

1 approval of the class action settlement on September 18, 2015.
2 (Docket Nos. 70-73.) Presently before the court is plaintiff's
3 motion for final approval of the class action settlement.

4 (Docket No. 76.)

5 I. Factual and Procedural Background

6 Plaintiff applied for a job with M-I on July 20, 2011.
7 (First Am. Compl. ("FAC") ¶ 14 (Docket No. 36).) As part of the
8 application process, plaintiff received and signed a one-page
9 disclosure form. (Id.) The form stated that M-I might procure a
10 consumer report on plaintiff from PreCheck for employment
11 purposes and included language releasing and discharging M-I and
12 PreCheck from any liability arising out of that report. (Id.)

13 Plaintiff alleges that PreCheck willfully violated the
14 Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681b(b)(1), by
15 furnishing consumer reports about plaintiff and class members for
16 employment purposes without first obtaining from M-I and other
17 employers a certification of compliance pursuant to 15 U.S.C.
18 § 1681b(b)(1). (FAC ¶¶ 42-50.)¹ Plaintiff alleges that as a
19 result, class members could recover statutory damages between
20 \$100 and \$1,000 and punitive damages under 15 U.S.C. § 1681n(a).
21 (FAC ¶ 47.) The court subsequently stayed the action pending the
22 Supreme Court's decision in Spokeo, Inc. v. Robins, 135 S. Ct.
23 1892 (2015), which addresses whether a plaintiff who has not
24 demonstrated a concrete harm has Article III standing to seek

25 ¹ Under § 1681b(b)(1), before PreCheck can furnish a
26 consumer report for employment purposes, the receiving employer
27 must certify that it had complied with § 1681b(b)(2)'s disclosure
28 requirements and would comply with § 1681b(b)(3) if it decided to
take adverse action based on the consumer report. See 15 U.S.C.
§ 1681b(b)(1)(A)(i).

1 statutory damages under the FCRA. (Docket No. 69.) Two months
2 later, the parties reached a settlement. (Docket No. 70.)

3 The Settlement Agreement provides for the creation of a
4 settlement fund of \$1.6 million. (Dion-Kindem Decl. in Supp. of
5 Prelim. Approval Ex. A ("Settlement Agreement") ¶ 22 (Docket No.
6 72-2).) From this fund, class counsel may apply for attorney's
7 fees of 25%, or \$400,000, and attorney costs of \$4,505.81. (Id.
8 ¶ 26; Dion-Kindem Decl. in Supp. of Att'y Fees ("Dion-Kindem
9 Decl.") ¶ 13 (Docket No. 76-2); Blanchard Decl. in Supp. of
10 Atty's Fees ("Blanchard Decl.") ¶ 6 (Docket No. 76-3).)
11 Additionally, plaintiff may apply for a \$5,000 incentive award.
12 (Settlement Agreement ¶ 26.) Lastly, administration expenses of
13 \$133,427 shall be paid out of the settlement fund to the
14 settlement administrator, Dahl Administration, LLC ("Dahl").
15 (Id. ¶¶ 17-18.)

16 The parties' stipulated amount for class counsel's fees
17 and costs and plaintiff's incentive award were negotiated only
18 after the original settlement fund amount of \$1.6 million had
19 been agreed upon. (Id. ¶ 26.) After the above deductions, the
20 remaining settlement fund to be distributed pro rata to the class
21 is \$1,057,067.19. (See Pl.'s Mem. in Supp. of Prelim. Approval
22 at 6 (Docket No. 72-1).) 65,654 class members have successfully
23 received notice of the class settlement, and the net recovery per
24 class member is approximately \$16. (Kratz Decl. ¶ 10 (Docket No.
25 76-1).)

26 Plaintiff now seeks final approval of the parties'
27 stipulated class-wide settlement pursuant to Federal Rule of
28 Civil Procedure 23(e). PreCheck does not oppose plaintiff's

1 motion for final approval. (Docket No. 77.)

2 II. Discussion

3 Rule 23(e) provides that “[t]he claims, issues, or
4 defenses of a certified class may be settled . . . only with the
5 court’s approval.” Fed. R. Civ. P. 23(e). “Approval under 23(e)
6 involves a two-step process in which the Court first determines
7 whether a proposed class action settlement deserves preliminary
8 approval and then, after notice is given to class members,
9 whether final approval is warranted.” Nat’l Rural Telecomms.
10 Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 525 (C.D. Cal. 2004)
11 (citing Manual for Complex Litig., Third, § 30.41 (1995)).

12 The Ninth Circuit has declared a strong judicial policy
13 favoring settlement of class actions. Class Plaintiffs v. City
14 of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992). Nevertheless,
15 where, as here, “the parties reach a settlement agreement prior
16 to class certification, courts must peruse the proposed
17 compromise to ratify both the propriety of the certification and
18 the fairness of the settlement.” Staton v. Boeing Co., 327 F.3d
19 938, 952 (9th Cir. 2003).

20 A. Class Certification

21 A class action will be certified only if it meets the
22 four prerequisites identified in Rule 23(a) and additionally fits
23 within one of the three subdivisions of Rule 23(b). See Fed. R.
24 Civ. P. 23(a)-(b); Ontiveros v. Zamora, Civ. No. 2:08-567 WBS
25 DAD, 2014 WL 3057506, at *4 (E.D. Cal. July 7, 2014). Although
26 the court has discretion in determining whether the moving party
27 has satisfied each Rule 23 requirement, see Califano v. Yamasaki,
28 442 U.S. 682, 701 (1979); Montgomery v. Rumsfeld, 572 F.2d 250,

1 255 (9th Cir. 1978), the court must conduct a rigorous inquiry
2 before certifying a class, see Gen. Tel. Co. of Sw. v. Falcon,
3 457 U.S. 147, 161 (1982); E. Tex. Motor Freight Sys. v.
4 Rodriguez, 431 U.S. 395, 403-05 (1977).

5 1. Rule 23(a) Requirements

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

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

11 Fed. R. Civ. P. 23(a). These requirements are more commonly
12 referred to as numerosity, commonality, typicality, and adequacy
13 of representation.

14 a. Numerosity

15 "A proposed class of at least forty members
16 presumptively satisfies the numerosity requirement." Avilez v.
17 Pinkerton Gov't Servs., 286 F.R.D. 450, 456 (C.D. Cal. 2012); see
18 also, e.g., Collins v. Cargill Meat Solutions Corp., 274 F.R.D.
19 294, 300 (E.D. Cal. 2011) (Wanger, J.) ("Courts have routinely
20 found the numerosity requirement satisfied when the class
21 comprises 40 or more members."). The settlement class here
22 contains more than 65,000 members, which easily satisfies the
23 numerosity requirement. (Kratz Decl. ¶ 10.)

24 b. Commonality

25 Commonality requires that the class members' claims
26 "depend upon a common contention" that is "capable of classwide
27 resolution--which means that determination of its truth or
28 falsity will resolve an issue that is central to the validity of

1 each one of the claims in one stroke.” Wal-Mart Stores, Inc. v.
2 Dukes, 131 S. Ct. 2541, 2550 (2011). “[A]ll questions of fact
3 and law need not be common to satisfy the rule,” and the
4 “existence of shared legal issues with divergent factual
5 predicates is sufficient, as is a common core of salient facts
6 coupled with disparate legal remedies within the class.” Hanlon
7 v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998).

8 The proposed class includes all “individual[s] on whom,
9 during the period from May 20, 2009 through September 18, 2015, a
10 consumer report for employment purposes was furnished by
11 PreCheck, Inc., and where the address provided . . . listed
12 California as the state of [] residence at the time the report
13 was furnished.” (Kratz Decl. Ex. A.) The class would be
14 comprised of individuals alleging facts similar to the named
15 plaintiff: that PreCheck furnished consumer reports regarding the
16 class members to prospective employers without first obtaining
17 the requisite § 1681b(b) (1) certification from those employers.
18 The statutory damages could also be resolved on a class-wide
19 basis. See 15 U.S.C. § 1681n(a). The proposed class thus meets
20 the commonality requirement.

21 c. Typicality

22 Typicality requires that the named plaintiff have
23 claims “reasonably coextensive with those of absent class
24 members,” but those claims do not have to be “substantially
25 identical.” Hanlon, 150 F.3d at 1020. The test for typicality
26 “is whether other members have the same or similar injury,
27 whether the action is based on conduct which is not unique to the
28 named plaintiff[], and whether other class members have been

1 injured by the same course of conduct." Hanon v. Dataproducts
2 Corp., 976 F.2d 497, 508 (9th Cir. 1992) (citation omitted).

3 Plaintiff's and the class members' claims are based on
4 substantially similar factual allegations regarding PreCheck's
5 course of conduct: PreCheck's furnishing of a consumer report for
6 employment purposes without having first obtained a § 1681b(b) (1)
7 certification. Their claims are based on the legal theory that
8 PreCheck failed to comply with its obligations under
9 § 1681b(b) (1) of the FCRA. Plaintiff and class members thus
10 allege similar injuries and class members would presumably seek
11 the same remedy that plaintiff does here: statutory and punitive
12 damages under § 1681n(a). Accordingly, plaintiff's claims appear
13 to be reasonably coextensive with those of the proposed class,
14 and the proposed class thus meets the typicality requirement.

15 d. Adequacy of Representation

16 To resolve the question of adequacy, the court must
17 make two inquiries: "(1) do the named plaintiffs and their
18 counsel have any conflicts of interest with other class members
19 and (2) will the named plaintiffs and their counsel prosecute the
20 action vigorously on behalf of the class?" Hanlon, 150 F.3d at
21 1020. These questions involve the consideration of a number of
22 factors, including "a sharing of interests between
23 representatives and absentees." Brown v. Ticor Title Ins., 982
24 F.2d 386, 390 (9th Cir. 1992).

25 The Settlement Agreement provides for an incentive
26 payment of \$5,000 to plaintiff to be paid out of the settlement
27 fund. Although the Ninth Circuit has approved "reasonable
28 incentive payments" to named plaintiffs, such payments

1 nonetheless raise the possibility that a plaintiff's interest in
2 receiving his payment will cause his interests to diverge from
3 the class's interest in a fair settlement. Staton, 327 F.3d at
4 977-78 (declining to approve a settlement agreement where the
5 size of the incentive payment suggested that the named plaintiffs
6 were "more concerned with maximizing [their own] incentives than
7 with judging the adequacy of the settlement as it applies to
8 class members at large"). The court must thus "scrutinize
9 carefully [such] awards so that they do not undermine the
10 adequacy of the class representatives." Radcliffe v. Experian
11 Info. Sys., Inc., 715 F.3d 1157, 1163 (9th Cir. 2013).

12 A \$5,000 incentive award to plaintiff does not on its
13 face appear to create a conflict of interest. Courts have
14 generally found that a \$5,000 incentive payment is reasonable.
15 See In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 463 (9th
16 Cir. 2000); Alberto v. GMRI, Inc., 252 F.R.D. 652, 669 (E.D. Cal.
17 2008). The proposed award, however, is disproportionate to the
18 recovery of other class members, who will each receive
19 approximately \$16. Relevant factors for evaluating a named
20 plaintiff's incentive award include "the actions the plaintiff
21 has taken to protect the interests of the class, the degree to
22 which the class has benefitted from those actions, . . . and
23 reasonabl[e] fear[s of] workplace retaliation." Staton, 327 F.3d
24 at 977 (citation omitted).

25 The incentive payment here is not particularly unfair
26 to other class members, given that it will not significantly
27 reduce the amount of settlement funds available to the rest of
28 the class. In addition, none of the class members have objected

1 to the amount of additional compensation sought by the named
2 plaintiff. Plaintiff also explains that he dedicated over
3 seventy-five hours assisting class counsel, including traveling
4 to the mediation, participating in extensive telephone
5 conversations with counsel, responding to emails, looking for and
6 reviewing documents, and explaining the contents of documents to
7 counsel. (Syed Decl. ¶ 3 (Docket No. 76-4.)

8 Plaintiff also says he bore the risk that his future
9 employers might learn about this lawsuit and be hesitant to hire
10 him, but nonetheless pursued this action for the benefit of the
11 proposed class members. (Id. ¶ 2.) He further states that he
12 risked being personally liable for PreCheck's costs if this
13 action was unsuccessful, and that those costs could have been
14 substantial. (Id. ¶ 4.) Given this information, the court finds
15 that the \$5,000 incentive payment to the named plaintiff is
16 reasonable and does not create a conflict of interest.

17 The second prong of the adequacy inquiry examines the
18 vigor with which the named plaintiff and his counsel have pursued
19 the common claims. "Although there are no fixed standards by
20 which 'vigor' can be assayed, considerations include competency
21 of counsel and, in the context of a settlement-only class, an
22 assessment of the rationale for not pursuing further litigation."
23 Hanlon, 150 F.3d at 1021.

24 Plaintiff's counsel state that they have expertise in
25 prosecuting employment claims throughout their careers. (Dion-
26 Kindem Decl. ¶ 2; Blanchard Decl. ¶ 2.) Peter R. Dion-Kindem
27 states that he has been counsel of record for at least forty
28 class actions in federal and state court. (Dion-Kindem Decl.

1 ¶ 3.) Lonnie C. Blanchard, III states that he has been counsel
2 of record for at least thirty employment class actions.

3 (Blanchard Decl. ¶ 2.) The court thus has some assurance that
4 plaintiff's counsel has the experience necessary to maximize the
5 return on this matter and vindicate the injuries of the class.

6 Plaintiff's counsel also indicate that the decision to
7 settle plaintiff's claim was made after taking into account the
8 uncertainty and risk of further litigation, the potential outcome
9 of pursuing the case, and the difficulties and delays inherent in
10 class action litigation. (Dion-Kindem Decl. in Supp. of Prelim.
11 Approval ¶ 7.) Plaintiff's counsel point to the pending decision
12 in Spokeo, which will determine whether a plaintiff seeking only
13 statutory damages for a violation of the FCRA has Article III
14 standing. (Id.) The court agrees that these considerations
15 weigh in favor of settlement. Accordingly, the court holds that
16 the named plaintiff is an adequate class representative.

17 2. Rule 23(b)

18 An action that meets all the prerequisites of Rule
19 23(a) may be certified as a class action only if it also
20 satisfies the requirements of one of the three subdivisions of
21 Rule 23(b). Leyva v. Medline Indus. Inc., 716 F.3d 510, 512 (9th
22 Cir. 2013). Plaintiffs seek certification under Rule 23(b)(3),
23 which provides that a class action may be maintained only if (1)
24 "the court finds that questions of law or fact common to class
25 members predominate over questions affecting only individual
26 members" and (2) "that a class action is superior to other
27 available methods for fairly and efficiently adjudicating the
28 controversy." Fed. R. Civ. P. 23(b)(3).

1 a. Predominance

2 "Because Rule 23(a)(3) already considers commonality,
3 the focus of the Rule 23(b)(3) predominance inquiry is on the
4 balance between individual and common issues." Murillo v. Pac.
5 Gas & Elec. Co., 266 F.R.D. 468, 476 (E.D. Cal. 2010) (citing
6 Hanlon, 150 F.3d at 1022); see also Amchem Prods. Inc. v.
7 Windsor, 521 U.S. 591, 623 (1997) ("The Rule 23(b)(3)
8 predominance inquiry tests whether proposed classes are
9 sufficiently cohesive to warrant adjudication by
10 representation.").

11 Plaintiff's and the class members' claims turn on the
12 legality of a common method used by PreCheck to furnish consumer
13 reports for employment purposes and whether that method
14 constituted a willful violation of the FCRA. The class claim
15 thus demonstrates a "common nucleus of facts and potential legal
16 remedies" for the class members that can be resolved in a single
17 adjudication. See Hanlon, 150 F.3d at 1022.

18 To the extent that any variations may exist, there is
19 no indication that any variations in class members' claims are
20 "sufficiently substantive to predominate over the shared claims."
21 See id. at 1023. Accordingly, the court finds that common
22 questions of law and fact predominate over questions affecting
23 only individual class members.

24 b. Superiority

25 Rule 23(b)(3) also requires a showing that "a class
26 action is superior to other available methods for fairly and
27 efficiently adjudicating the controversy." Fed. R. Civ. P.
28 23(b)(3). In considering whether a class action is superior, the

1 court considers four non-exhaustive factors:

2 (A) the class members' interests in individually
3 controlling the prosecution or defense of separate
4 actions; (B) the extent and nature of any litigation
5 concerning the controversy already begun by or against
6 class members; (C) the desirability or undesirability
7 of concentrating the litigation of the claims in the
8 particular forum; and (D) the likely difficulties in
9 managing a class action.

10 Id. The parties settled this action prior to certification,
11 making factors (C) and (D) inapplicable. See Murillo, 266 F.R.D.
12 at 477 (citing Windsor, 521 U.S. at 620).

13 Given that they will recover approximately \$16 under
14 the settlement, class members might have an interest in
15 individually prosecuting their own separate actions. If class
16 members pursued individual litigation, they could possibly
17 recover statutory damages between \$100 and \$1,000 and punitive
18 damages under the FCRA. See 15 U.S.C. § 1681n(a). As discussed
19 in greater detail below, however, the substantial risks
20 associated with litigating this case make class members'
21 interests in pursuing individual actions likely low.

22 Additionally, notice of the settlement had been
23 successfully mailed to 65,654 class members, out of which only
24 five members opted out and none had filed objections. (Kratz
25 Decl. ¶¶ 10, 12-13.) The court is also unaware of any concurrent
26 litigation already begun by class members regarding the FCRA
27 issues presented here against PreCheck. The class action device
28 thus appears to be the superior method for adjudicating this
controversy.

Accordingly, because the settlement class has satisfied

1 both Rule 23(a) and Rule 23(b) (3), the court will grant final
2 certification of the settlement class.

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

4 If the court certifies a class under Rule 23(b) (3), it
5 "must direct to class members the best notice that is practicable
6 under the circumstances, including individual notice to all
7 members who can be identified through reasonable effort." Fed.
8 R. Civ. P. 23(c) (2) (B). Rule 23(c) (2) governs both the form and
9 content of a proposed notice. See Ravens v. Iftikar, 174 F.R.D.
10 651, 658 (N.D. Cal. 1997) (citing Eisen v. Carlisle & Jacquelin,
11 417 U.S. 156, 172-77 (1974)). Although that notice must be
12 "reasonably certain to inform the absent members of the plaintiff
13 class," actual notice is not required. Silber v. Mabon, 18 F.3d
14 1449, 1454 (9th Cir. 1994) (citation omitted).

15 PreCheck provided records for 72,261 individuals about
16 whom it furnished consumer reports for employment purposes.

17 (Kratz Decl. ¶ 4.) Dahl then removed duplicate and incomplete
18 records, processed the records through the U.S. Postal Service
19 National Change of Address database to update the addresses for
20 class members who had moved within the last four years, and
21 successfully mailed summary notice of the class settlement to
22 65,654 class members. (Id. ¶¶ 4-13.)

23 The mailed notice contained a summary of the settlement
24 terms, explained that class members do not have to do anything to
25 receive their settlement payments, described the binding effect
26 of the class action and the procedure for opting out and
27 objecting to the settlement, and provided the time and place of
28 the final fairness hearing. (Id. Ex. A.) The notice also

1 directed class members to the settlement website, which provided
2 further information on the proceedings, class members' rights,
3 and answers to frequently asked questions; allowed class members
4 to view and download the Settlement Agreement and other
5 settlement documents filed with the court; and listed the contact
6 information for the claims administrator. (Id. ¶ 11, Exs. A-B.)

7 The court finds that the notice provided was reasonably
8 certain to inform class members of the settlement and that it was
9 the best notice practicable under the circumstances. The notice
10 provided to class members therefore satisfies Rule 23(c)(2)(B).
11 See also Churchill Vill., L.L.C. v. Gen. Elec., 361 F.3d 566, 575
12 (9th Cir. 2004) ("Notice is satisfactory if it 'generally
13 describes the terms of the settlement in sufficient detail to
14 alert those with adverse viewpoints to investigate and to come
15 forward and be heard.'" (citation omitted)).

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

18 Having determined class treatment to be warranted, the
19 court must now determine whether the terms of the parties'
20 settlement appear fair, adequate, and reasonable. See Fed. R.
21 Civ. P. 23(e)(2); Hanlon, 150 F.3d at 1026. This process
22 requires the court to "balance a number of factors," including:

23 the strength of the plaintiff's case; the risk,
24 expense, complexity, and likely duration of further
25 litigation; the risk of maintaining class action status
26 throughout the trial; the amount offered in settlement;
27 the extent of discovery completed and the stage of the
28 proceedings; the experience and views of counsel; the
presence of a governmental participant; and the
reaction of the class members to the proposed
settlement.

Hanlon, 150 F.3d at 1026.

1 1. Strength of Plaintiff's Case

2 An important consideration is the strength of the
3 plaintiff's case on the merits balanced against the amount
4 offered in the settlement. DIRECTV, 221 F.R.D. at 526. The
5 district court, however, is not required to reach any ultimate
6 conclusions on the merits of the dispute, "for it is the very
7 uncertainty of outcome in litigation and avoidance of
8 wastefulness and expensive litigation that induce consensual
9 settlements." Officers for Justice v. Civil Serv. Comm'n of the
10 City & Cty. of S.F., 688 F.2d 615, 625 (9th Cir. 2004).

11 Plaintiff alleges that PreCheck willfully violated
12 § 1681b(b) (1) of the FCRA by improperly furnishing consumer
13 reports about class members for employment purposes without first
14 obtaining the required certification that the employers had
15 complied with their obligations under the FCRA. Plaintiff here
16 faced substantial risks associated with litigating this case.
17 PreCheck has vigorously denied that it violated § 1681b(b) (1)
18 because it had obtained prospective, blanket certifications from
19 M-I and other employers before furnishing consumer reports to
20 them. PreCheck further contends that even if those blanket
21 certifications were not proper, it nonetheless did not willfully
22 violate the FCRA. PreCheck's denial of liability is evidenced by
23 the two motions to dismiss it had previously filed in this
24 litigation. (Docket Nos. 10, 38.)

25 There was a risk that PreCheck's prospective
26 certifications indeed complied with the FCRA or that even if they
27 did not comply, that PreCheck's actions did not amount to willful
28 noncompliance. Furthermore, this action was stayed pending the

1 Supreme Court's resolution of Spokeo two months before the
2 parties settled. Absent a settlement, the Supreme Court's
3 decision in Spokeo could have undermined plaintiff's action
4 entirely if the Supreme Court ruled that a plaintiff does not
5 have standing under the FCRA without first proving a concrete
6 injury.

7 The settlement terms, which provide some payment to
8 over 65,000 members of the class, compare favorably to these
9 uncertainties regarding PreCheck's liability. "In most
10 situations, unless the settlement is clearly inadequate, its
11 acceptance and approval are preferable to lengthy and expensive
12 litigation with uncertain results." DIRECTV, 221 F.R.D. at 529
13 (citation omitted). In comparing the strength of plaintiff's
14 case with the settlement, the court thus finds that the proposed
15 settlement is a fair resolution of the issues in this case.

16 2. Risk, Expense, Complexity, and Likely Duration of
17 Further Litigation

18 Further litigation could greatly delay the resolution
19 of this case and increase expenses. The parties would have had
20 to wait until the Supreme Court's decision in Spokeo and, if that
21 decision allowed plaintiff's action to proceed, they would have
22 had to litigate class certification and a jury trial. This
23 factor weighs in favor of settling this action.

24 3. Risk of Maintaining Class Action Status Throughout
25 Trial

26 Plaintiff states that if the case proceeded to trial,
27 there would be a risk that PreCheck would succeed in decertifying
28 the class. (Pls.' Mot. at 3-4.) Thus, this factor also favors

1 approval of the settlement

2 4. Amount Offered in Settlement

3 In assessing the amount offered in settlement, “[i]t is
4 the complete package taken as a whole, rather than the individual
5 component parts, that must be examined for overall fairness.”
6 Officers for Justice, 688 F.2d at 628. “It is well-settled law
7 that a cash settlement amounting to only a fraction of the
8 potential recovery will not per se render the settlement
9 inadequate or unfair.” Id. The value of the settlement fund in
10 this case is \$1.6 million with each class member receiving
11 approximately \$16. As discussed above, the class recovery here
12 is a fair resolution of the issues given the litigation risks
13 involved regarding the merits and the costs and delays of further
14 litigation. This factor thus weighs in favor of settlement.

15 5. Extent of Discovery and the State of Proceedings

16 The parties represent that they have conducted an
17 extensive exchange of information in this matter. (Dion-Kindem
18 Decl. in Supp. of Prelim. Approval ¶ 5.) Among other
19 information, PreCheck has provided plaintiff with information
20 regarding its agreements with the employers, its certification
21 process, and information on the class members on whom it
22 furnished consumer reports. (Pl.’s Mot. at 4; Kratz Decl. ¶ 4,
23 Ex. B at 2.)

24 The parties also engaged in a full day of mediation
25 before Joan Jessler, a well-known mediator, and the matter was
26 settled based on the mediator’s proposal. (Pl.’s Mem. in Supp.
27 of Prelim. Approval at 19.) The parties’ investigation of the
28 claims through informal discovery and mediation, and their

1 consideration and acceptance of the views of a third-party
2 mediator weigh in favor of settlement.

3 6. Experience and Views of Counsel

4 As discussed above, plaintiff's counsel indicate that
5 they have extensive expertise in prosecuting employment claims
6 and class actions throughout their careers. (Dion-Kindem Decl.
7 ¶¶ 2-3; Blanchard Decl. ¶ 2.) Based on their experience, counsel
8 believe that the settlement is fair, reasonable, and in the best
9 interests of the class members given the uncertainty and risk of
10 further litigation, the potential outcome of pursuing the case,
11 the difficulties and delays inherent in class action litigation,
12 and the Supreme Court's pending decision in Spokeo. (Dion-Kindem
13 Decl. in Supp. of Prelim. Approval ¶ 7.) The court gives
14 considerable weight to class counsel's opinions regarding the
15 settlement due to counsel's experience and familiarity with the
16 litigation. Alberto v. GMRI, Inc., Civ. No. 07-1895 WBS DAD,
17 2008 WL 4891201, at *10 (E.D. Cal. Nov. 12, 2008). Counsel's
18 assertion that the settlement is fair, adequate, and reasonable
19 is a factor supporting the court's final approval of the
20 agreement. See Hanlon, 150 F.3d at 1026.

21 7. Presence of Government Participant

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

24 8. Reaction of the Class Members to the Proposed
25 Settlement

26 Notice of the settlement was successfully mailed to
27 65,654 class members and no objections were filed prior to the
28 December 28, 2015 deadline. (Kratz Decl. ¶¶ 10, 12.) "It is

1 established that the absence of a large number of objections to a
2 proposed class action settlement raises a strong presumption that
3 the terms of a proposed class settlement action are favorable to
4 the class members.” DIRECTV, 221 F.R.D. at 529. Accordingly,
5 this factor weighs in favor of the court’s approval of the
6 settlement.

7 Having considered the above factors, the court finds
8 that the settlement is fair, adequate, and reasonable pursuant to
9 Rule 23(e). See Hanlon, 150 F.3d at 1026.

10 C. Attorney’s Fees

11 Federal Rule of Civil Procedure 23(h) provides that
12 “[i]n a certified class action, the court may award reasonable
13 attorney’s fees and nontaxable costs that are authorized by law
14 or by the parties’ agreement.” If a negotiated class action
15 settlement includes an award of attorney’s fees, that fee award
16 must be evaluated in the overall context of the settlement.
17 Knisley v. Network Assocs., 312 F.3d 1123, 1126 (9th Cir. 2002);
18 Monterrubio v. Best Buy Stores, L.P., 291 F.R.D. 443, 455 (E.D.
19 Cal. 2013) (England, J.). The court “ha[s] an independent
20 obligation to ensure that the award, like the settlement itself,
21 is reasonable, even if the parties have already agreed to an
22 amount.” In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d
23 935, 941 (9th Cir. 2011).

24 “Under the ‘common fund’ doctrine, ‘a litigant or a
25 lawyer who recovers a common fund for the benefit of persons
26 other than himself or his client is entitled to a reasonable
27 attorney’s fee from the fund as a whole.’” Staton, 327 F.3d at
28 969 (quoting Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980)).

1 In common fund cases, the district court has discretion to
2 determine the amount of attorney's fees to be drawn from the fund
3 by employing either the percentage method or the lodestar method.
4 Id. The percentage method is particularly appropriate in common
5 fund cases where, as here, "the benefit to the class is easily
6 quantified." Bluetooth, 654 F.3d at 942. The Ninth Circuit has
7 permitted courts to award attorney's fees using the percentage
8 method "in lieu of the often more time-consuming task of
9 calculating the lodestar." Id. The court will thus adopt the
10 percentage method here.

11 Under the percentage method, the court may award class
12 counsel a percentage of the total settlement fund. Vizcaino v.
13 Microsoft Corp., 290 F.3d 1043, 1047 (9th Cir. 2002). The Ninth
14 Circuit "has established 25% of the common fund as a benchmark
15 award for attorney fees." Hanlon, 150 F.3d at 1029. Class
16 counsel request \$400,000 in attorney's fees, which constitutes
17 25% of the total \$1.6 million settlement fund. (Dion-Kindem
18 Decl. ¶ 11; Blanchard Decl. ¶ 3.) The parties negotiated the
19 amount for attorney's fees only after the original settlement
20 amount of \$1.6 million had been agreed upon. (Settlement
21 Agreement ¶ 26.)

22 As discussed above, there were substantial risks and
23 delays inherent in this litigation and a possibility that class
24 members would not have recovered anything. No class members have
25 filed any objections to the settlement, nor to the proposed
26 attorneys fees, and PreCheck does not oppose class counsel's
27 application for fees. (Id.; Kratz Decl. ¶ 13.) The court thus
28 finds that class counsel's request for attorney's fees is fair,

1 appropriate, and reasonable under the circumstances.

2 Accordingly, the court will approve class counsel's application
3 for \$400,000 in attorney's fees.

4 D. Costs

5 "There is no doubt that an attorney who has created a
6 common fund for the benefit of the class is entitled to
7 reimbursement of reasonable litigation expenses from that fund."
8 Alberto, 2008 WL 4891201, at *12. Class counsel have submitted a
9 list of itemized costs relating to scanning, photocopying,
10 mediation, travel expenses, postage, court fees, and other
11 office-related costs. (Dion-Kindem Decl. ¶ 13; Blanchard Decl.
12 ¶ 6.) The court finds these are reasonable litigation expenses.
13 Accordingly, the court will grant class counsel's request for
14 costs in the amount of \$2,877.59 to Dion-Kindem and \$1,628.22 to
15 Blanchard.

16 E. Incentive Payment to Named Plaintiff

17 "Incentive awards are payments to class representatives
18 for their service to the class in bringing the lawsuit."
19 Radcliffe, 715 F.3d at 1163. For the reasons previously
20 discussed, see supra Part II.A.1.d, the court finds that an
21 incentive payment of \$5,000 is reasonable and proper in this
22 case.

23 III. Conclusion

24 Based on the foregoing, the court grants final
25 certification of the settlement class and approves the settlement
26 set forth in the Settlement Agreement (Docket No. 72-2) as fair,
27 reasonable, and adequate. Consummation of the Settlement
28 Agreement is therefore approved, and the definitions provided in

1 the Settlement Agreement shall apply to the terms used herein.
2 The Settlement Agreement shall be binding upon all members of the
3 class action who did not timely elect to be excluded.

4 IT IS THEREFORE ORDERED that plaintiff's motion for
5 final approval of the class action settlement (Docket No. 76) be,
6 and the same hereby is, GRANTED.

7 IT IS FURTHER ORDERED THAT:

8 (1) solely for the purpose of this settlement, and pursuant
9 to Federal Rule of Civil Procedure 23, the court hereby
10 certifies the following class: All individuals on whom,
11 during the period from May 20, 2009 through the date of
12 this Order, a consumer report for employment purposes was
13 furnished by PreCheck, Inc., and where the address
14 provided listed California as the individual's state of
15 residence at the time the report was furnished, but not
16 any individuals who timely opt-out of the settlement.
17 Specifically, the court finds that:

18 (a) the settlement class members are so numerous that
19 joinder of all settlement class members would be
20 impracticable;

21 (b) there are questions of law and fact common to the
22 settlement class which predominate over any
23 individual questions;

24 (c) claims of the named plaintiff are typical of the
25 claims of the settlement class;

26 (d) the named plaintiff and plaintiff's counsel have
27 fairly and adequately represented and protected the
28 interests of the settlement class; and

1 (e) a class action is superior to other available
2 methods for the fair and efficient adjudication of
3 the controversy.

4 (2) the court appoints the named plaintiff, Sarmad Syed, as
5 representative of the class and finds that he meets the
6 requirements of Rule 23;

7 (3) the court appoints Peter R. Dion-Kindem, P.C., 21550
8 Oxnard St., Suite 900, Woodland Hills, CA 91367; and
9 Blanchard Law Group, APC, 3311 East Pico Boulevard
10 Los Angeles, CA 90023, as counsel to the settlement class
11 and finds that counsel meets the requirements of Rule 23;

12 (4) the Settlement Agreement's plan for class notice is the
13 best notice practicable under the circumstances and
14 satisfies the requirements of due process and Rule 23.
15 The plan is approved and adopted. The notice to the
16 class complies with Rule 23(c)(2) and Rule 23(e) and is
17 approved and adopted;

18 (5) the parties have executed the notice plan in the court's
19 Preliminary Approval Order and successfully mailed notice
20 to 65,654 class members, in response to which five class
21 members requested to be excluded, and none objected.
22 Having found that the parties and their counsel took
23 extensive efforts to locate and inform all putative class
24 members of the settlement, and given that no class
25 members have filed any objections to the settlement, the
26 court finds and orders that no additional notice to the
27 class is necessary;

28 (6) as of the date of the entry of this Order, plaintiff and

1 all class members who have not timely opted out of the
2 settlement, and all those acting or purporting to act on
3 their behalf, fully and forever release, waive, acquit,
4 and discharge PreCheck, Inc., and the Released Persons
5 (as defined by paragraph 10 of the Settlement Agreement)
6 from any and all claims set forth in the complaint or any
7 amended complaint, and any and all claims, known or
8 unknown, that arise out of or that could have arisen out
9 of, the facts, transactions, occurrences,
10 representations, or omissions set forth in the First
11 Amended Complaint, based on claims arising out of or
12 based on the Fair Credit Reporting Act; and all
13 penalties, tax, and interest associated with the
14 foregoing. The claims released by plaintiffs and class
15 members are subject to the conditions stated in paragraph
16 33 of the Settlement Agreement;

17 (7) class administrator, Dahl Administration, LLC, is awarded
18 \$133,427.00 for its services as settlement administrator
19 and payment shall be made in accordance with paragraph 28
20 of the Settlement Agreement;


21 (8) class representative, Sarmad Syed, is awarded \$5,000 as
22 an incentive payment and payment shall be made in
23 accordance with paragraphs 26, 30, and 31 of the
24 Settlement Agreement;

25 (9) class counsel, Peter R. Dion-Kindem, P.C. and Blanchard
26 Law Group, APC, are awarded \$400,000 in attorney's fees
27 and payment shall be made in accordance with paragraph 29
28 of the Settlement Agreement;

- 1 (10) class counsel, Peter R. Dion-Kindem, P.C., is awarded
2 \$2,877.59 in costs and payment shall be made in
3 accordance with paragraph 29 of the Settlement Agreement;
4 (11) class counsel, Blanchard Law Group, APC, is awarded
5 \$1,628.22 in costs and payment shall be made in
6 accordance with paragraph 29 of the Settlement Agreement;
7 (12) all class members who did not opt out from the settlement
8 will receive a settlement share from the Net Settlement
9 Fund (as defined in paragraph 12 of the Settlement
10 Agreement) and payment shall be made in accordance with
11 paragraphs 26, 30, and 31 of the Settlement Agreement;
12 (13) this action is dismissed with prejudice; however, without
13 affecting the finality of this Order, the court shall
14 retain continuing jurisdiction over the interpretation,
15 implementation, and enforcement of the Settlement
16 Agreement with respect to all parties to this action and
17 their counsel of record.

18 Pursuant to Federal Rule of Civil Procedure 58, the
19 Clerk of the Court is instructed to enter judgment accordingly.

20 Dated: January 26, 2016

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

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