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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**
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11
12 THOMAS LAGOS, on behalf of himself and all
13 others similarly situated,

14 Plaintiff,

15 vs.

16 THE BOARD OF TRUSTEES OF THE
17 LELAND STANFORD JUNIOR UNIVERSITY,
a California corporation, and DOES 1 through 10,

18 Defendants.

Case No. 2015-1-CV-284497

**ORDER RE: MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

19 The above-entitled matter came on regularly for hearing on Friday, June 1, 2018, at 9:00
20 a.m. in Department 5 (Complex Civil Litigation), the Honorable Thomas E. Kuhnle presiding.
21 The Court reviewed and considered the written submissions of all parties and issued a tentative
22 ruling on Thursday, May 31, 2018. No party contested the tentative ruling; therefore, the Court
23 orders the tentative ruling be adopted as the Order of the Court, as follows:

24 **I. INTRODUCTION**

25 This is a putative class action arising out of an alleged violation of 15 U.S.C. section
26 1681b(b), which concerns the use of “consumer reports” for employment purposes. (Complaint,
27 ¶¶ 10-14.) The Complaint, filed on August 18, 2015, sets forth a single cause of action for
28 violation of 15 U.S.C. section 1681b(b)(2).

1 The parties have reached a settlement. Plaintiff Thomas Lagos (“Plaintiff”) and
2 defendant The Board of Trustees of the Leland Stanford Junior University (collectively, the
3 “Parties”) move for preliminary approval of the settlement.

4 **II. LEGAL STANDARD**

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

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

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

20 “The list of factors is not exclusive and the court is free to engage in a balancing and
21 weighing of factors depending on the circumstances of each case.” (*Wershba v. Apple*
22 *Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245.) The court must examine the “proposed
23 settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is
24 not the product of fraud or overreaching by, or collusion between, the negotiating parties, and
25 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*,
26 quoting *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n,*
27 *etc., supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

28 The burden is on the proponent of the settlement to show that it is fair and
reasonable. However “a presumption of fairness exists where: (1) the settlement
is reached through arm’s-length bargaining; (2) investigation and discovery are
sufficient to allow counsel and the court to act intelligently; (3) counsel is
experienced in similar litigation; and (4) the percentage of objectors is small.”

1 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245, citing *Dunk*, *supra*, 48
2 Cal.App.4th at p. 1802.)

3 **III. DISCUSSION**

4 **A. Provisions of the Settlement**

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

6 All individuals on whom, during the [period from August 18, 2010 through
7 August 22, 2015] a consumer report for employment purposes was procured by
8 Stanford. Excluded from the Settlement Class are all persons who are validly
9 excluded from the Settlement Class and persons who received constructive or
actual notice that [a] consumer report had been obtained on them more than two
years before August 18, 2015.

10 (Declaration of Peter R. Dion-Kindem in Support of Stipulation re Order for Preliminary
11 Approval of Class Action Settlement (“Dion-Kindem Decl.”), Ex. 1 (“Settlement Stipulation”),
12 ¶¶ II(9), (22).)

13 Pursuant to the settlement, Defendant will pay a total of \$600,000. (Settlement
14 Stipulation, ¶ II(25).) This amount includes attorneys’ fees of up to \$200,000, costs of up to
15 \$25,000, an enhancement payment of \$7,500 for the class representative, and class
16 administration costs of up to \$70,000.

17 Out of the net settlement fund, 90% will be distributed to class members for whom a
18 consumer report was generated by Defendant during the period August 18, 2013 through August
19 22, 2015 (“two-year settlement class members”), and 10% will be distributed to class members
20 for whom a consumer report was generated by Defendant during the period August 18, 2010
21 through August 18, 2013 and who did not have constructive or actual notice that a consumer
22 report had been obtained on them (“three-five year settlement class members”). (Settlement
23 Stipulation, ¶¶ II(29)-(30), III(1).)

24 **B. Fairness of the Settlement**

25 Plaintiff states the settlement was reached through arm’s-length negotiations, including a
26 formal settlement conference with a federal court magistrate judge. Plaintiff contends this is a
27 good settlement. Plaintiff asserts that whether Defendant violated the Fair Credit Reporting Act
28 (“FCRA”) is highly contested and Plaintiff would also have to show any violation was willful.

1 Plaintiff states two-year settlement class members will receive a net distribution of \$29.60 and
2 three-five year settlement class members will receive a net distribution of \$5.51. In light of the
3 good faith negotiations in this matter and the risk that the class will not prevail if this case
4 continues to trial, the Court finds the settlement is fair.

5 Plaintiff will seek a class representative incentive award of \$7,500.

6 The rationale for making enhancement or incentive awards to named plaintiffs is
7 that they should be compensated for the expense or risk they have incurred in
8 conferring a benefit on other members of the class. An incentive award is
9 appropriate if it is necessary to induce an individual to participate in the suit.
10 Criteria courts may consider in determining whether to make an incentive award
11 include: 1) the risk to the class representative in commencing suit, both financial
12 and otherwise; 2) the notoriety and personal difficulties encountered by the class
13 representative; 3) the amount of time and effort spent by the class representative;
14 4) the duration of the litigation and; 5) the personal benefit (or lack thereof)
15 enjoyed by the class representative as a result of the litigation. These "incentive
16 awards" to class representatives must not be disproportionate to the amount of
17 time and energy expended in pursuit of the lawsuit.

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

20 Plaintiff has submitted a declaration in support of the request for the incentive award.
21 Plaintiff lists various activities he has performed and states he has spent approximately 95 hours
22 in connection with the case. (Declaration of Thomas Lagos in Support of Stipulation re Entry of
23 Order for Preliminary Approval of Class Action Settlement, ¶ 11.) The Court finds Plaintiff has
24 sufficiently justified the requested incentive award and it is approved.

25 The Court also has an independent right and responsibility to review the requested
26 attorneys' fees and only award so much as it determines reasonable. (See *Garabedian v. Los*
27 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff's counsel will
28 seek attorneys' fees of \$200,000 (one-third of the total settlement fund), plus up to \$25,000 for
costs. In support of the request, Plaintiff's counsel provides a declaration stating the lodestar for
the case so far is \$433,562.50. (Dion-Kindem Decl., ¶ 24.) While the rates used in calculating
this lodestar are somewhat high (\$875/hour), the lodestar results in a negative multiplier.
Consequently, the Court finds the fees are fair and they are preliminarily approved.

1 **C. Conditional Certification of Class**

2 The Parties request the putative class be conditionally certified for purposes of the
3 settlement. Rule 3.769(d) of the California Rules of Court states that “[t]he court may make an
4 order approving or denying certification of a provisional settlement class after [a] preliminary
5 settlement hearing.” California Code of Civil Procedure Section 382 authorizes certification of a
6 class “when the question is one of a common or general interest, of many persons, or when the
7 parties are numerous, and it is impracticable to bring them all before the court”

8 As interpreted by the California Supreme Court, Section 382 requires: (1) an
9 ascertainable class; and (2) a well-defined community of interest among the class members.
10 (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) The “community-of-
11 interest” requirement encompasses three factors: (1) predominant questions of law or fact;
12 (2) class representatives with claims or defenses typical of the class; and, (3) class
13 representatives who can adequately represent the class. (*Id.* at p. 326.) “Other relevant
14 considerations include the probability that each class member will come forward ultimately to
15 prove his or her separate claim to a portion of the total recovery and whether the class approach
16 would actually serve to deter and redress alleged wrongdoing.” (*Linder v. Thrifty Oil Co.* (2000)
17 23 Cal.4th 429, 435.) The plaintiff has the burden of establishing that class treatment will yield
18 “substantial benefits” to both “the litigants and to the court.” (*Blue Chip Stamps v. Superior*
19 *Court* (1976) 18 Cal.3d 381, 385.)

20 As explained by the California Supreme Court,

21 The certification question is essentially a procedural one that does not ask whether
22 an action is legally or factually meritorious. A trial court ruling on a certification
23 motion determines whether the issues which may be jointly tried, when compared
24 with those requiring separate adjudication, are so numerous or substantial that the
25 maintenance of a class action would be advantageous to the judicial process and
26 to the litigants.

27 (*Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at p. 326, internal quotation
28 marks, ellipses, and citations omitted.)

 Class members can be ascertained from Defendant’s records. The parties state there are
approximately 13,000 class members. There are common issues regarding whether Defendant

1 failed to provide lawful, timely notice when obtaining consumer reports for employment
2 purposes and whether any violation was willful. No issue has been raised regarding the
3 typicality or adequacy of Plaintiff as class representative. The Court finds the proposed class
4 should be conditionally certified.

5 **D. Class Notice**

6 The content of a class notice is subject to court approval. "If the court has certified the
7 action as a class action, notice of the final approval hearing must be given to the class members
8 in the manner specified by the court." (Cal. Rules of Court, rule 3.769(f).)

9 There are two notices – an email and website notice, and a postcard notice. (Dion-
10 Kindem Decl., Ex. 1, Exs. B1 and B2.) Both notices generally comply with the requirements for
11 class notice. They provide basic information about the settlement, including the settlement
12 terms, and procedures to object or request exclusion. However, the notices states that class
13 members who want to object must mail a written objection to the class administrator and that
14 failure to do so in a specified manner will result in a class member being unable to object.

15 The class notices must be changed in two ways. First, they need to make clear that class
16 members may appear at the final approval hearing to make an oral objection even without
17 mailing any written objection and without providing advance notice. Second, at the hearing
18 counsel stated that there are some minor mathematical errors in the notice. The Court agreed the
19 notices should be amended in that regard, too. The amended notices need not be approved by the
20 Court before mailing, but they should be included in the final approval submissions.

21 **E. Conclusion**

22 Subject to the modification to the notices, the motion for preliminary approval of class
23 action settlement is GRANTED. The final approval hearing is set for October 5, 2018, at
24 9:00 a.m. in Department 5.

25
26 Dated: June 1, 2018

27 
28 Thomas E. Kuhnle
Judge of the Superior Court