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Case #20CV362399
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

DESIRE OYERO, on behalf of herself, all others
similarly situated,

Plaintiff,

vs.

PRIDE INDUSTRIES, a California corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. 20CV362399

**ORDER RE: MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

The above-entitled matter came on for hearing on Wednesday, August 10, 2022, at 1:30 p.m. in Department 3, the Honorable Patricia M. Lucas presiding. The court reviewed and considered the written submissions filed by the parties and issued a tentative ruling on Tuesday, August 9, 2022. No party contested the tentative ruling; therefore, the court orders that the tentative ruling be adopted as the order of the court, as follows:

I. INTRODUCTION

This is a putative class action for alleged violations of the Fair Credit Reporting Act (“FCRA”). Plaintiff Desire Oyero (“Plaintiff”) alleges that defendant Pride Industries (“Defendant”) routinely acquires consumer, investigative consumer, and/or consumer credit reports to conduct background checks on Plaintiff and other employees and uses information

1 from the reports in connection with the hiring process without providing proper disclosures and
2 obtaining proper authorization. (Complaint, ¶¶ 2 & 20-23.) The Complaint, filed on January 29,
3 2020, sets forth a single cause of action for failure to provide proper disclosure in violation of the
4 FCRA.

5 The parties have reached a settlement. Plaintiff now moves for preliminary approval of
6 the settlement.

7 **II. LEGAL STANDARD**

8 Generally, “questions whether a settlement was fair and reasonable, whether notice to the
9 class was adequate, whether certification of the class was proper, and whether the attorney fee
10 award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*
11 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235, citing *Dunk v. Ford Motor Co.* (1996) 48
12 Cal.App.4th 1794.)

13 In determining whether a class settlement is fair, adequate and reasonable, the
14 trial court should consider relevant factors, such as “the strength of plaintiffs’
15 case, the risk, expense, complexity and likely duration of further litigation, the
16 risk of maintaining class action status through trial, the amount offered in
17 settlement, the extent of discovery completed and the stage of the proceedings, the
18 experience and views of counsel, the presence of a governmental participant, and
19 the reaction of the class members to the proposed settlement.”
(*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk*, *supra*, 48
20 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688
21 F.2d 615, 624.)

22 “The list of factors is not exclusive and the court is free to engage in a balancing and
23 weighing of factors depending on the circumstances of each case.” (*Wershba v. Apple*
24 *Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245.) The court must examine the “proposed
25 settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is
26 not the product of fraud or overreaching by, or collusion between, the negotiating parties, and
27 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*,
28 quoting *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n,*
etc., *supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

The burden is on the proponent of the settlement to show that it is fair and
reasonable. However “a presumption of fairness exists where: (1) the settlement

1 is reached through arm’s-length bargaining; (2) investigation and discovery are
2 sufficient to allow counsel and the court to act intelligently; (3) counsel is
experienced in similar litigation; and (4) the percentage of objectors is small.”

3 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245, citing *Dunk*, *supra*, 48
4 Cal.App.4th at p. 1802.)

5 **III. DISCUSSION**

6 **A. Provisions of the Settlement**

7 The case has been settled on behalf of an FCRA Class that consists of a Five Year FCRA
8 Subclass and a Two Year FCRA Subclass. (Declaration of Shaun Setareh in Support of
9 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement and Certification of
10 Settlement Class (“Setareh Dec.”), Ex. A (“Settlement Agreement”), ¶ 10.) FCRA Class
11 Members are generally defined as all applicants for employment with Defendant in the United
12 States for whom Defendant procured a background check report during the FCRA Class Period
13 of January 28, 2015 through December 31, 2021. (Settlement Agreement, ¶¶ 12 & 13.) The
14 Five Year FCRA Subclass is defined as those FCRA Class Members for whom Defendant
15 procured a background check report from January 28, 2015 through January 27, 2018, inclusive.
16 (Settlement Agreement, ¶ 17.) The Two Year FCRA Subclass is defined as those FCRA Class
17 Members who authorized a background check report to be provided to Defendant for
18 employment purposes from January 28, 2018 through December 31, 2021, inclusive.
19 (Settlement Agreement, ¶ 32.) Class members who are in both subclasses will be considered to
20 be in the Two Year FCRA Subclass for purposes of allocating settlement funds. (Settlement
21 Agreement, ¶ 32.)

22 According to the terms of settlement, Defendant will pay a total non-reversionary amount
23 of \$600,000. (Settlement Agreement, ¶¶ 18 & 40.) The total settlement payment includes
24 attorney fees not to exceed \$200,000 (1/3 of the gross settlement amount), litigation costs up to
25 \$17,000, an incentive award of \$5,000 for the class representative, and settlement administration
26 costs up to \$29,000. (Settlement Agreement, ¶¶ 3, 6, 18, 31, & 42.) From the net settlement
27 amount, 40 percent will be allocated to the Five Year FCRA Subclass and 60 percent will be
28 allocated to the Two Year FCRA Subclass. (Settlement Agreement, ¶¶ 41 & 43.) Checks

1 remaining uncashed more than 180 days after issuance will be void and the funds from those
2 checks will be sent to the Employment Rights Project of Bet Tzedek as a *cy pres* recipient.
3 (Settlement Agreement, ¶ 43.)

4 **B. Fairness of the Settlement**

5 Plaintiff contends that the settlement is fair, adequate, and reasonable in view of
6 Defendant's potential liability exposure and the risks of continued litigation. Plaintiff states that
7 the settlement was reached through arm's-length negotiations and two all-day mediation sessions
8 with the Honorable Ronald M. Sabraw (Ret.). Plaintiff asserts that there are approximately 9,080
9 individuals in the FCRA Class (3,929 class members in the Five Year FCRA Subclass and 5,151
10 class members in the Two Year FCRA Subclass). Defendant's potential liability ranges from
11 \$908,000 to \$9,080,000. Plaintiff states that it is likely a jury would enter an award at the lower
12 end of the range in light of applicable case law and recent verdicts in standalone disclosure cases.
13 The amount of payment received by a particular class member in this case depends upon whether
14 the class member is subject to a statute of limitations defense. Plaintiff advises that Defendant
15 has a potential statute of limitations defense to any violations that occurred during the period
16 from five years before the suit was filed, i.e., January 28, 2015, up to two years before the filing
17 of the action. The net settlement amount is estimated to be approximately \$349,000. Class
18 members in the Two Year FCRA Subclass will each receive a payment of approximately \$40.65.
19 Class members in the Five Year FCRA Subclass will each receive a payment of approximately
20 \$35.53.

21 Overall, the court finds the settlement is fair. The settlement provides for some recovery
22 for each class member and eliminates the risk and expense of further litigation.

23 **C. Incentive Award, Fees, and Costs**

24 Plaintiff requests an incentive award of \$5,000.

25 The rationale for making enhancement or incentive awards to named plaintiffs is
26 that they should be compensated for the expense or risk they have incurred in
27 conferring a benefit on other members of the class. An incentive award is
28 appropriate if it is necessary to induce an individual to participate in the suit.
Criteria courts may consider in determining whether to make an incentive award
include: 1) the risk to the class representative in commencing suit, both financial
and otherwise; 2) the notoriety and personal difficulties encountered by the class
representative; 3) the amount of time and effort spent by the class representative;

1 4) the duration of the litigation and; 5) the personal benefit (or lack thereof)
2 enjoyed by the class representative as a result of the litigation. These “incentive
awards” to class representatives must not be disproportionate to the amount of
time and energy expended in pursuit of the lawsuit.

3 (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks,
4 brackets, ellipses, and citations omitted.)

5 Prior to the final approval hearing, the class representative shall file a declaration
6 specifically detailing her participation in the action and an estimate of the time spent. The court
7 will make a determination at that time.

8 The court also has an independent right and responsibility to review the requested
9 attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los*
10 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff’s counsel will
11 seek attorney fees of \$200,000 (1/3 of the total settlement fund). Plaintiff’s counsel shall submit
12 lodestar information (including hourly rates and hours worked) prior to the final approval
13 hearing in this matter so the court can compare the lodestar information with the requested fees.
14 Plaintiff’s counsel shall also submit evidence of actual costs incurred.

15 **D. Conditional Certification of Class**

16 Plaintiff requests that the putative class be conditionally certified for purposes of the
17 settlement. Rule 3.769(d) of the California Rules of Court states that “[t]he court may make an
18 order approving or denying certification of a provisional settlement class after [a] preliminary
19 settlement hearing.” California Code of Civil Procedure Section 382 authorizes certification of a
20 class “when the question is one of a common or general interest, of many persons, or when the
21 parties are numerous, and it is impracticable to bring them all before the court” As
22 interpreted by the California Supreme Court, Section 382 requires: (1) an ascertainable class; and
23 (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v.*
24 *Superior Court* (2004) 34 Cal.4th 319, 326.)

25 The “community-of-interest” requirement encompasses three factors: (1) predominant
26 questions of law or fact; (2) class representatives with claims or defenses typical of the class;
27 and, (3) class representatives who can adequately represent the class. (*Sav-On Drug Stores, Inc.*
28 *v. Superior Court, supra*, 34 Cal.4th at p. 326.) “Other relevant considerations include the

1 probability that each class member will come forward ultimately to prove his or her separate
2 claim to a portion of the total recovery and whether the class approach would actually serve to
3 deter and redress alleged wrongdoing.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)
4 The plaintiff has the burden of establishing that class treatment will yield “substantial benefits”
5 to both “the litigants and to the court.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d
6 381, 385.)

7 As explained by the California Supreme Court:

8 The certification question is essentially a procedural one that does not ask whether
9 an action is legally or factually meritorious. A trial court ruling on a certification
10 motion determines whether the issues which may be jointly tried, when compared
11 with those requiring separate adjudication, are so numerous or substantial that the
12 maintenance of a class action would be advantageous to the judicial process and
13 to the litigants.

14 (*Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at p. 326, internal quotation
15 marks, ellipses, and citations omitted.)

16 There are approximately 9,080 class members. Class members can be ascertained from
17 Defendant’s records. There are common issues because Defendant’s potential liability is based
18 on the same facts and legal issues that apply to all class members regarding the background
19 checks. No issue has been raised regarding the typicality or adequacy of Plaintiff as class
20 representative. In sum, the court finds that the proposed class should be conditionally certified.

21 **E. Class Notice**

22 The content of a class notice is subject to court approval. “If the court has certified the
23 action as a class action, notice of the final approval hearing must be given to the class members
24 in the manner specified by the court.” (Cal. Rules of Court, rule 3.769(f).)

25 The postcard notice and long-form notice generally comply with the requirements for
26 class notice. (See Settlement Agreement, Exs. 1A & 1B.) The notices provide basic information
27 about the settlement including the settlement terms, as well as procedures to object or to request
28 exclusion.

However, the postcard notice suggests that class members can only object by submitting
a timely written objection. The language in the postcard notice shall be modified to make clear
that class members may appear at the final approval hearing to object to the settlement without

1 submitting any written objection and with no prior notice. Additionally, both notices shall
2 include the following language:

3 Class members may appear at the final approval hearing remotely using the
4 Microsoft Teams link for Department 3 (Afternoon Session). Instructions for
5 appearing remotely are provided at
6 https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml and
7 should be reviewed in advance. Class members who wish to appear remotely are
8 encouraged to contact class counsel at least three days before the hearing if
9 possible, so that potential technology or audibility issues can be avoided or
10 minimized.

11 The amended notices shall be provided to the court for approval prior to mailing and
12 posting.

13 **IV. CONCLUSION**

14 The motion for preliminary approval of the class action settlement is GRANTED, subject
15 to the modification of the notices. The final approval hearing is set for February 8, 2023, at 1:30
16 p.m. in Department 3.

17 The Case Management Conference set for August 10, 2022 is vacated.

18 Dated: August 10, 2022

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20 Patricia M. Lucas
21 Judge of the Superior Court
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