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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**
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12 DOMENIQUE NEWMAN, on behalf of herself,
13 all others similarly situated,

14 Plaintiff,

15 vs.

16 SMITH+NOBLE HOME, INC., a Delaware
17 corporation; and DOES 1 through 50, inclusive,

18 Defendants.

Case No. 19CV346587

**ORDER RE: MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT; JUDGMENT**

19 The above-entitled matter came on for hearing on Wednesday, January 19, 2022, at 1:30
20 p.m. in Department 3, the Honorable Patricia M. Lucas presiding. The court reviewed and
21 considered the written submissions filed by the parties and issued a tentative ruling on Tuesday,
22 January 18, 2022. No party contested the tentative ruling; therefore, the court orders that the
23 tentative ruling be adopted as the order of the court, and hereby orders, adjudges, and decrees as
24 follows:

25 **I. INTRODUCTION**

26 This is a putative class action for alleged violations of the Fair Credit Reporting Act
27 (“FCRA”). Plaintiff Domenique Newman (“Plaintiff”) alleges that defendant Smith+Noble
28 Home, Inc. (“Defendant”) routinely acquires consumer, investigative consumer, and/or consumer

1 credit reports to conduct background checks on Plaintiff and other employees and uses
2 information from the reports in connection with the hiring process without providing proper
3 disclosures and obtaining proper authorization. (Complaint, ¶ 2.) The Complaint, filed on April
4 17, 2019, sets forth a single cause of action for failure to provide proper disclosure in violation of
5 the FCRA.

6 The parties have reached a settlement. On August 26, 2021, the court granted
7 preliminary approval of the settlement, subject to modification of the class notice.

8 Thereafter, Plaintiff's counsel filed a declaration with an amended class notice. The
9 court reviewed the amended notice and notified the parties that the second sentence in the second
10 paragraph in section 16 of the amended class notice did not match the language used in the order
11 granting preliminary approval of the settlement. Thereafter, Plaintiff did not submit a further
12 amended class notice, correcting the noted defect, to the court for its review and approval.

13 Plaintiff now moves for final approval of the settlement.

14 **II. LEGAL STANDARD**

15 Generally, “questions whether a settlement was fair and reasonable, whether notice to the
16 class was adequate, whether certification of the class was proper, and whether the attorney fee
17 award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*
18 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.*
19 (1996) 48 Cal.App.4th 1794 (*Dunk*).

20 In determining whether a class settlement is fair, adequate and reasonable, the
21 trial court should consider relevant factors, such as “the strength of plaintiffs’
22 case, the risk, expense, complexity and likely duration of further litigation, the
23 risk of maintaining class action status through trial, the amount offered in
settlement, the extent of discovery completed and the stage of the proceedings, the
experience and views of counsel, the presence of a governmental participant, and
the reaction of the class members to the proposed settlement.”

24 (*Wershba, supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1801
25 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688 F.2d 615, 624
26 (*Officers*).

27 “The list of factors is not exclusive and the court is free to engage in a balancing and
28 weighing of factors depending on the circumstances of each case.” (*Wershba, supra*, 91

1 Cal.App.4th at p. 245.) The court must examine the “proposed settlement agreement to the
2 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
3 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
4 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, quoting *Dunk, supra*, 48
5 Cal.App.4th at p. 1801 and *Officers, supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

6 The burden is on the proponent of the settlement to show that it is fair and
7 reasonable. However “a presumption of fairness exists where: (1) the settlement
8 is reached through arm’s-length bargaining; (2) investigation and discovery are
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.”

9 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

10 **III. DISCUSSION**

11 The case has been settled on behalf of the following class:

12 All applicants for employment with Defendant in the United States for whom
13 Defendant procured a background check report from April 17, 2014 to and
including October 1, 2020.

14 There are two subclasses. The “5 Year FCRA Subclass” includes class members for
15 whom Defendant procured a background check report from April 17, 2014 through and including
16 April 16, 2017. The “2 Year FCRA Subclass” includes class members for whom Defendant
17 procured a background check report from April 17, 2017 through October 1, 2020. Class
18 members who are in both subclasses will be considered to be in the 2 Year FCRA Subclass for
19 purposes of allocating settlement funds.

20 As discussed in connection with the motion for preliminary approval, Defendant will pay
21 a total non-reversionary amount of \$170,000. The total settlement payment includes attorney
22 fees of \$56,666.66, costs up to \$20,000, an incentive award of \$5,000 for the class
23 representative, and settlement administration costs up to \$11,000. From the net settlement
24 amount, 40 percent will be allocated to the 5 Year FCRA Subclass and 60 percent will be
25 allocated to the 2 Year FCRA Subclass. Checks remaining uncashed more than 180 days after
26 issuance will be void and the funds from those checks will be sent to the Employment Rights
27 Project of Bet Tzedek as a *cy pres* recipient.

1 On September 24, 2021, the settlement administrator mailed a class notice to 498 class
2 members. (Declaration of American Legal Claim Services, LLC Regarding Due Diligence in
3 Noticing (“ALCS Dec.”), ¶ 4 & Ex. A.) Although this notice was not presented to the court for
4 approval before it was mailed to the class, the court has now reviewed the notice and finds that it
5 complies with the order granting preliminary approval.

6 As of December 23, 2021, 63 notices were returned by the United States Postal Service.
7 (ALCS Dec., ¶ 5.) The settlement administrator mailed 58 notices to updated address and, of
8 those 58 notices, 7 were returned by the United States Postal Service. (*Ibid.*). Ultimately, 12
9 notices remained undeliverable. (*Id.* at ¶ 6.)

10 In addition, the settlement administrator created a case website as stated in the notice,
11 which provided further information, access to court documents, and an opportunity for class
12 members to update their address. (ALCS Dec., ¶ 7.) The settlement administrator also
13 established a toll-free telephone number for class members to contact with questions about the
14 settlement or to update their address. (*Id.* at ¶ 8.) As of December 23, 2021, the settlement
15 administrator received 7 phone calls on the line. (*Ibid.*)

16 The settlement administrator has not received any objections or requests for exclusion as
17 of December 23, 2021. (ALCS Dec., ¶¶ 9-10.)

18 The court previously found that the proposed settlement is fair and the court continues to
19 make that finding for purposes of final approval.

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

21 The rationale for making enhancement or incentive awards to named plaintiffs is
22 that they should be compensated for the expense or risk they have incurred in
23 conferring a benefit on other members of the class. An incentive award is
24 appropriate if it is necessary to induce an individual to participate in the suit.
25 Criteria courts may consider in determining whether to make an incentive award
26 include: 1) the risk to the class representative in commencing suit, both financial
27 and otherwise; 2) the notoriety and personal difficulties encountered by the class
28 representative; 3) the amount of time and effort spent by the class representative;
4) the duration of the litigation and; 5) the personal benefit (or lack thereof)
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.

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

3 The class representative has submitted a declaration in which she states that she spent at
4 least 20 hours on the case, including speaking with counsel, gathering and providing information
5 and documents to class counsel, participating in a full-day mediation, and reviewing the
6 settlement. (Declaration of Domenique Newman, ¶ 9.) The court finds the service award is
7 warranted and it is approved.

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
11 seeks attorney fees of \$56,666.66 (1/3 of the total settlement fund). Plaintiff's counsel provides
12 evidence demonstrating a lodestar of \$91,177.50. (Declaration of Shaun Setareh in Support of
13 Plaintiff's Motion for Final Approval of Class Action Settlement, Award of Attorneys' Fees,
14 Reimbursement of Litigation Costs, and Enhancement Award ("Setareh Dec."), ¶¶ 32-35.) This
15 results in a negative multiplier. The attorney fees in the amount of \$56,666.66 are justified and
16 approved.

17 Plaintiff's counsel also requests costs in the amount of \$4,016.37, but only provides
18 evidence of incurred costs in the amount of \$3,854.85. (Setareh Dec., ¶ 28 & Ex. A.)
19 Anticipated costs are not recoverable. Thus, costs in the amount of \$3,854.85 are justified and
20 approved.

21 The settlement administration costs of \$6,976 are also approved. (ALCS Dec., ¶ 16.)


22 Accordingly, the motion for final approval of the class action settlement is GRANTED.

23 Pursuant to Rule 3.769, subdivision (h), of the California Rules of Court, the court retains
24 jurisdiction over the parties to enforce the terms of the Settlement Agreement, and the final
25 Order and Judgment.

26 The court sets a compliance hearing for October 12, 2022, at 2:30 p.m. in Department 3.
27 At least ten court days before the hearing, class counsel and the settlement administrator shall
28 submit a summary accounting of the net settlement fund identifying distributions made as

1 ordered herein, the number and value of any uncashed checks, amounts remitted to Defendant,
2 the status of any unresolved issues, and any other matters appropriate to bring to the court's
3 attention. Counsel may appear at the compliance hearing remotely.

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5 Dated: January 19, 2022


6 Patricia M. Lucas
7 Judge of the Superior Court
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