

1 Carolyn H. Cottrell (SBN 166977)  
David C. Leimback (SBN 265409)  
2 SCHNEIDER WALLACE  
COTTRELL KONECKY WOTKYNS LLP  
3 2000 Powell Street, Suite 1400  
Emeryville, CA 94608  
4 Tel. 415.421.7100; Fax: 415.421.7105  
ccottrell@schneiderwallace.com  
5 dleimback@schneiderwallace.com

6 BERGER MONTAGUE PC  
7 E. Michelle Drake (*pro hac vice*)  
Joseph C. Hashmall (*pro hac vice*)  
8 43 SE Main Street, Suite 505  
Minneapolis, MN 55414  
9 Tel.: 612.594.5999; Fax: 612.584.4470  
emdrake@bm.net  
10 jhashmall@bm.net

11 *Attorneys for Plaintiff*

12  
13 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

14 GREGORY HOWELL, on behalf of himself  
15 and all others similarly situated,

16 Plaintiff,

17 v.

18 CHECKR, INC.,

19 Defendant.  
20  
21

Case No.:3:17-cv-04305-SK

**PLAINTIFFS' MOTION FOR  
FINAL APPROVAL OF THE  
PROPOSED SETTLEMENT AND  
MEMORANDUM IN SUPPORT  
[UNOPPOSED]**

Date: December 3, 2018  
Time: 11:00 AM  
Courtroom: A, 15th Floor  
Judge: Hon. Sallie Kim

22 **NOTICE OF MOTION AND MOTION**

23 PLEASE TAKE NOTICE that on December 3, 2018, at 11:00 AM, in Courtroom A  
24 on the 15th Floor, at 450 Golden Gate Avenue, San Francisco, California, the Honorable  
25 Sallie Kim, U.S. Magistrate Judge, presiding, Plaintiff will respectfully move the Court to  
26 grant final approval to the parties' settlement and enter final judgment in this action.

27 Defendant does not oppose this Motion.  
28

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**TABLE OF AUTHORITIES**

Cases

*Cahlin v. Gen. Motors Acceptance Corp.*, 936 F.2d 1151 (11th Cir. 1991).....10

*Centuouri v. Experian Info. Sols., Inc.*, 431 F. Supp. 2d 1002 (D. Ariz. 2006)..... 10

*In re Charles Schwab Corp. Secs. Litig.*, No. 08-1510, 2011 WL 1481424 (N.D. Cal. April 19, 2011)..... 11

*Churchill Village, L.L.C. v. General Electric*, 361 F.3d 566 (9th Cir. 2004).....13

*Class Plaintiffs v. City of Seattle*, 955 F.2d 1268 (9th Cir. 1991)..... 6, 13

*Dickerson v. Cable Commc’ns, Inc.*, No. 12-cv-12, 2013 WL 6178460 (D. Or. Nov. 25, 2013)..... 7

*Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15 (N.D. Cal. 1980)..... 11

*Gauci v. Citi Mortg.*, No. 11-cv-01387, 2011 WL 3652589 (C.D. Cal. Aug. 19, 2011)..9

*Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329 (9th Cir. 1995).....10

*Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998)..... 7

*In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573 (N.D. Cal. 2015).....12

*Lenox v. Equifax Info. Servs. LLC*, 2007 WL 1406914 (D. Or. May 7, 2007).....10

*Nachshin v. AOL, LLC*, 663 F.3d 1034 (9th Cir. 2011).....5

*Nat’l Rural Telecomms. Coop v. DIRECTV, Inc.*, 221 F.R.D. 523 (C.D. Cal. 2004).....12

*In re Pac. Enters. Sec. Litig.*, 47 F.3d 373 (9th Cir. 1995).....11

*In re Quintus Secs. Litig.*, No. 00-cv-4263, 2006 WL 3507936 (N.D. Cal. Dec. 5, 2006).1

*Rodriguez v. West Publ’g Corp.*, 563 F.3d 948 (9th Cir. 2009)..... 7

*Shames v. Hertz Corp.*, No. 07-cv-2174, 2012 WL 5392159 (S.D. Cal. Nov. 5, 2012)..12

*In re Syncor ERISA Litig.*, 516 F.3d 1095 (9th Cir. 2008)..... 6

*In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078 (N.D. Cal. 2007).....11

*Tait v. BSH Home Appliances Corp.*, No. 10-cv-0711, 2015 WL 4537463 (C.D. Cal. July 27, 2015)..... 13

*Touhey v. U.S.*, No. 08-cv-01418, 2011 WL 3179036 (C.D. Cal. July 25, 2011).....13

1 *In re Toys R Us-Delaware, Inc.–Fair & Accurate Credit Transactions Act (FACTA) Litig.*,  
 2 295 F.R.D. 438 (C.D. Cal. 2014).....7  
 3 *In re Volkswagen “Clean Diesel” Mktg., Sales Practices & Prod. Liab. Litig.*, 895 F.3d 597  
 4 (9th Cir. 2018).....8  
 5 *In re Wash. Public Power Supply Sys. Secs. Litig.*, 19 F.3d 1291 (9th Cir. 1994).....13  
 6 *White v. Experian Info. Solutions, Inc.*, 803 F. Supp. 2d 1086 (C.D. Cal. 2011).....13  
 7 *Zepeda v. PayPal, Inc.*, 2017 WL 1113293 (N.D. Cal. March 24, 2017).....12  
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**MEMORANDUM OF POINTS & AUTHORITIES**

**I. INTRODUCTION**

On June 29, 2018, the Court granted preliminary approval of the proposed settlement of this action. (ECF No. 66.) The Court found on a preliminary basis that the terms of the settlement are “fair, reasonable, and adequate.” (*Id.*) The settlement provides meaningful injunctive relief which creatively and effectively solves the problems identified by this lawsuit. In addition, the settlement provides monetary relief for class members which exceeds that provided in settlements of similar claims. The response from the Settlement Class Members confirms that the settlement is fair and should be approved – out of 96,040 Class Members, only two have opted out, none have objected, and as of October 26, out of the group of Class Members required to return a Claim Form to receive a payment, 4,553 (10.8 percent) have done so.<sup>1</sup> This supports a final analysis that the settlement is fair, reasonable, and adequate. *See In re Quintus Secs. Litig.*, No. 00-cv-4263, 2006 WL 3507936, at \*3 (N.D. Cal. Dec. 5, 2006) (“the absence of any objections or requests for exclusion among a class of this size [about 20,000] demonstrates the overall reasonableness of this settlement”).

Accordingly, Plaintiff Gregory Howell (“Plaintiff”), individually and on behalf of the Settlement Class, respectfully requests that the Court enter an order granting final approval of the proposed Settlement Agreement with Defendant Checkr, Inc. (“Defendant”) which fully resolves this class action brought under the Fair Credit Reporting Act (“FCRA”).

**II. STATEMENT OF THE ISSUE TO BE DECIDED**

Whether the Settlement Agreement should receive final approval.

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<sup>1</sup> The deadline for submission of Claim Forms was October 24, thus this number represents the total valid Claim Forms as of October 26, but Claim Forms are continuing to be reviewed for validity, and additional Forms may still arrive in the mail with an October 24 or earlier postmark. The parties will provide a final claims number, and a final count of valid claims, to the Court prior to the Final Fairness Hearing.

1 **III. RELEVANT FACTS**

2 **A. SUMMARY OF CLAIMS AND LITIGATION HISTORY**

3 The substance and history of this class action is recounted in detail in Plaintiff's  
4 preliminary approval and fee petition papers and will be only briefly summarized here. (*See*  
5 ECF Nos. 55, 71.) Plaintiff alleged that Defendant, a consumer reporting agency, violated  
6 the FCRA by: (1) failing to follow reasonable procedures to assure maximum possible  
7 accuracy of the driving records it reported about consumers, 15 U.S.C. § 1681e(b), and (2)  
8 by reporting adverse information which was older than seven years and which was not a  
9 criminal conviction, 15 U.S.C. § 1681c. (*See generally* Compl., ECF No. 1-1.) Defendant  
10 removed the case to federal court (originally filed in San Francisco Superior Court on June  
11 23, 2017), and answered the Complaint on November 3, 2017, denying Plaintiff's  
12 allegations. (ECF No. 37.) In its Answer, Defendant denied that it violated the FCRA and  
13 denied each of the material allegations of the Complaint. (*Id.*)

14 During discovery, the parties exchanged both informal and formal information and  
15 document productions. (ECF No. 55-1 ¶ 3.) Defendant provided detailed information about  
16 its policies, procedures, and algorithms, and the parties negotiated extensively regarding the  
17 production of ESI from Defendant. Class Counsel retained a database expert, who reviewed  
18 and refined Defendant's proposed algorithm, and Defendant executed those queries to  
19 provide information about the composition of the proposed Class. (*Id.*)

20 On March 1, 2018, the parties engaged in a full-day mediation with third-party  
21 neutral Rodney Max, Esq. (ECF No. 45.) After a full day of vigorous, arms-length  
22 negotiations, the parties were unable to reach a resolution, but engaged in subsequent arms-  
23 length negotiations through counsel. With the assistance of Mr. Max, the parties ultimately  
24 executed a terms sheet and formalized a class-wide settlement, which was presented to the  
25 Court for preliminary approval on May 21, 2018. (ECF No. 55-2.) The Court preliminarily  
26 approved the settlement on June 29, 2018 (ECF No. 66), after the parties had submitted  
27 amendments to the timeline and notices incorporated in the original Agreement. On  
28

1 October 8, 2018, in accordance with the Settlement Agreement, Plaintiff moved for  
2 approval of his attorneys' fees, costs, Class Representative Service Award, and Settlement  
3 Administration Expenses. (ECF No. 71.)

4 **B. KEY SETTLEMENT TERMS**

5 The settlement resolves, on a class-wide basis, Plaintiff's claim regarding  
6 Defendant's alleged reporting of adverse information older than seven years from the date  
7 of the report which is not a criminal conviction.<sup>2</sup> The Settlement Class consists of all  
8 consumers upon whom Defendant produced a consumer report which included records  
9 older than seven years from the date of the report, which included the following terms in  
10 the "charge type" field: "infraction," "ordinance," "violation," "petty offense," "traffic,"  
11 "citation," and "civil," herein referred to as "low-level offenses." (ECF No. 66 ¶ 2.) In  
12 return for the settlement benefits described below, Class Members release claims arising  
13 under 15 U.S.C. § 1681c and analogous state laws.<sup>3</sup>

14 Defendant has agreed to implement several business practice changes that address  
15 Plaintiff's claims in this litigation. (ECF No. 55-2 ¶ 5.) Defendant will (1) not report low-  
16 level offenses older than seven years for at least 18 months, regardless of whether such low-  
17 level offenses are criminal in the relevant jurisdiction, and (2) if, after that time period,  
18 Defendant decides to resume reporting low-level *criminal* offenses that are older than seven  
19 years, it will use data provided by Class Counsel from the settlement claims process, and  
20 consult an expert regarding its methodology in resuming reporting these types of records.  
21 The purpose of the injunctive relief is to clear all Class Members' reports of *all* low-level  
22 offense records and to ensure that, in the event Defendant resumes reporting the limited set  
23 of such records which can lawfully be reported, such reporting is done in such a way as to  
24 protect consumers' rights.

25 \_\_\_\_\_  
26 <sup>2</sup> Plaintiff's other claim, regarding reasonable procedures, is being released by Plaintiff on  
an individual basis.

27 <sup>3</sup> In general, §1681c preempts most state laws on this issue, although there is a carve-out  
28 for state laws already in effect at the time the relevant FCRA provision was passed. 15  
U.S.C. § 1681t(b)(1)(E).

1           Should the Court grant final approval, Defendant also will create a common fund  
2 consisting of \$4,460,000.00 for the benefit of the Settlement Class. (ECF No. 55-2 ¶ 1.21.)  
3 This fund will be distributed *pro rata* to all Settlement Class Members eligible to receive a  
4 payment, after the deductions for any Court-awarded attorneys' fees and costs, settlement  
5 administration costs, and a Named Plaintiff service award. (*Id.* ¶ 8.5.2.) Settlement Class  
6 Members will receive an automatic payment where either (1) Defendant reported an  
7 "infraction" on the individual that was older than seven years from the date of the report  
8 and the infraction was from North Carolina, Florida, or Virginia (states where all  
9 "infractions" are non-criminal) and/or (2) the individual's consumer report included  
10 infraction and/or other low-level records older than seven years, the Class Member disputed  
11 that information with Defendant, and the dispute resulted in a change to the records on their  
12 report which were older than seven years. (*Id.* ¶ 1.4.) This automatic payment group  
13 accounts for more than half of the Settlement Class. The remaining Settlement Class  
14 Members were required to return a Claim Form. These individuals consist of people whose  
15 low-level offense records were not infraction records from North Carolina, Florida, or  
16 Virginia and/or who did not previously successfully dispute the inclusion of a low-level  
17 offense in their consumer report.

18           Following receipt by the Settlement Administrator of a Claim Form, Defendant  
19 transmitted a redacted copy of that Class Member's consumer report to Class Counsel.  
20 Class Counsel then reviewed the low-level offense information on the report and performed  
21 legal research in order to determine whether the reported offense was criminal under the  
22 applicable state law. If the reported offense was not criminal, that Settlement Class Member  
23 will receive a payment, should the settlement be finally approved. All eligible Settlement  
24 Class Members, including those who receive payment automatically and those whose  
25 claims are approved, will receive payments for the same amount.

26           If settlement checks are not cashed, remaining funds will be donated to the Southern  
27 Center for Human Rights and Public Justice. Both organizations are legal advocacy non-  
28



1 profits who do work to advance enforcement of the FCRA and/or in service of assisting  
2 individuals who are facing collateral consequences as a result of interactions with the  
3 criminal justice system, and are appropriate *cy pres* recipients. *Nachshin v. AOL, LLC*, 663  
4 F.3d 1034, 1039 (9th Cir. 2011) (“[C]y pres distribution must be guided by (1) the  
5 objectives of the underlying statute(s) and (2) the interests of the silent class members.”).  
6 No portion of the settlement fund will revert to Defendant in any circumstance.

7 **C. CLASS NOTICE AND REACTION**

8 On July 26, 2018, JND Class Action Administration emailed Notice to the 96,040  
9 Settlement Class Members in accordance with the procedures outlined in the Settlement  
10 Agreement. (ECF No. 71-10 ¶ 9.) On July 24, 2018, JND also activated the Settlement  
11 Website, [www.HowellSettlement.com](http://www.HowellSettlement.com), and a toll-free telephone line for Class Members  
12 with questions. (*Id.* ¶¶ 15, 18.) Further, on August 13, 2018, JND sent a Reminder Email  
13 Notice to those whose initial Email Notice was still unopened. (*Id.* ¶ 10.) Additionally,  
14 throughout the Notice Period, JND sent Mail Notices to those Settlement Class Members  
15 whose Email Notices were either undeliverable or unopened after a certain amount of time  
16 had passed, to ensure receipt of Notice by Settlement Class Members. (2d Admin. Decl. ¶¶  
17 11, 12.)

18 As of October 26, 2018, there are only **two** opt-outs, and **zero** objections received.  
19 (2d Admin. Decl. ¶¶ 22, 24.) Additionally, as of October 26, 2018, out of the 42,030 Class  
20 Members required to return a Claim Form to be considered for eligibility for payment, 4,553  
21 have done so, resulting in an approximately 10.8% claims rate. (2d Admin. Decl. ¶ 26.)<sup>4</sup>

22 Class Counsel have reviewed and made determinations on eligibility for payment  
23 for 2,939 Claimants as of October 26, 2018. Of these reports, Class Counsel have  
24 determined that 1,618 had low-level offenses older than seven years that were non-criminal  
25

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26 <sup>4</sup> The postmark deadline for opt-outs, objections and claims was October 24, 2018, thus  
27 there may be updates to these numbers, should some timely-postmarked opt-outs, objections  
28 or claims arrive after today’s date. Class Counsel will provide final numbers to the Court  
prior to the Final Approval Hearing.

1 in nature on their reports (approximately 55% of Claimants), and are thus eligible for  
2 payment. Class Counsel are continuing their review and analysis process as Defendant  
3 provides Claimants' reports on a rolling basis, and expects to complete all Claimants'  
4 reports in advance of the Final Approval Hearing. Class Counsel will include updated  
5 numbers in the supplement to be provided prior to the Final Approval Hearing.

6 The Settlement Administrator has also ensured compliance with the notice  
7 requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b), providing  
8 notice of the proposed settlement to the appropriate officials. (ECF No. 71-10 ¶ 3.)

9 On October 8, 2018, Plaintiff filed his Motion for Attorneys' Fees, Costs, Class  
10 Representative Service Payment, and Settlement Administration Expenses, which JND  
11 promptly posted on the Settlement Website for Class Members to access and review. There  
12 have been no objections to Plaintiff's Motion for Fees, Costs, and Service Payment.

13 **D. RELIEF TO BE PROVIDED AFTER FINAL APPROVAL.**

14 If the settlement is granted final approval, Defendant will deposit the common fund  
15 amount within ten business days of the Effective Date. Within fifteen business days of the  
16 Effective Date, JND will mail checks to all Settlement Class Members eligible for payment.  
17 Should the claims rate and the rate of eligibility of Claimants remain unchanged, if the Court  
18 grants the requested attorneys' fees, costs, and Class Representative Service Payment, and  
19 after JND's costs are paid, eligible Settlement Class Members will receive approximately  
20 \$54.88 each.<sup>5</sup> This amount is slightly higher than the amount estimated in Class Members'  
21 Notices, which stated the expected recovery would be between \$40 and \$50.

22 **IV. ARGUMENT**

23 There is a "strong judicial policy that favors settlements, particularly where complex  
24 class action litigation is concerned." *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th  
25 Cir. 2008). Courts may approve proposed class action settlements if they are found to be  
26 "fair, adequate, and reasonable." *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1292

27 \_\_\_\_\_  
28 <sup>5</sup> The precise amount will be updated in Counsel's supplement filing as well.

1 (9th Cir. 1991). The court begins its analysis with an “initial presumption of fairness when  
2 a proposed class settlement, which was negotiated at arm’s length by counsel for the class,  
3 is presented for court approval.” Newberg on Class Actions § 11:41 (4th ed. 2006); *accord*,  
4 *Dickerson v. Cable Commc’ns, Inc.*, No. 12-cv-12, 2013 WL 6178460, at \*2 (D. Or. Nov.  
5 25, 2013) (“Courts within the Ninth Circuit ‘put a good deal of stock in the product of an  
6 arms[]length, non-collusive, negotiated resolution.’”) (quoting *Rodriguez v. West Publ’g*  
7 *Corp.*, 563 F.3d 948, 965 (9th Cir. 2009)).

8 The Ninth Circuit has stated that courts should consider several factors as part of the  
9 fairness determination, including: (1) the strength of the plaintiffs’ case; (2) the risk,  
10 expense, complexity and duration of further litigation; (3) the risk of maintaining class  
11 action status through trial; (4) the amount offered in settlement; (5) the extent of discovery  
12 completed and the stage of proceedings; (6) the experience and views of counsel; (7) the  
13 presence of a governmental participant; and (8) the reaction of the class members to the  
14 proposed settlement. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

15 For the reasons set forth below, all of the relevant factors weigh in favor of granting  
16 final approval to the parties’ settlement, and the Court should enter the Final Approval  
17 Order, dismiss Plaintiff’s and the Settlement Class’s claims with prejudice, and approve the  
18 settlement payments for distribution.

19 **A. THE RELIEF PROVIDED BY THE SETTLEMENT IS SIGNIFICANT.**

20 The settlement not only offers Settlement Class Members monetary relief that is  
21 comparable or exceeds recoveries approved in similar cases, it also provided meaningful  
22 non-monetary relief in the form of practice changes that directly address the claims at issue.

23 Plaintiff sought statutory damages under the FCRA, which provides for damages of  
24 between \$100 and \$1,000 for each willful violation. 15 U.S.C. § 1681n(a)(1). Due to the  
25 difficulties inherent in establishing that violations were willful, it is common for FCRA  
26 class actions to settle for less than \$100 per class member. *See, e.g., In re Toys R Us-*  
27 *Delaware, Inc.–Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438,

1 453-4 (C.D. Cal. 2014) (“A \$5 or \$30 award, therefore, represents 5% to 30% of the  
2 recovery that might have been obtained. This is not a *de minimis* amount. Given the  
3 likelihood that plaintiffs would have been unable to prove actual damages and the risk that  
4 they would have been unable to prove willfulness and recover any damages at all, the court  
5 finds that the amount of the settlement weighs in favor of approval.”). The net recovery  
6 here of approximately \$54.88 per eligible Class Member, supports the fairness of the  
7 settlement.

8 The individual recovery provided is in line with or superior to other settlements of  
9 similar claims. *See, e.g., King v. Gen. Info. Servs.*, No. 10-cv-6850, ECF No. 124 (E.D. Pa.  
10 Nov. 4, 2014) (approving §1681c settlement providing class members each \$50), *Haley v.*  
11 *TalentWise, Inc.*, No. 13-cv-1915, ECF No. 88 (W.D. Wash. June 16, 2015) (final approval  
12 of settlement paying class members \$50 per claim based on reporting of outdated charges);  
13 *Smith v. A-Check, Inc.*, No. 16-cv-174, ECF No. 66 (C.D. Cal. July 18, 2017) (approval of  
14 settlement with tiered class based on whether outdated information reported was criminal  
15 or not, with outdated non-criminal information resulting in \$28 per class member, and  
16 outdated criminal non-convictions resulting in \$114 per class member). Most of these cases  
17 related to the reporting of outdated *criminal* charges which did not result in a conviction.  
18 As a general matter, reporting an outdated criminal charge is more serious than reporting  
19 the kinds of low-level civil violations at issue here. Of prior settlements involving similar  
20 claims, the most directly analogous recovery is the \$28-per class-member recovery for  
21 individuals with non-criminal information on their reports in the *A-Check* case. This  
22 settlement well exceeds the amount provided there.<sup>6</sup>

23 Moreover, the non-monetary relief is a substantial benefit for the Settlement Class  
24 Members as well as for future subjects of consumer reports prepared by Defendant.

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25 <sup>6</sup> Nor does any defect arise from the fact that some class members are required to provide  
26 additional information on a claim form. *In re Volkswagen "Clean Diesel" Mktg., Sales*  
27 *Practices, & Prod. Liab. Litig.*, 895 F.3d 597, 613 (9th Cir. 2018) (no defect with settlement  
28 that required some class members to “take additional steps to claim their benefits under the  
settlement”).

1 Defendant will stop reporting low-level offenses older than seven years from the date of the  
2 report altogether for a period of at least 18 months. Should Defendant decide to begin  
3 reporting low-level criminal offenses older than seven years from the date of the report in  
4 the future, it will be required to review the extensive analysis conducted by Class Counsel  
5 of Claimants' reports, and consult with an expert to ensure that its reporting parameters  
6 appropriately distinguish between criminal and non-criminal offenses. Class Counsel's  
7 expert has valued this important relief at approximately \$9.4 million. (*See* ECF No. 71-4.)  
8 The weight of the authority is that injunctive relief is unavailable to plaintiffs under the  
9 FCRA. *See Gauci v. Citi Mortg.*, No. 11-cv-01387, 2011 WL 3652589, at \*3 (C.D. Cal.  
10 Aug. 19, 2011) ("District courts in the Ninth Circuit agree that a private party may not  
11 obtain injunctive relief under the FCRA."). Accordingly, this benefit is noteworthy, and  
12 likely would not have been achievable absent this settlement.

13 The injunctive relief also furthers important public policy goals. Up to 92% of  
14 employers subject their candidates to some form of criminal background screening. EEOC,  
15 *Enforcement Guidance on the Consideration of Arrest and Conviction Records in*  
16 *Employment Discrimination* at 6 (Apr. 25, 2012). Removing potentially outdated and non-  
17 reportable records from these background reports is important, both because it ensures  
18 compliance with the FCRA, but also because it achieves the important societal goal of  
19 allowing people with minor records to successfully obtain employment.

20 Further, overbroad reporting of infractions has a disparate impact on people of color  
21 and people in poverty, who are significantly overrepresented when it comes to the  
22 enforcement of laws involving low-level infractions. *See, e.g.,* [https://ips-dc.org/wp-](https://ips-dc.org/wp-content/uploads/2015/03/IPS-The-Poor-Get-Prison-Final.pdf)  
23 [content/uploads/2015/03/IPS-The-Poor-Get-Prison-Final.pdf](https://ips-dc.org/wp-content/uploads/2015/03/IPS-The-Poor-Get-Prison-Final.pdf) ("For example, in Antioch,  
24 African-Americans in 2008 were four times as likely as white Section 8 occupants to be  
25 targeted and searched by law enforcement as a result of noncriminal complaints.").  
26 Removing these records from reports helps minimize the impact that this disparity has on  
27 employment.



1           **C. THE STAGE OF THE PROCEEDINGS AND AMOUNT OF DISCOVERY**  
2           **COMPLETED SUPPORTS APPROVAL.**

3           This action had been vigorously investigated, litigated, and negotiated, at the time  
4 of settlement. Prior to mediation, Plaintiff researched and drafted the complaint, after  
5 extensive vetting and investigating of potential claims, and the parties exchanged  
6 considerable formal and informal discovery, as well as detailed mediation submissions prior  
7 to mediating with an experienced third-party neutral. Only after attending a full day  
8 mediation and several weeks of further discussions and negotiations through counsel, and  
9 with additional assistance from the mediator, was an agreement reached. Consequently, the  
10 parties had a clear understanding of the claims and defenses in this action and were able to  
11 appropriately evaluate their positions prior to settlement. This further weighs in favor of  
12 final approval. *See In re Charles Schwab Corp. Secs. Litig.*, No. 08-1510, 2011 WL  
13 1481424, at \*5 (N.D. Cal. April 19, 2011) (“[T]he class settlements were reached ... when  
14 class counsel had completed discovery and had conducted extensive motion practice and  
15 were thus well aware of the issues and attendant risks involved in going to trial as well as  
16 the adequacy of the amount of the class settlement.”).

17           **D. THE EXPERIENCE AND VIEWS OF COUNSEL SUPPORT THE SETTLEMENT.**

18           The views of experienced counsel are entitled to considerable weight when deciding  
19 to approve a settlement. *See Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal.  
20 1980) (“The fact that experienced counsel involved in the case approved the settlement after  
21 hard-fought negotiations is entitled to considerable weight.”). Class Counsel here are  
22 experienced and skilled in consumer class actions and FCRA actions in particular. (*See*  
23 *ECF Nos. 55-1, 55-3, 71-1, 71-2, 71-3, 71-7.*) The experience of Class Counsel further  
24 weighs in favor of approval of the settlement. *See In re Pac. Enters. Sec. Litig.*, 47 F.3d  
25 373, 378 (9th Cir. 1995) (finding that “[p]arties represented by competent counsel are better  
26 positioned than courts to produce a settlement that fairly reflects each party’s expected  
27 outcome in the litigation”); *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080  
28 (N.D. Cal. 2007) (finding this factor favored settlement approval where “[e]xperienced

1 counsel on both sides, each with a comprehensive understanding of the strengths and  
2 weaknesses of each party's respective claims and defenses, negotiated this settlement over  
3 an extended period of time").

4 **E. THE REACTION OF THE CLASS HAS BEEN POSITIVE.**

5 Finally, the Settlement Class has reacted well to the settlement. "It is established  
6 that the absence of a large number of objections to a proposed class action settlement raises  
7 a strong presumption that the terms of a proposed class settlement action are favorable to  
8 the class members." *Nat'l Rural Telecomms. Coop v. DIRECTV, Inc.*, 221 F.R.D. 523, 529  
9 (C.D. Cal. 2004). There have been **zero objections** and only two opt-outs received from the  
10 96,040 Class Members.

11 Further, 4,553 Settlement Class Members returned Claim Forms as of October 26,  
12 2018, for a claims rate of 10.8%. The use of a claim form was appropriate here as the group  
13 of Class Members required to return the form had low-level offenses older than seven years  
14 reported by Defendant from a multitude of states (36 in Class Counsel's review to date),  
15 which required a state-by-state, offense-by-offense analysis to determine if the offense  
16 reported was criminal or not, and thus whether the reporting of the offense was permissible  
17 under the FCRA. (*See* ECF No. 55, pp. 5-6.) Moreover, the claims submission process was  
18 easy to follow, simply requiring claimants to go to the Settlement Website, click a clearly  
19 labeled link, and enter claim identification information, their name, address, phone, and  
20 email, or to do the same on a pre-paid postcard if they received a Mail Notice. The claims  
21 filing rate as of October 26, 2018 is 10.8%. This rate is higher than those approved in other  
22 settlements in this Circuit and is indicative of the strength of the settlement and the notice  
23 program. *See Shames v. Hertz Corp.*, No. 07-cv-2174, 2012 WL 5392159, at \*14 (S.D. Cal.  
24 Nov. 5, 2012) (granting final approval of settlement with 4.9% claims rate); *Zepeda v.*  
25 *PayPal, Inc.*, 2017 WL 1113293, at \*15-16 (N.D. Cal. March 24, 2017) (finding in  
26 consumer protection case that a 3.8% claims rate indicated that the email "notice process  
27 has been remarkably successful – and the Settlement Class's reaction to the Settlement has  
28



1 been overwhelmingly positive.”); *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 589  
2 (N.D. Cal. 2015) (approving settlement and finding 5.9% claims rate to indicate an overall  
3 positive reaction to the settlement); *White v. Experian Info. Solutions, Inc.*, 803 F. Supp. 2d  
4 1086, 1100 (C.D. Cal. 2011) (approving settlement with 5% response rate); *Tait v. BSH*  
5 *Home Appliances Corp.*, No. 10-cv-0711, 2015 WL 4537463, at \*8 (C.D. Cal. July 27,  
6 2015) (approving settlement with 3% claims rate); *Touhey v. U.S.*, No. 08-cv-01418, 2011  
7 WL 3179036, at \*7-8 (C.D. Cal. July 25, 2011) (approving settlement with 2% claims rate).

8 The positive reaction of the Class to the settlement supports its fairness, and thus  
9 this factor weighs in favor of approval. See *City of Seattle*, 955 F.2d at 1291-96; *Churchill*  
10 *Village, L.L.C. v. General Electric*, 361 F.3d 566, 577 (9th Cir. 2004); *In re Wash. Public*  
11 *Power Supply Sys. Secs. Litig.*, 19 F.3d 1291, 1294-95 (9th Cir. 1994).

12 **V. CONCLUSION**

13 In short, the settlement provides meaningful relief to the Class, both in the form of  
14 monetary payments and injunctive relief that effectively address the allegations raised in  
15 this action. Class Members have reacted positively to the settlement and its terms are fair  
16 and reasonable. Based on the foregoing, the Court should grant final approval.

17  
18  
19 Date: October 29, 2018

BERGER MONTAGUE PC

20 /s/E. Michelle Drake  
21 E. Michelle Drake (*pro hac vice*)

22 ATTORNEYS FOR PLAINTIFF