

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	SACV 16-00563 AG (AFMx)	Date	January 27, 2020
Title	DEMETA REYES v. EXPERIAN INFORMATION SOLUTIONS, INC.		

Present: The Honorable	ANDREW J. GUILFORD		
Melissa Kunig	Not Present		
Deputy Clerk	Court Reporter / Recorder	Tape No.	
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:		

[IN CHAMBERS] ORDER REGARDING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT (DKT. NO. 144)

In February 2016, Plaintiff Demeta Reyes (“Plaintiff”) filed a putative class action against Defendant Experian Information Solutions, Inc. (“Experian”) for reporting violations under the Fair Credit Reporting Act of 1970 (“FCRA”), 15 U.S.C. § 1681 *et seq.* After Plaintiff’s successful appeal reversing a previous judgment in Experian’s favor, this Court certified a class under Federal Rule of Civil Procedure 23(b)(3) in October 2019. Now, having reach a settlement agreement, Plaintiff moves for preliminary approval of the class action settlement. Plaintiff’s motion is unopposed.

The Court GRANTS Plaintiff’s motion for preliminary approval of class actions settlement. The Court ORDERS that the final approval hearing be set for May 18, 2020.

1. LEGAL STANDARD

Under Federal Rule of Civil Procedure 23(e), judicial approval is required for a settlement of claims brought as a class action. And under Rule 23(e)(1), the issue at preliminary approval turns on whether the Court “will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.” As an initial matter, the Court has already certified the Class so it need not determine whether it could certify the class for purposes of judgment on the proposal. *See* Fed. R. Civ. P. 23(e)(1)(ii); Dkt. No. 132.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	SACV 16-00563 AG (AFMx)	Date	January 27, 2020
Title	DEMETA REYES v. EXPERIAN INFORMATION SOLUTIONS, INC.		

Further, the Court may approve a settlement agreement only “after a hearing and on finding that it is fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). District courts must consider various factors in assessing a settlement proposal:

the strength of the plaintiffs’ case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the 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 v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998). Because of the danger of improper collusion, “settlement approval that takes place [before] formal class certification requires a higher standard of fairness.” *Id.* But “the court’s intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.* at 1027. “[T]he decision to approve or reject a settlement is committed to the sound discretion of the trial judge.” *Id.* at 1026. Ultimately, “[s]trong judicial policy favors settlements.” *Churchill Vill., LLC. v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004) (omission and quotation marks omitted) (quoting *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992)).

2. OVERVIEW OF THE SETTLEMENT AGREEMENT

Under the settlement agreement, Experian agrees to establish a non-reversionary settlement fund of \$24,000,000 (“Class Settlement Fund”). (Mot., Dkt. No. 144-1 at 11.) Here, each class member would receive an automatic payment unless the class member opts out. (*Id.*) The Class Settlement Fund will also cover costs of settlement administration and dissemination of notice, attorney fees and expenses, and a service award payment. The following table summarizes how the Class Settlement Fund would be divided:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	SACV 16-00563 AG (AFMx)	Date	January 27, 2020
Title	DEMETA REYES v. EXPERIAN INFORMATION SOLUTIONS, INC.		

Amount	Payee
\$8,400,000	Class Attorney Fees (not to exceed 35%)
\$200,000	Costs and Expenses
\$110,950	Notice and Settlement Claims Administration
\$15,000	Class Representative Service Payment Award

The remaining amount, approximately \$15,274,050, will be distributed equally to class members. Each class member would receive a distribution from the remaining amount of the Class Settlement Fund in the form of an automatic payment. Plaintiff estimates a payout of “at least \$270” for each class member. (Mot., Dkt. No. 144-1 at 11.)

3. PRELIMINARY APPROVAL OF SETTLEMENT TERMS AND COSTS

The Court has considered various factors in assessing this class settlement and finds that, at this stage, the settlement is overall fair, reasonable, and appropriate. One important factor is that the parties reached the settlement after significant arms-length negotiations with a third-party mediator. *See In re First Capital Holdings Corp. Financial Prods.*, No. MDL 901, 1992 WL 226321, at *2 (C.D. Cal. June 10, 1992) (“[T]here is typically an initial presumption of fairness where the settlement was negotiated at arm’s length.”) Indeed, the parties’ settlement negotiations with Retired Judge Jay Gandhi followed nearly three and a half years of hard-fought litigation. (*See* Mot., Dkt. No. 144-1 at 9-10, 19.)

Further, the parties have reached this agreement only after extensive discovery, motion practice, and an appeal. (*Id.* at 3-9.) Plaintiff’s counsel obtained and reviewed “nearly 20,000 pages of documents.” (*Id.* at 3.) Plaintiff’s counsel conducted numerous depositions, including Experian’s fact witnesses, corporate representatives, and “in-house” expert. (*Id.*) Plaintiff also hired an expert witness in the credit reporting industry, who submitted a 28-page expert report. Experian deposed Plaintiff and Plaintiff’s expert. (*Id.*) Plaintiff’s motion also summarizes the extensive motion practice in this case, including cross-motions for summary judgment and a motion for class certification. (*Id.* at 4-5.) After the Court granted Experian’s motion for summary judgment, Plaintiff successfully appealed to the Ninth Circuit. (*Id.* at 6.) On remand, the parties engaged in more hotly-contested motion practice over class-certification. (*Id.* at 7.) Only after the parties’ extensive litigation efforts and multiple, in-

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	SACV 16-00563 AG (AFMx)	Date	January 27, 2020
Title	DEMETA REYES v. EXPERIAN INFORMATION SOLUTIONS, INC.		

person mediation sessions with Mr. Gandhi did the parties make progress towards settlement. (*Id.* at 9-10.) All of this tends to show that the settlement is based on a sufficient understanding of what’s at stake in this case. Plaintiff’s counsel are experienced litigators and have concluded that the benefits of settlement outweigh the risks of continued litigation. (*Id.* at 20-22.)

Next, the proposed release of claims appears fair and reasonable. The scope of released claims is limited to those claims “that have been or could have been asserted in [this case] related to a Delbert account” (*See* Settlement Agreement, Dkt. No. 144-2, ¶20.) The release is specifically limited to the Delbert accounts “embraced within this Action” and to avoid confusion specifically excludes claims that might be asserted in the action *Smith v. Experian Information Solutions, Inc.*, Case No. 8:17-cv-00629-CJC-AFM. (*Id.*)

Lastly, considering the lengthy procedural history of this case, it’s possible that the proposed attorney fee award of 35% of the Class Settlement Fund is reasonable. The requested fee of \$8,400,000 potentially reflects fair compensation for undertaking this complex, risky, expensive, and time-consuming class action on a contingent fee-basis, particularly since both parties have been actively litigating this case since February 2016. Still, a 35% award for attorney fees is on the higher side of potential recovery. *See Morris v. Lifescan, Inc.*, 54 F. App’x 663, 664 (9th Cir. 2003) (affirming attorney fee award of 33% of a \$14,800,000 cash settlement); *see also In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995); *Tanfilis v. Allergan, Inc.*, Case No. 8:15-cv-00307-JLS-JCG, 2018 WL 4849716, at *7 (C.D. Cal. Nov. 18, 2014). With this concern in mind, Plaintiff’s requested attorney fees will be reviewed further at the final approval stage when Plaintiff’s counsel provides more information regarding the hours spent litigating this case.

The Court GRANTS preliminary approval of the class settlement.

4. PROPOSED NOTICE

When a court certifies a class under Rule 23(b)(3), it must “direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). A helpful review of class action notices is found at Shannon R. Wheatman, Ph.D. & Terri R. LeClercq, Ph.D., *Majority of Class Action Publication Notices Fail to Satisfy Rule 23 Requirements*, 30 THE REV. OF

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	SACV 16-00563 AG (AFMx)	Date	January 27, 2020
Title	DEMETA REYES v. EXPERIAN INFORMATION SOLUTIONS, INC.		

LITIGATION 1 (2010). In “plain, easily understood language” the notice must “clearly and concisely” state:

- (i) the nature of the action;
- (ii) the definition of the class certified;
- (iii) the class claims, issues, or defenses;
- (iv) that a class member may enter an appearance through an attorney if the member so desires;
- (v) that the court will exclude from the class any member who requests exclusion;
- (vi) the time and manner for requesting exclusion;
- (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B). Finally, “[n]otice is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.” *Churchill Vill., L.L.C.*, 361 F.3d at 575 (internal quotation marks omitted).

The parties agree that a third party, Angeion Group, LLC (“Angeion”), will mail via U.S. first-class mail, postage prepaid to class members’ most current address. (See Decl. of Christian J. Clapp, Dkt. No. 144-3, ¶ 10.) Plaintiff proposes an opt-out and objection deadline of 30 days from receipt of notice for class members. (Mot., Dkt. No. 144-1 at 25.) The Court would suggest a longer deadline of 45 days for class members to opt-out or object to the settlement agreement.

Further, the Notice provides detailed information in plain English, and it sets forth, among other things: (1) the case caption and description of the class; (2) a description of the claims and history of the litigation; (3) names of class counsel and a statement of the maximum attorney fees sought; (4) the maximum service award class counsel seeks; (5) a description of procedures and deadlines for requesting exclusion from the class; (6) a link to the settlement website containing relevant case documents; and (7) how to obtain further information. (See Mot., Dkt. No. 144-1 at 13, 17.) This Court’s own review of the proposed materials confirms that the documents in the proposed notice are broken down clearly into an easy to read table

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	SACV 16-00563 AG (AFMx)	Date	January 27, 2020
Title	DEMETA REYES v. EXPERIAN INFORMATION SOLUTIONS, INC.		

followed by the relevant categories of information outlining the elements required by Rule 23(c)(2)(B). (*See generally* Proposed Class Notice, Dkt. No. 144-2, Ex. 1.)

Significantly, the Notice states on page one that if a party does nothing, the party will “[a]utomatically receive a settlement check for at least \$270.00.”

The Court concludes that the notice packet and plan comply with Federal Rule of Civil Procedure 23. The Court also appoints Angeion as the third-party claims administrator.

5. FINAL APPROVAL HEARING

A court must hold a hearing before finally determining whether a class settlement is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2). Plaintiff proposes that the final fairness hearing take place at least 120 days from the date of this Order. (Mot., Dkt. No. 144-1 at 25.) The Court thus **ORDERS** that the final fairness hearing be set **May 18, 2020 at 10:00 A.M.** Regarding all other applicable dates, the Court **ADOPTS** the implementation schedule requested by Plaintiff subject to the revisions described in Section 4. (*See id.*) The parties are encouraged to work together in choosing any additional dates or deadlines needed.

6. DISPOSITION

The Court **GRANTS** Plaintiffs’ motion for preliminary approval of class action settlement. The Court **ORDERS** that the final approval hearing be set **May 18, 2020 at 10:00 A.M.**

Initials of Deputy Clerk _____ : 0
mku _____