

[TENTATIVE] RULINGS/ORDERS RE: MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT

Erica Price v. EDS Service Solutions, LLC, Case No.: 21STCV40438

The Parties' Motion for Preliminary Approval of Class Action Settlement is **GRANTED** as the settlement is fair, adequate, and reasonable.

The essential terms are:

- A. The Gross Settlement Amount ("GSA") is \$100,000.
- B. The Net Settlement Amount is the GSA minus the following:

- Up to \$33,333.33 (33 1/3%) for attorney fees (§36.b);
- Up to \$20,000 for litigation costs (Ibid.);
- Up to \$5,000 for a Service Payment to the Named Plaintiff (§36.a)
- Up to \$7,500 for settlement administration costs (§36.c).

- C. Plaintiffs release of Defendants from claims described herein.

The Parties' Motion for Final Approval of Class Action Settlement must be filed by **September 12, 2024**. Plaintiff must call the Court **PRIOR** to filing and serving to obtain a hearing date.

The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged [Proposed] Judgment containing among other things, the class definition, full release language, and names of the any class members who opted out; and the parties must email the [Proposed] Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.

Non-Appearance Case Review is set for September 19, 2024, 8:30 a.m., Department 9.

I.
BACKGROUND

This is a credit reporting class action. On February 5, 2020, Plaintiff filed a putative class action complaint for violation of the Fair Credit Reporting Act ("FCRA"), the Investigative Consumer Reporting Agencies Act ("ICRAA") and the Consumer Credit Reporting Act ("CCRAA") in the United States District Court - Central District of California, against Defendant. On or about May 6, 2020, the Parties met and conferred for FRCP Rule 26(f) purposes and also discussed an interest in early mediation.

Counsel represents that prior to mediation, Plaintiff conducted informal discovery necessary to evaluate the asserted claim that Defendant failed to provide proper disclosures to obtain consumer reports for Plaintiff and similarly situated employees. Specifically, Defendant identified and produced a template of the offending disclosure entitled "Disclosure and Release" that was provided to approximately 238 applicants from California who were subjected to background/investigative reports. The Disclosure and Release provided was the identical form that Plaintiff was required to sign, which subjected her to a similar background/investigative report. Defendant further identified that the Disclosure and Release was drafted by Accutrace, Inc., who was identified on the form, and was responsible for conducting the background/investigation report. Defendant also identified that the Disclosure and Release was only applicable to drivers, of which again, there were only approximately 238 applicants that were subjected to the alleged background/investigative reports. Defendant also identified that it ceased using the Disclosure and Release to acquire background/investigative reports for its drivers in 2018 since it lost its bussing contract in 2018.

Defendant also produced background/investigative reports for two applicants that were not selected for employment based on the results and confirmed that no other applicants were rejected based on information gathered from the background/investigative reports.

Since Plaintiff contends that the Disclosure and Release was facially non-compliant with the law since the purported disclosure was embedded with extraneous information that did not effectuate the purposes of the FCRA and analogous California statutes, she was able to evaluate the claim based on review of the aforementioned information/documents.

No sampling was required as the Disclosure and Release template provided was identical to the one provided to Plaintiff

and because the approximately 238 other California drivers would have been subjected to the same offending document.

The Parties agreed to mediate with Lynn S. Frank, Esq. ("Ms. Frank") on December 1, 2020, but postponed the mediation to allow more time for informal discovery. On March 30, 2021 the Parties held their first mediation but were unsuccessful. However, Ms. Frank continued settlement discussions with counsel for several months and as part of the settlement discussions, the Parties agreed to dismiss the Complaint in federal court, without prejudice, and re-file the Complaint in state court. Thereafter, Ms. Frank continued settlement discussions with counsel which resulted in the Parties reaching a class wide settlement on July 27, 2022. A fully executed copy of the Settlement Agreement was filed with the Court on June 14, 2023 attached to the Motion for Preliminary Approval (MPA) as Exhibit 1.

On October 23, 2023, the Court issued a checklist of items for counsel to address. In response, on February 7, 2024, counsel supplemental briefing filed a fully executed Amended Settlement Agreement ("Amended Settlement") attached to the Declaration of James A. De Sario ("De Sario Decl.").

Now before the Court is Plaintiff's motion for preliminary approval of the settlement agreement.

II. SETTLEMENT AGREEMENT

A. Definitions.

"FCRA Class": All applicants for employment on behalf of drivers with Defendant in California for whom Defendant procured a background check report from February 5, 2015 to and including December 31, 2018 ("FCRA Class Period").

Defendant represents that the FCRA Class contains approximately 238 individuals. (¶10)

"FCRA Class Period": February 5, 2015 to and including December 31, 2018. (Ibid.)

The parties stipulate to class certification for settlement purposes only. (¶32.)

B. Terms of Settlement Agreement

The essential terms are:

- The Gross Settlement Amount ("GSA") is \$100,000, non-reversionary. (¶35)
- The Net Settlement Amount ("Net") (\$34,166.67) is the GSA minus the following:
 - Up to \$33,333.33 (33 1/3%) for attorney fees (¶36.b);
 - Up to \$20,000 for litigation costs (Ibid.);
 - Up to \$5,000 for a Service Payment to the Named Plaintiff (¶36.a1; and
 - Up to \$7,500 for settlement administration costs (¶36.c).
- Funding of Settlement: Defendant shall fund the Gross Settlement Amount within seven (7) days after the Effective Date of the Settlement by wire transfer or as agreed upon with the Settlement Administrator. (¶40)
- There is no claim form requirement. (Ibid.)
- Individual Settlement Payment Calculation: Participating Class Members shall be eligible to receive a pro rata share of the Net Settlement Amount in relation to the aggregate number of Class Members during the FCRA Class Period. The pro rata share shall be calculated by dividing the Net Settlement Amount by the number of Class Members during the FCRA Class Period. (¶37)
 - Tax Allocation: Individual Settlement Awards to Participating FCRA Class Members shall not be subject to payroll tax withholdings. (¶37.d)
- "Response Deadline" means the date forty-five (45) days after the Settlement Administrator mails the Class Notice to Class Members and the last date on which Class Members may postmark an objection to or opt out of the Settlement. To the extent any mailed Class Notice is returned as undeliverable, such person shall be permitted an additional fifteen (15) days from any remailing of the Class Notice to submit their objection or request to opt out, but in no event later than sixty (60) days from [sic] the initial mailing of the Class Notice. (¶25)
- Uncashed Settlement Checks: Individual Settlement Award checks shall remain negotiable for one hundred eighty (180) days from the date of mailing. If an Individual Settlement Award check remains uncashed after one hundred eighty (180) days from issuance, the Settlement Administrator shall void any such uncashed checks. Thereafter, any uncashed checks shall be distributed to the Legal-Aid at Work. (¶37.f) Counsel declare they have no interest or involvement in the governance or work of the cy pres recipient. (De Sario Decl., ¶2.F; Price Decl., ¶6; Theriault Decl., ¶3; Botello Decl., ¶2.)

- The settlement administrator will be CPT Group. (¶26)
- Notice of Final Judgment will be posted on the Settlement Administrator's website. (De Sario Decl., ¶2.E)
- Participating class members and the named Plaintiff will release certain claims against Defendants. (See further discussion below)

III. DISCUSSION

A. Does a Presumption of Fairness Exist?

1. Was the settlement reached through arm's-length bargaining? Yes. The Parties agreed to mediate with Lynn S. Frank, Esq. ("Ms. Frank") on December 1, 2020, but postponed the mediation to allow more time for informal discovery. On March 30, 2021 the Parties held their first mediation, but were unsuccessful. However, Ms. Frank continued settlement discussions with counsel for several months and as part of the settlement discussions, the Parties agreed to dismiss the Complaint in federal court, without prejudice, and re-file the Complaint in state court. Thereafter, Ms. Frank continued settlement discussions with counsel which resulted in the Parties reaching a class wide settlement on July 27, 2022. (Declaration Of Michael Nourmand ("Nourmand Decl."), ¶¶2-3).

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Counsel represents that prior to mediation, Plaintiff conducted informal discovery necessary to evaluate the asserted claim that Defendant failed to provide proper disclosures to obtain consumer reports for Plaintiff and similarly situated employees. Specifically, Defendant identified and produced a template of the offending disclosure entitled "Disclosure and Release" that was provided to approximately 238 applicants from California who were subjected to background/investigative reports. The Disclosure and Release provided was the identical form that Plaintiff was required to sign, which subjected her to a similar background/investigative report. Defendant further identified that the Disclosure and Release was drafted by Accutrace, Inc., who was identified on the form, and was responsible for conducting the background/investigation report. (De Sario Decl., ¶2.A)

Defendant also identified that the Disclosure and Release was only applicable to drivers, of which again, there were only approximately 238 applicants that were subjected to the alleged

background/investigative reports. Defendant also identified that it ceased using the Disclosure and Release to acquire background/investigative reports for its drivers in 2018 since it lost its bussing contract in 2018. Defendant also produced background/investigative reports for two applicants that were not selected for employment based on the results and confirmed that no other applicants were rejected based on information gathered from the background/investigative reports. (Ibid.) Since Plaintiff contends that the Disclosure and Release was facially non-compliant with the law since the purported disclosure was embedded with extraneous information that did not effectuate the purposes of the FCRA and analogous California statutes, she was able to evaluate the claim based on review of the aforementioned information/documents. No sampling was required as the Disclosure and Release template provided was identical to the one provided to Plaintiff and because the approximately 238 other California drivers would have been subjected to the same offending document. (Ibid).

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (Nourmand Decl., ¶¶16-17).

4. What percentage of the class has objected? This cannot be determined until the fairness hearing. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶ 14:139.18, ["Should the court receive objections to the proposed settlement, it will consider and either sustain or overrule them at the fairness hearing."].)

The Court concludes that the settlement is entitled to a presumption of fairness.

B. Is the Settlement Fair, Adequate, and Reasonable?

1. Strength of Plaintiff's case. "The most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.)

Class Counsel has provided information, summarized below, regarding the factual basis for, and estimated maximum exposure for each of the claims alleged.

Violation	Maximum Exposure	Risk-Adjusted Exposure
FCRA	\$238,000.00	\$23,800.00

TOTAL	\$238,000.00	\$23,800.00
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(Nourmand Decl. ¶¶ 8-12.)

2. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

3. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (See Weinstat v. Dentsply Intern., Inc. (2010) 180 Cal.App.4th 1213, 1226 ("Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate."))

4. Amount offered in settlement. Plaintiff's counsel obtained a \$100,000 non-reversionary settlement. The \$100,000 settlement amount constitutes approximately 42.02% to 420.17% of Defendant's maximum to risk-adjusted exposure. Given the uncertain outcomes, the settlement appears to be within the "ballpark of reasonableness."

The \$100,000 settlement amount, if reduced by the requested deductions, will leave \$34,166.67 to be divided among approximately 238 class members. The resulting payments will average \$143.56 per class member. [$\$34,166.67 / 238 = \143.56].

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Class Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour class actions.

7. Presence of a governmental participant. This factor is not applicable here.

8. Reaction of the class members to the proposed settlement. The class members' reactions will not be known until they receive notice and are afforded an opportunity to

object, opt-out and/or submit claim forms. This factor becomes relevant during the fairness hearing.

The Court concludes that the settlement can be preliminarily deemed fair, adequate, and reasonable.

C. Scope of the Release

Upon entry of Final Approval Order and Judgment, Plaintiff and all other Participating Class Members in the FCRA Class shall be deemed to have released their respective Released Claims against the Released Parties as follows: (§41)

Upon entry of Final Approval Order and Judgment and Defendant funding the Gross Settlement Amount, the Participating FCRA Class Members shall release the Released Parties to the fullest extent permitted by law from all federal, state, and local claims, causes of action, demands, and obligations of any kind in law or equity, whether known or unknown, suspected or unsuspected, that were either asserted in the Action or that could reasonably arise from facts alleged in the Action, or arising out of, background checks or reports, motor vehicle reports, reference checks, background investigations and/or consumer reports or investigative consumer reports (collectively, "Reports") of any kind, including but not limited to claims arising under the Fair Credit Reporting Act, the California Consumer Credit Reporting Agencies Act, the California Investigative Consumer Reporting Agencies Act, and like federal, state, and local laws, including but not limited to all statutory, compensatory, actual and punitive damages, any restitution, declaratory, injunctive and any other equitable relief, and attorneys' fees and expenses, arising from or related to Reports ordered through the FCRA Class Period. (§41a)

"Released Parties" means EDS Service Solutions, LLC., and all divisions, related or affiliated companies, parent companies, holding companies, shareholders, officers, directors, employees, agents, attorneys, insurers, investors, successors and assigns, owners, officials, branches, partners, units, assigns, limited liability companies or other organizations, members, managers, principals, heirs, representatives, accountants, auditors, consultants, reinsurers, predecessors in interest, beneficiaries, executors, members, privies, administrators, fiduciaries, and trustees and any individual or entity which could be jointly liable with Defendant. (§24)

Named Plaintiff will also provide a general release and CC § 1542 waiver. (¶41.b-41.c)

D. May Conditional Class Certification Be Granted?

A detailed analysis of the elements required for class certification is not required, but it is advisable to review each element when a class is being conditionally certified (Amchem Products, Inc. v. Winsor (1997) 521 U.S. 620, 622-627.) The trial court can appropriately utilize a different standard to determine the propriety of a settlement class as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases. (Dunk at 1807, fn 19.) Finally, the Court is under no "ironclad requirement" to conduct an evidentiary hearing to consider whether the prerequisites for class certification have been satisfied. (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 240, disapproved on another ground in Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260.)

1. Numerosity. There are approximately 238 class members. (Nourmand Decl., ¶19.) This element is met.

2. Ascertainability. The proposed class is defined above. The class definition is "precise, objective and presently ascertainable." (Sevidal v. Target Corp. (2010) 189 Cal.App.4th 905, 919.) All Class Members are identifiable through a review of Defendant's employment records. (Nourmand Decl., ¶19).

3. Community of interest. "The community of interest requirement involves three factors: '(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.'" (Linder v. Thrifty Oil Co. (2000) 23 Cal.4th 429, 435.)

Regarding commonality, Plaintiff contends that common issues, without limitation, include whether Defendant violated the FCRA. (Nourmand Decl., ¶20.)

As to typicality, Plaintiff contends that her claims are typical of the Class Members' claims because Plaintiff's claims are precisely the same as those of the class she seeks to represent. Like other members of the Class, the offending FCRA disclosure was provided to her. (Id. at ¶21.)

As to adequacy, Plaintiff represents that she was informed of the risks of serving as class representative, participated in the litigation, and does not have conflicts of interest with the class. (Id. at ¶22; Declaration of Plaintiff Eric Price, passim.)

4. Adequacy of class counsel. As indicated above, Class Counsel has shown experience in class action litigation, including wage and hour class actions.

5. Superiority. Given the relatively small size of the individual claims, a class action appears to be superior to separate actions by the class members.

The Court finds that the class may be conditionally certified because the prerequisites of class certification have been satisfied.

E. Is the Notice Proper?

1. Content of class notice. The proposed notice is attached to the Settlement Agreement. Its content appears to be acceptable. It includes information such as: a summary of the litigation; the nature of the settlement; the terms of the settlement agreement; attorney fees and costs; enhancement awards; the procedures and deadlines for participating in, opting out of, or objecting to, the settlement; the consequences of participating in, opting out of, or objecting to, the settlement; and the date, time, and place of the final approval hearing.

Notice will be given in English and Spanish. (¶27)

2. Method of class notice. Within seven (7) days of entry of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the Class Information for purposes of mailing the Class Notice to FCRA Class Members. The Class Information shall be considered confidential, shall not be disclosed to anyone other than Defense Counsel. Specifically, the Settlement Administrator shall not provide the Class Information to Class Counsel. (¶38.a) Upon receipt of the Class Information, the Settlement Administrator shall perform a search based on the National Change of Address Database maintained by the United States Postal Service to update and correct any known or identifiable address changes. Within seven (7) days after receiving the Class Information from Defendant as provided herein, the Settlement Administrator shall mail copies of the

Class Notice to all Class Members via regular First Class U.S. Mail. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Class Member. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the most current mailing address for each Class Member. The Parties agree that this procedure for notice provides the best notice practicable to Class Members and fully complies with due process. (§38.b) Any Class Notice returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by the use of skip-tracing, or other type of automated search, using the name, address and/or Social Security number of the Class Member involved, and shall then perform re-mailing to the Class Member whose Class Notice was returned as non-delivered, assuming another mailing address is identified by the Settlement Administrator. If a returned Class Notice is associated with a currently employed Class Member, the Settlement Administrator will notify Defendant, who will in turn obtain an updated and current address for such Class Members and provide it to the Settlement Administrator for re-mailing of the Class Notice. Class Members who are sent re-mailed a Class Notice shall have their Response Deadline extended by 15 days from any re-mailing of the Class Notice, but in no event later than 60 days after the initial mailing of the Class Notice. If these procedures are followed, notice to Class Members shall be deemed to have been fully satisfied, and if the intended recipient of the Class Notice does not receive the Class Notice, the intended recipient shall nevertheless remain a Class Member and shall be bound by all terms of the Settlement and the Final Order and Judgment. (§38.b).

3. Cost of class notice. As indicated above, settlement administration costs are estimated to be \$7,500. Prior to the time of the final fairness hearing, the claims administrator must submit a declaration attesting to the total costs incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

F. Attorney Fees and Costs

CRC rule 3.769(b) states: "Any agreement, express or implied, that has been entered into with respect to the payment of attorney fees or the submission of an application for the approval of attorney fees must be set forth in full in any

application for approval of the dismissal or settlement of an action that has been certified as a class action.”

Ultimately, the award of attorney fees is made by the court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. (PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095-1096; Ramos v. Countrywide Home Loans, Inc. (2000) 82 Cal.App.4th 615, 625-626; Ketchum III v. Moses (2000) 24 Cal.4th 1122, 1132-1136.) Despite any agreement by the parties to the contrary, “the court ha[s] an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable.” (Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal.App.4th 123, 128.)

The question of whether Class Counsel is entitled to \$33,333.33 (33 1/3%) in attorney fees and up to \$20,000 in costs will be addressed at the final fairness hearing when class counsel brings a noticed motion for attorney fees. Class counsel must provide the court with billing information so that it can properly apply the lodestar method, and must indicate what multiplier (if applicable) is being sought as to each counsel.

Class Counsel should also be prepared to justify the costs sought by detailing how they were incurred.

G. Incentive Award to Class Representative

The named Plaintiff will request a service award of \$5,000. (¶36.a)

In connection with the final fairness hearing, the named Plaintiff must submit a declaration attesting to why he should be entitled to an enhancement award in the proposed amount. The named Plaintiff must explain why he “should be compensated for the expense or risk she has incurred in conferring a benefit on other members of the class.” (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with “nothing more than pro forma claims as to ‘countless’ hours expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude that an enhancement was ‘necessary to induce [the named

plaintiff] to participate in the suit" (Id. at 806-807, italics and ellipsis in original.)

The Court will decide the issue of the enhancement award at the time of final approval.

IV.
CONCLUSION

Based upon the foregoing, the Court orders that:

1) The Parties' Motion for Preliminary Approval of Class Action Settlement is GRANTED as the settlement is fair, adequate, and reasonable.

2) The essential terms are:

A. The Gross Settlement Amount ("GSA") is \$100,000.

B. The Net Settlement Amount is the GSA minus the following:

Up to \$33,333.33 (33 1/3%) for attorney fees (§36.b);
Up to \$20,000 for litigation costs (Ibid.);
Up to \$5,000 for a Service Payment to the Named Plaintiff (§36.a)
Up to \$7,500 for settlement administration costs (§36.c).

C. Plaintiffs release of Defendants from claims described herein.

3) The Parties' Motion for Final Approval of Class Action Settlement must be filed by September 12, 2024. Plaintiff must call the Court PRIOR to filing and serving to obtain a hearing date.

4) The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged [Proposed] Judgment containing among other things, the class definition, full release language, and names of the any class members who opted out; and the parties must email the [Proposed] Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.

5) Non-Appearance Case Review is set for September 19, 2024, 8:30 a.m., Department 9.

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CLERK TO GIVE NOTICE TO MOVING PARTY. THE MOVING PARTY TO GIVE
NOTICE TO ALL OTHER PARTIES.

IT IS SO ORDERED.

DATED: March 8, 2024

YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT