
14 RJB (W.D. Wash.) at ECF 62 p. 7 (\$425 for successful claimants).

15 Furthermore, all Class Members and individuals who may be subject to a Continuous
16 Check report in the future will substantially benefit from the Class Settlement because of the
17 important practice changes mandated by the Consent Order achieved as a result of the Settlement.

18 **E. The Extent of Discovery Completed and the Stage of Proceedings.**

19 Courts consider the extent of discovery completed and the stage of the proceedings in
20 determining whether a class action settlement is fair, adequate and reasonable. *Shames v. Hertz*
21 *Corp.*, No. 07 CV-2174, 2012 WL 5392159, at *6 (S.D. Cal. Nov 5, 2012). This case settled only
22 after the parties had engaged in a substantial exchange of information that revealed the potential
23 strengths and weaknesses of Plaintiff’s case and the viability of class certification. Though the
24 parties ultimately reached a resolution, they did so notwithstanding reaching an impasse at two
25 separate formal mediation sessions and only after continued settlement discussions after the
26 mediation and with continued additional assistance from the mediator. After settlement was
27

1 reached, the parties' engaged in a confirmatory discovery process to verify the information
2 exchanged informally.

3 **F. The Experience and Views of Counsel.**

4 Where Class Counsel is qualified and well informed, their opinion that a settlement is
5 fair, reasonable, and adequate is entitled to significant weight. *See Pelletz v. Weyerhaeuser Co.*,
6 255 F.R.D. 537, 543 (W.D. Wash. 2009). Here, counsel for Plaintiff are highly experienced class
7 action litigators. ECF 66 at p. 15, 22-23; ECF 74-1 at Ex. A. Plaintiff agreed to settle only
8 because the Class Settlement provides an excellent result for Class Members by ensuring the
9 recovery of compensation without the need to submit a claim and ensuring fundamental practice
10 changes that serve to benefit all prospective employees to Defendant. Class Counsel believe the
11 proposed settlement is fair, reasonable, adequate, and in the best interest of the Classes. As such,
12 the experience of counsel supports final approval.

13 **G. The Presence of a Governmental Participant.**

14 Consistent with the Settlement Agreement, the Settlement Administrator provided the
15 required CAFA notice to the attorneys general of 50 states, as well as the U.S. territories and the
16 District of Columbia's Corporate Counsel. ECF 75 at ¶¶ 3-4. Not a single government entity has
17 objected to the settlement or sought to intervene. Thus, this factor weighs in favor of settlement
18 approval. *See Garner v. State Farm Auto Ins. Co.*, No. CV 08 1365 CW (EMC), 2010 WL
19 1687832, *14 (N.D. Cal. Apr. 22, 2010).

20 **H. The Reaction of Settlement Class Members.**

21 The reaction of Class Members to the Class Settlement has been universally positive, with
22 no objections and no opt-outs, which supports final approval. *See Pelletz*, 255 F.R.D. at 543-44;
23 *Tadepalli v. Uber Techs., Inc.*, No. 15-CV-04348-MEJ, 2016 WL 1622881, at *8 (N.D. Cal. Apr.
24 25, 2016) (quoting *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1043) (observing "the
25 absence of a large number of objections to a proposed class action settlement raises a strong
26 presumption that the terms of a proposed class settlement action are favorable to the class
27 members").

**VII. SETTLEMENT CLASS MEMBERS RECEIVED
THE BEST NOTICE PRACTICABLE**

1
2 In directing notice to Settlement Class Members, this Court determined that the proposed
3 notice program in this case “fully satisfies the requirements of Fed. R. Civ. P. 23 and due process,
4 constitutes the best notice practicable under the circumstances, and shall constitute due and
5 sufficient notice to all persons entitled thereto.” ECF 73 at ¶ 6. This notice program was fully
6 implemented by the Settlement Administrator, JND. See ECF 75.

7 The class notice and notice process approved by this Court and implemented by the
8 Settlement Administrator adequately informed Class Members of the nature of the action and
9 these proceedings, the terms of the proposed settlement, the effect of the action and release of
10 these claims, the right to exclude themselves from the action, and their right to object to the
11 proposed settlement, as required for final approval of a class settlement under Federal Rule of
12 Civil Procedure 23 and in compliance with *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d
13 988, 994 (9th Cir. 2010).

14 The notice program successfully reached Settlement Class Members. Notice via
15 electronic mail reached approximately 94% of Class Members, and hard copy notice via U.S.
16 mail reached approximately 84% of the Settlement Class Members. ECF 75 at ¶¶ 7-11.

VIII. CONCLUSION

17 For all the foregoing reasons, Plaintiff respectfully requests that this Court grant final
18 approval of the parties’ Class Settlement as fair, reasonable, and adequate, certify the proposed
19 Class for settlement purposes, approve the proposed *cy pres* recipient and enter final judgment
20 in this case.

21 RESPECTFULLY SUBMITTED AND DATED this 11th day of October, 2021.

22 By: /s/ Erika Angelos Heath
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