

1 ("Settlement Agreement") (Docket No. 127-2).) Plaintiff now
2 moves for final approval of the settlement pursuant to Federal
3 Rule of Civil Procedure 23(e). (Docket No. 136.) Plaintiff's
4 also move for attorneys' fees and costs. (Docket No. 135.)

5 I. Factual and Procedural Background

6 Plaintiff applied for a job with M-I on July 20, 2011.
7 (First Amended Complaint ("FAC") ¶ 14.) During the application
8 process, plaintiff filled out and signed a one-page form entitled
9 "Pre-Employment Disclosure and Release." (Id.) That form included
10 the following language:

11 I understand that the information obtained will
12 be used as one basis for employment or denial of
13 employment. I hereby discharge, release, and
14 indemnify prospective employer [defendant M-I
15 LLC], PreCheck, Inc., their agents, servants, and
16 employees, and all parties that rely on this
17 release and/or the information obtained with this
18 release from any and all liability and claims
19 arising by reason of the use of this release and
20 dissemination of information that is false and
21 untrue if obtained by a third party without
22 verification.

23 It is expressly understood that the information
24 obtained through the use of this release will not
25 be verified by PreCheck, Inc.

26 (Id.)

27 Plaintiff alleges that M-I violated Section 1681(b)(2)
28 of the Fair Credit Reporting Act by procuring or causing to be
procured a consumer report for employment purposes via a
disclosure form that contained not only language authorizing the
procurement of a consumer report, but also an indemnity clause
and release. (Id. ¶ 17.) Plaintiff alleges that as a result,
class members could recover statutory damages between \$100 and
\$1,000 as well as punitive damages under 15 U.S.C. § 1681n(a).

1 (Id. ¶ 31.)

2 In October 2018, the parties reached a settlement.
3 (See Docket No. 122.) Their Settlement Agreement provides for a
4 gross settlement amount of \$556,000. (Settlement Agreement ¶
5 34.) The Settlement Agreement specifies that the defendants
6 agree not to oppose a motion by class counsel for attorney's fees
7 (up to \$300,000) and attorney's costs (up to \$10,000) from this
8 gross settlement amount. (Id. ¶¶ 37-38.) Notably, the
9 Settlement Agreement provides that any portion of the requested
10 attorneys' fees or costs not awarded will revert to the
11 defendant. (Id.) The Settlement Agreement also provides for the
12 deduction of settlement administration costs from the gross
13 settlement amount (id. ¶ 36) and for a class representative
14 service award of up to \$5,000 (id. ¶ 35).

15 In its order granting preliminary approval of a class
16 and class settlement, the court provisionally certified the
17 following class:

18 All persons residing in the United States
19 (including all territories and other political
20 subdivisions of the United States) as to whom M-I
21 L.L.C. may have procured or caused to be procured
22 a consumer report for employment purposes during
23 the period from May 19, 2009 through November 1,
2018, who M-I L.L.C. hired, and who have not
signed a severance agreement and release or
equivalent agreement releasing the claims
asserted in the Action[.]

24 (Order re: Preliminary Approval of Class Settlement at 22 (Docket
25 No. 132).) The court appointed Sarmad Syed as class
26 representative, the Peter R. Dion-Kindem and the Blanchard Law
27 Group as class counsel, and Simpluris, Inc. ("Simpluris") as
28 settlement administrator. (Id. at 22-23.) The court also

1 approved the notice of settlement and final approval hearing and
2 opt-out form. (Id. at 23.) The court set the final fairness
3 hearing for August 5, 2019. (Id. at 23-24.) It directed class
4 counsel to file with the court, within twenty-eight days of the
5 fairness hearing, a petition for an award of attorney's fees and
6 costs; all papers in support of the settlement, incentive award,
7 fees, and costs; and a declaration from the settlement
8 administrator setting forth the services rendered, proof of
9 mailing, and a list of all class members who have commented upon
10 or objected to the settlement. (Id. at 24.)

11 After conducting the final fairness hearing and
12 carefully considering the terms of the settlement, the court now
13 addresses whether this class should receive final certification;
14 whether the proposed settlement is fair, reasonable, and
15 adequate; and whether class counsel's request for attorneys' fees
16 and costs, as well as an enhancement award for the representative
17 plaintiff, should be granted.

18 II. Discussion

19 Judicial policy strongly favors settlement of class
20 actions. Class Plaintiffs v. City of Seattle, 955 F.2d 1268,
21 1276 (9th Cir. 1992). "To vindicate the settlement of such
22 serious claims, however, judges have the responsibility of
23 ensuring fairness to all members of the class presented for
24 certification." Staton v. Boeing Co., 327 F.3d 938, 952 (9th
25 Cir. 2003).

26 There are two stages to a court's approval of a
27 proposed class action settlement. In the first phase, the court
28 temporarily certifies a class, authorizes notice to that class,

1 and preliminarily approves the settlement, with final approval
2 contingent on the outcome of a fairness hearing. Ontiveros v.
3 Zamora, No. 2:08-567 WBS DAD, 2014 WL 3057506, at *2 (E.D. Cal.
4 July 7, 2014.) If a court determines that a proposed class
5 action settlement does deserve preliminary approval, then notice
6 of the action is given to the class members and a fairness
7 hearing is held.

8 In the second phase, the court holds a fairness hearing
9 and entertains class members' objections to both the suitability
10 of the class action as a vehicle for this litigation and the
11 terms of the settlement. See Murillo v. Pac. Gas & Elec. Co., 266
12 F.R.D. 468, 473 (E.D. Cal. 2010) (Shubb, J.). Following the
13 fairness hearing, the court makes a final determination regarding
14 whether the parties should be allowed to settle the class action
15 pursuant to the agreed upon terms.

16 Having previously preliminarily certified the proposed
17 class and approved the proposed settlement, the court now makes a
18 final determination as to whether the class should be certified
19 and as to whether the parties should be allowed to settle the
20 class action pursuant to the terms agreed upon.

21 A. Class Certification

22 To be certified, the putative class must satisfy both
23 the requirements of Federal Rule of Civil Procedure 23(a) ("Rule
24 23(a)") and Federal Rule of Civil Procedure 23(b) ("Rule 23(b)").
25 See Leyva v. Medline Indus. Inc., 716 F.3d 510, 512 (9th Cir.
26 2013). In the settlement context, the court's careful scrutiny
27 of the extent to which the putative class complies with the
28 requirements of Rules 23(a) and 23(b) is especially important

1 since the court will "lack the opportunity, present when a case
2 is litigated, to adjust the class, informed by the proceedings as
3 they unfold." Amchem Prods. Inc. v. Windsor, 521 U.S. 591, 620
4 (1997).

5 Rule 23(a) restricts class actions to cases where:

6 (1) the class is so numerous that joinder of all
7 members is impracticable; (2) there are questions
8 of law or fact common to the class; (3) the
9 claims or defenses of the representative parties
10 are typical of the claims or defenses of the
11 class; and (4) the representative parties will
12 fairly and adequately protect the interests of
13 the class.

14 Fed. R. Civ. P. 23(a). These requirements are more commonly
15 known as numerosity, commonality, typicality, and adequacy of
16 representation, respectively. See Leyva, 716 F.3d at 512. While
17 the court must evaluate Rule 23(a)'s requirements independently,
18 they serve a common purpose of "ensur[ing] that the named
19 plaintiffs are appropriate representatives of the class whose
20 claims they wish to litigate." Wal-Mart Stores, Inc. v. Dukes,
21 564 U.S. 338, 349 (2011).

22 In the court's order granting preliminary approval of
23 the proposed class action settlement, the court found that the
24 putative class satisfied the numerosity, commonality, and
25 typicality requirements of Rule 23(a). However, the court
26 expressed some concerns about the adequacy of representation. The
27 court is unaware of any changes that would alter its analysis as
28 to numerosity, typicality, or commonality, and because the
parties did not indicate at the fairness hearing that they were
aware of any such developments, the court finds these
requirements satisfied. The court will thus focus its Rule 23(a)

1 analysis on evaluating adequacy of representation for purposes of
2 final certification.

3 "Resolution of two questions determines legal adequacy:
4 (1) do the named plaintiffs and their counsel have any conflicts
5 of interest with other class members and (2) will the named
6 plaintiffs and their counsel prosecute the action vigorously on
7 behalf of the class?" Hanlon v. Chrysler Corp., 150 F.3d 1011,
8 1020 (9th Cir. 1998).

9 Although the Ninth Circuit has specifically approved
10 the award of "reasonable incentive payments" to named plaintiffs,
11 the use of an incentive award nonetheless raises the possibility
12 that a plaintiff's interest in receiving that award will cause
13 his interests to diverge from the class's interest in a fair
14 settlement. See Staton, 327 F.3d at 977-78. In the order
15 preliminarily approving the proposed class action settlement, the
16 court expressed concern that the requested \$5,000 incentive award
17 for the class representative is disproportionately large relative
18 to the average class member's recovery of approximately \$50.¹
19 (Order Re: Preliminary Approval at 10.)

20 Plaintiff Syed submitted a declaration in support of
21 his Motion for Award of Attorneys' Fees and Costs and
22 Representative Incentive Award. (Syed Decl. (Docket No. 135-3).)
23 This declaration outlines each of the Syed's contributions to the
24 case. Plaintiff declares that he invested over 50 hours of time
25 in case. (Id. ¶ 9.) Plaintiff declares that he contributed to
26 the prosecution of this case by:

27 ¹ The average class member received \$46.84. (See
28 Alcantara Decl. ¶ 12.)

1
2 obtaining legal counsel, speaking with my legal
3 counsel on numerous occasions, both in person and
4 over the phone, assisting them in gathering
5 information, reviewing pleading and other
6 documents in the case, reviewing the Settlement,
7 and other case related documents on my own and
8 with my counsel to make sure that the Settlement
9 and other work my attorneys performed are in the
10 best interest of the Settlement Class.

11 (Id.) Plaintiff's declaration also highlights the potential
12 professional risk and stigma he took on as a result of bringing
13 this action. (Id. ¶¶ 11-12.)

14 The court is satisfied with the evidence of plaintiff's
15 substantial efforts taken as class representative. In light of
16 plaintiff's contributions to the prosecution of this action, the
17 court finds that the requested \$5,000 incentive award is
18 reasonable and will not impair the alignment of plaintiff's
19 interests and those of the class.

20 Because the order granting preliminary approval also
21 found the second step of the adequacy analysis satisfied (Order
22 Re: Preliminary Approval at 11-12), and nothing has come to the
23 court's attention that would change its analysis, the court
24 determines that plaintiff is an adequate class representative.

25 An action that meets all the prerequisites of Rule
26 23(a) may only be certified as a class action if it also
27 satisfies the requirements of one of the three subdivisions of
28 Rule 23(b). Leyva, 716 F.3d at 512. Plaintiff seeks
certification under Rule 23(b)(3), which provides that a class
action may be maintained only if (1) "the court finds that
questions of law or fact common to class members predominate over
questions affecting only individual members" and (2) "that a

1 class action is superior to other available methods for fairly
2 and efficiently adjudicating the controversy.” Fed. R. Civ. P.
3 23(b) (3).

4 In its order granting preliminary approval of the
5 settlement, the court found that both prerequisites of Rule
6 23(b) (3) were satisfied. (Order Re: Preliminary Approval at 12-
7 14.) The court is unaware of any changes that would affect this
8 conclusion.

9 Having determined that the proposed class satisfies the
10 requirements of both Federal Rule of Civil Procedure 23(a) and
11 those of Federal Rule of Civil Procedure 23(b), the court will
12 grant final certification to the proposed class.

13 3. Rule 23(c) (2) Notice Requirements

14 If the court certifies a class under Rule 23(b) (3), it
15 “must direct to class members the best notice that is practicable
16 under the circumstances, including individual notice to all
17 members who can be identified through reasonable effort.” Fed.
18 R. Civ. P. 23(c) (2) (B). Actual notice is not required. See
19 Silber v. Mabon, 18 F.3d 1449 (9th Cir. 1994). The notice
20 provided to absent class members, however, must be “reasonably
21 certain to inform the absent members of the plaintiff class”.
22 Id. at 1454 (quoting In re Victor Techs. Sec. Litig., 792 F.2d
23 862, 865 (9th Cir. 1986).)

24 As provided by the Settlement Agreement, the settlement
25 administrator, Simpluris, mailed the notice packed to the last
26 known address of 4,295 class members. (Alcantara Decl. ¶ 8
27 (Docket No. 136-2).) Rust used the National Change of Address
28 Database to update the class list. (See id. ¶ 7.) If a class

1 member's notice packet was returned as undeliverable without a
2 forwarding address, Rust performed an advanced address search, or
3 a "skip trace." (Id. ¶ 9.) Ultimately, only 76 notices were
4 undeliverable because Rust was unable to find a correct address.
5 (Id.) The court is satisfied that this system of providing
6 notice was reasonably calculated to provide notice to class
7 members and was the best form of notice available under the
8 circumstances.

9 Likewise, the notice itself contained an easy-to-read
10 table that clearly identified the options available to putative
11 class members -- do nothing, ask to be excluded or object by June
12 10, 2019, and go to hearing on August 5, 2019 -- and
13 comprehensively explained the nature and mechanics of the
14 settlement. (See Alcantara Decl., Ex. A.) The content of the
15 notice is therefore sufficient to satisfy Rule 23(c)(2)(B). See
16 Churchill Vill., L.L.C. v. Gen. Elec., 361 F.3d 566, 575 (9th
17 Cir. 2004) ("Notice is satisfactory if it 'generally describes
18 the terms of the settlement in sufficient detail to alert those
19 with adverse viewpoints to investigate and to come forward and be
20 heard.'" (quoting Mendoza v. Tucson Sch. Dist. No. 1., 623 F.2d
21 1338, 1352 (9th Cir. 1980))).

22 B. Rule 23(e): Fairness, Adequacy, and Reasonableness of
23 Proposed Settlement

24 Having determined that the proposed class preliminarily
25 satisfies the requirements of Rule 23, the court will now examine
26 whether the terms of the parties' settlement appear fair,
27 adequate, and reasonable. See Fed. R. Civ. P. 23(e)(2). This
28 process requires the court to "balance a number of factors,"

1 including:

2 the strength of the plaintiff's case; the risk, expense,
3 complexity, and likely duration of further litigation; the
4 risk of maintaining class action status throughout the
5 trial; the amount offered in settlement; the extent of
6 discovery completed and the stage of the proceedings; the
7 experience and views of counsel; the presence of a
8 governmental participant; and the reaction of the class
9 members to the proposed settlement.

10 Hanlon, 150 F.3d at 1026. The court will address each in turn.

11 1. Strength of Plaintiff's Case

12 An important consideration is the strength of
13 plaintiff's case on the merits compared to the settlement amount
14 offered. See Nat'l Rural Telecommunications Coop. v. DIRECTV,
15 Inc., 221 F.R.D. 523, 526 (C.D. Cal. 2004). The court, however,
16 is not required to reach an ultimate conclusion of the merits,
17 "for it is the very uncertainty of outcome in litigation and
18 avoidance of wastefulness and expensive litigation that induce
19 consensual settlements." Officers for Justice v. Civ. Serv.
20 Comm'n of City & Cty of S.F., 688 F.2d 615, 625 (9th Cir. 1982).

21 Plaintiff alleges claims under the Fair Credit
22 Reporting Act. Specifically, plaintiff claims that defendant
23 procured or caused to be procured a consumer report for
24 employment purposes via a disclosure form that contained not only
25 language authorizing the procurement of a consumer report, but
26 also an indemnity clause and release. (FAC ¶ 17.) If this case
27 were to proceed, defendant could argue that the plaintiffs lack
28 standing to bring their claims. See Spokeo, Inc. v. Robins, 136
S. Ct. 1540 (2016). See id. (holding that plaintiffs alleging
violations of the FCRA must show a concrete injury to establish
Article III standing and that an alleged "bare procedural

1 violation" of the FCRA does not constitute a concrete injury for
2 Article III purposes). Thus, in comparing the strength of
3 plaintiff's case with the proposed settlement, the court finds
4 that the proposed settlement is a fair resolution of the issues
5 in this case.

6 2. Risk, Expense, Complexity, and Likely Duration of
7 Further Litigation

8 Further litigation could delay resolution of this case
9 and increase expenses. Thus, the court finds that this factor
10 weighs in favor of final approval of the settlement. See
11 DIRECTV, Inc., 221 F.R.D. at 526 ("In most situations, unless the
12 settlement is clearly inadequate, its acceptance and approval are
13 preferable to lengthy and expensive litigation with uncertain
14 results.")

15 3. Risk of Maintaining Class Action Status

16 Plaintiff has not yet filed a motion for class
17 certification. The likelihood, however, that plaintiffs would
18 succeed with class certification is diminished by the Supreme
19 Court's ruling in Spokeo, 136 S. Ct. 1540. Regardless, the court
20 is unaware of any potential future development that could upset
21 certification if the plaintiffs were in fact able to obtain class
22 certification. Accordingly, the court will not consider this
23 factor in its analysis. See In re Veritas Software Corp. Sec.
24 Litig., No. 03-0283, 2005 WL 3096079, at *5 (N.D. Cal. Nov.15,
25 2005) (favoring neither approval nor disapproval of settlement
26 where the court was "unaware of any risk involved in maintaining
27 class action status"), vacated in part on other grounds, 496 F.3d
28 962 (9th Cir. 2007).

4. Amount Recovered and Distribution

1 In determining whether a settlement agreement is
2 substantively fair to class members, the court must balance the
3 value of expected recovery against the value of the settlement
4 offer. See In re Tableware Antitrust Litig., 484 F. Supp. 2d
5 1078, 1080 (N.D. Cal. 2007). The Net Settlement Fund is
6 \$201,000.000 and each class member's estimated recovery is \$46.84
7 under the proposed settlement. (See Alcantara Decl. ¶ 12.)
8 Though this is less than could potentially be secured if the case
9 went to trial, it is not plainly deficient. Numerous district
10 courts have approved similar recoveries in other FRCA class
11 action settlements. See Hillson v. Kelly Servs. Inc., 2017 WL
12 3446596, at *3 (E.D. Mich. 2017) (granting final approval for
13 FRCA class action settlement with \$19 per-capita net recovery);
14 Moore v. Aerotek, Inc., No. 2:15-CV-2701, 2017 WL 2838148, at *4
15 (S.D. Ohio June 30, 2017), report and recommendation adopted,
16 2017 WL 3142403 (S.D. Ohio July 25, 2017) (recommending final
17 approval of a FRCA class action settlement providing between \$13
18 and \$80 payouts to each class member).

19 Though the settlement represents far less than the
20 plaintiffs could have potentially secured had the case gone to
21 trial, it is not plainly deficient. See Officers for Justice v.
22 Civil Serv. Comm'n of City & Cty. of San Francisco, 688 F.2d 615,
23 628 (9th Cir. 1982) ("It is well-settled law that a cash
24 settlement amounting to only a fraction of the potential recovery
25 will not per se render the settlement inadequate or unfair.")
26 Thus, in light of the risks and expense of further litigation in
27 this matter, the court finds the settlement amount to be "fair,
28 reasonable, and adequate." See Fed. R. Civ. P. 23(e) (2).

1 Accordingly, the court will grant final approval to the
2 settlement.

3 5. Extent of Discovery and the State of Proceedings

4 This matter has been vigorously litigated. Plaintiff's
5 counsel has argued motions to dismiss before this court. (See
6 Docket No. 45.) Plaintiff also successfully appealed this
7 court's dismissal of his claims as to Defendant M-I LLC to the
8 Ninth Circuit. See Syed v. M-I, LLC, 853 F.3d 492, 495 (9th
9 Cir.), cert. denied, 138 S. Ct. 447 (2017). Thus, although this
10 factor is not essential to the settlement of a class action, see
11 Lachance v. Harrington, 965 F. Supp. 630, 644-45 (E.D. Pa. 1997),
12 the court finds that, on balance, it weighs slightly in favor of
13 settlement in this case.

14 6. Experience and Views of Counsel

15 Plaintiff's counsel Peter R. Dion-Kindem has more than
16 twenty years of experience and has practiced in civil litigation,
17 including the prosecution of employment claims, throughout his
18 career. (Dion-Kindem Decl. in Supp. of Mot. for Final Approval
19 and Attorneys' Fees and Costs (Dion-Kindem Decl. ¶ 2 (Docket No.
20 136-1).) Based on this experience, plaintiff's counsel believes
21 the proposed settlement is fair, reasonable, and adequate to the
22 class members. (See Mot. for Final Approval at 3.) The court
23 gives considerable weight to class counsel's opinions regarding
24 the settlement due to counsel's experience and familiarity with
25 the litigation. Alberto v. GMRI, Inc., No. CIV 07-1895 WBS DAD,
26 2008 WL 4891201, at *10 (E.D. Cal. Nov. 12, 2008). This factor
27 thus supports approval of the settlement agreement.

28 7. Presence of Government Participant

1 No governmental entity participated in this matter;
2 this factor, therefore, is irrelevant to the court's analysis.

3 8. Reaction of Class Members to Proposed Settlement

4 Notice of the settlement was sent to 4,295 class
5 members and as of June 27, 2019, only four class members had
6 submitted requests for exclusion. (Alcantara Decl. ¶¶ 8, 13.) No
7 class members have objected. (Id. ¶ 14.) "It is established that
8 the absence of a large number of objections to a proposed class
9 action settlement raises a strong presumption that the terms of a
10 proposed class settlement action are favorable to the class
11 members." DIRECTV, 221 F.R.D. at 529. Accordingly, this factor
12 weighs in favor of the court's approval of the settlement.

13 Having considered the foregoing factors, the court
14 finds the settlement is fair, adequate, and reasonable pursuant
15 to Rule 23(e).

16 C. Attorney's Fees

17 If a negotiated class action settlement includes an
18 award of attorney's fees, then the court "ha[s] an independent
19 obligation to ensure that the award, like the settlement itself,
20 is reasonable, even if the parties have already agreed to an
21 amount." In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d
22 935, 941 (9th Cir. 2011).

23 Defendant has agreed not to oppose any motion for
24 attorneys' fees of equal to or less than \$300,000. (Dion-Kindem
25 Decl. ¶ 10.) Plaintiff now asks for \$300,000 in attorney's fees.
26 (Mot. for Attorney Fees at 1 (Docket No. 135).) This request is
27 justified with a supposed \$379,000 lodestar. (Dion-Kindem Decl.
28 ¶ 29.) That figure represents a combined 433.25 hours of work by

1 Lonnie C. Blanchard and Peter R. Dion-Kindem, billed at an \$875
2 hourly rate. (See id. ¶ 23.)

3 Lodestar calculation is a two-step process. Fischer v.
4 SJB-P.D. Inc., 214 F.3d 1115, 1119 (9th Cir. 2000). First, the
5 court "tak[es] the number of hours reasonably expended on the
6 litigation and multipl[ies] it by a reasonable hourly rate." Id.
7 Second, the court may adjust the resulting figure upwards or
8 downwards based on a variety of factors. Id. The court will
9 address each step in turn.

10 The definition of a "reasonable hourly rate" for
11 purposes of lodestar calculation is tethered to the "prevailing
12 market rate in the relevant community." BMO Harris Bank N.A. v.
13 CHD Transp. Inc., No. 1:17-CV-00625 DAD BAM, 2018 WL 4242355, at
14 *7 (E.D. Cal. Sept. 6, 2018). When calculating the lodestar, the
15 "relevant community" is the forum in which the adjudicating
16 district court sits. Id. In this case, the "relevant community"
17 for purposes of lodestar calculation is the Fresno division of
18 the Eastern District of California. Plaintiff's memorandum in
19 support of his petition for attorneys' fees provides evidence
20 that an hourly rate of \$875 is within the range of rates for
21 partners in "Northern California and the Los Angeles area."
22 (Pl.'s Petition for Award of Attorney's Fees and Costs at 3-4.)
23 This evidence, however, is not dispositive of the reasonableness
24 of an \$875 hourly rate in the forum in which this court sits,
25 i.e. Fresno. Here, a more appropriate hourly rate for an
26 attorney with approximately 40 years of experience is
27 approximately \$400 per hour. See Willis v. City of Fresno, No.
28 1:09-CV-01766 BAM, 2018 WL 1071184, at *7 (E.D. Cal.

1 2018) (awarding rate of \$400 to attorney with more than forty
2 years of experience); Verduzco v. Ford Motor Co., No. 1:13-CV-
3 01437 LJO, 2015 WL 4131384, at *4 (E.D. Cal. 2015), report and
4 recommendation adopted, No. 1:13-CV-01437 LJO, 2015 WL 4557419
5 (E.D. Cal. 2015) (awarding an hourly rate of \$380 to an attorney
6 with more than forty years of experience). Given the market
7 rates in Fresno, the requested hourly rates are unreasonably
8 high.

9 In light of the findings of other courts, this court
10 finds that an hourly rate of \$400 is reasonable for attorneys in
11 Fresno with experience similar to that of Mr. Blanchard and Mr.
12 Dion-Kindem. Given the 433.25 hours expended on the litigation,
13 the first step of the lodestar calculation process yields the
14 figure \$173,300.

15 After calculating the lodestar, the court must decide
16 whether to enhance or reduce the award in the light of particular
17 factors, including the novelty and difficulty of the case, the
18 skill displayed in presenting them, the extent the litigation
19 precluded other employment by the attorneys, and the contingent
20 nature of the fee award. Ketchum v. Moses, 24 Cal. 4th 1122,
21 1132 (2001). However, “[t]here is no hard-and-fast rule limiting
22 the factors that may justify an exercise of judicial discretion
23 to increase or decrease a lodestar calculation.” Thayer v. Wells
24 Fargo Bank, N.A., 92 Cal. App. 4th 819, 834 (1st Dist. 2001).

25 The instant case presented relatively complex issues
26 involving defendant’s liability for its inclusion of release
27 language in the FCRA disclosure and authorization forms it
28 utilized. Plaintiff litigated this issue before this court as

1 well as on appeal to the Ninth Circuit. (Dion-Kindem Decl. ¶
2 16.)

3 In the approximately five years since this case began,
4 plaintiff's counsel invested 433.25 hours in this litigation, and
5 since class counsel took this matter on a purely contingent basis
6 the risk of nonpayment was ever-present. (Id. ¶ 20.)

7 Collectively, these factors weigh in favor of enhancing
8 the lodestar; the court will apply a 1.73 multiplier. This
9 yields a total award of \$299,809 in attorneys' fees.

10 Accordingly, the court will allow the award of attorneys' fees in
11 the amount of \$299,809, which is just shy of the \$300,000
12 attorneys' fee award agreed to by the parties. (See Dion-Kindem
13 Decl. ¶ 10.)

14 Plaintiff also petitions the court for an award of
15 attorneys' costs. Specifically, plaintiff asks for \$4,307.79 in
16 costs. (See Pl.'s Motion for Award of Attorneys' Fees and Costs
17 at 2 (Docket No. 135).) No objections have been filed to this
18 request for reimbursement. The court has reviewed the expenses
19 for which class counsel is seeking reimbursement. (See Dion-
20 Kindem Decl. ¶ 9; Pl.'s Petition for Award of Attorneys' Fees and
21 Costs Ex. 2, Blanchard Decl. ¶ 6 (Docket No. 135-2).) The court
22 finds the requested \$4307.79 costs' award to be reasonable. All
23 of the requested expenses are for services that are routinely and
24 properly reimbursed, i.e. transcription, PACER access fees, and
25 court filing fees. Accordingly, the court will allow the award
26 of costs in the amount of \$4307.79.

27 IT IS THEREFORE ORDERED that plaintiffs' Motion for
28 Final Approval of the Class and Class Action Settlement (Docket

1 No. 136) and plaintiff's Motion for Award of Attorneys' Fees and
2 Costs (Docket No. 135) be, and the same hereby are, GRANTED.

3 IT IS FURTHER ORDERED THAT:

4 (1) solely for the purpose of this settlement, and
5 pursuant to Federal Rule of Civil Procedure 23, the court hereby
6 certifies the following class:

7 All persons residing in the United States
8 (including all territories and other political
9 subdivisions of the United States) as to whom M-I
10 L.L.C. may have procured or caused to be procured
11 a consumer report for employment purposes during
12 the period from May 19, 2009 through November 1,
13 2018, who M-I L.L.C. hired, and who have not
14 signed a severance agreement and release or
15 equivalent agreement releasing the claims
16 asserted in the Action;

17 (2) the court appoints the named plaintiff Sarmad Syed
18 as representative of the class and finds that he meets the
19 requirements of Rule 23;

20 (3) the court appoints Peter R. Dion-Kindem and
21 Blanchard Law Group as counsel to the settlement class, and finds
22 that they meet the requirements of Rule 23;

23 (4) the Settlement Agreement's plan for class notice is
24 the best notice practicable under the circumstances and satisfies
25 the requirements of due process and Rule 23. The plan is approved
26 and adopted. The notice to the class complies with Rule 23 and
27 is approved and adopted.

28 (5) having found that the parties and their counsel
took appropriate efforts to locate and inform all putative class
members of the settlement, and given that no class members filed
an objection to the settlement, the court finds and orders that
no additional notice to the class is necessary;

1 (6) as of the date of the entry of this order,
2 plaintiff and all class members who have not timely opted out of
3 this settlement hereby do and shall be deemed to have fully,
4 finally, and forever released, settled, compromised,
5 relinquished, and discharged defendants of and from any and all
6 settled claims, pursuant to the release provisions stated in the
7 parties' Settlement Agreement;

8 (7) plaintiff's counsel is entitled to fees in the
9 amount of \$299,809 and costs in the amount of \$4307.79.

10 (8) the named plaintiff is entitled to an incentive
11 payment of \$5,000; and

12 (9) this action is dismissed with prejudice; however,
13 without affecting the finality of this order, the court shall
14 retain continuing jurisdiction over the interpretation,
15 implementation, and enforcement of the Settlement Agreement with
16 respect to all parties to this action and their counsel of
17 record.

18 The Clerk is instructed to enter judgment accordingly.

19
20 Dated: August 6, 2019



21 **WILLIAM B. SHUBB**
22 **UNITED STATES DISTRICT JUDGE**