UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

| Case No. | CV 15-9889 PA (SSx) | Date | July 29, 2017 |
|---|---|---|---|
| Title | John Huebner v. Mantech International Corp. | | |

| Present: The Honorable | PERCY ANDERSON, UNITED STATES DISTRICT JUDGE | |
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| Kamilla Sali-Suleyman | Not Reported | N/A |
| Deputy Clerk | Court Reporter | Tape No. |
| Attorneys Present for Plaintiffs: | Attorneys Present for Defendants: | |
| None | None | |

**Proceedings:** MOTIONS FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND ATTORNEYS' FEES

Before the Court are a Motion for Final Approval of Class Action Settlement (Docket No. 43) and a Motion for Attorneys' Fees, Reimbursement of Costs, and Incentive Award (Docket No. 44) filed by plaintiff John Huebner ("Plaintiff" or "Huebner"). Defendant Mantech International Corporation ("Mantech") does not oppose either motion. A Fairness Hearing was held on June 5, 2017, at 1:30 p.m.

## I. FACTUAL & PROCEDURAL BACKGROUND

On December 23, 2015, Plaintiff brought this action asserting that Mantech had failed to provide job applicants required disclosures when requesting authorization to obtain consumer reports, and that Mantech took adverse action against Plaintiff and other class members as a result of consumer reports without providing adequate notice. (Compl., ¶¶ 4, 34, 48.) The Complaint alleges claims for violations of the: (1) Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681 et seq.; (2) Investigative Consumer Reporting Agencies Act ("ICRAA"), Cal. Civ. Code §§ 1786 et seq.; (3) Consumer Credit Reporting Agencies Act ("CCRAA"), Cal. Civ. Code §§ 1785 et seq.; and (4) California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200 et seq.

On September 19, 2016, the parties filed a joint motion for preliminary approval of class action settlement. (Docket No. 33.) On November 17, 2016, the Court preliminarily approved the Settlement Agreement[1/] and preliminarily certified the Settlement Class and three subclasses ("Settlement Class and Subclasses"). (Docket No. 42.)

Plaintiff now moves for final approval of the Settlement Agreement. In addition, he seeks certification for settlement purposes of the Settlement Class and Subclasses; appointment of Huebner as

[1/] In doing so, the Court preliminarily approved the appointment of Huebner as Class Representative (Declaration of Anthony J. Orshansky ISO Mot. for Final Approval ("Orshansky Decl. ISO Final Approval"), Exh. 1 ("Settlement Agreement") § III.A.21), Anthony J. Orshansky and Justin Kachadoorian of CounselOne, P.C. as Class Counsel (id. § III.A.6), and CPT Group, Inc. as Settlement Administrator (id. § III.A.23).

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Class Representative, CounselOne, P.C. as Class Counsel, and CPT Group, Inc. as Settlement Administrator; approval of settlement administration costs; and judgment of dismissal based upon the Settlement Agreement. (See Notice of Mot. for Final Approval, 2.) Finally, Plaintiff seeks approval of attorneys' fees, litigation costs, and an incentive award for Plaintiff. (See Notice of Mot. for Attorneys' Fees, 2.)

For purposes of settlement, Plaintiff seeks final certification of the following Settlement Class and Subclasses:

The Settlement Class. There are 7,545[2/] members of the Settlement Class, also called the Federal Disclosure Class. Each member of the subclasses is also a member of the Settlement Class. An individual is a member of the Settlement Class if, between November 1, 2012 and January 31, 2015, Mantech procured a consumer report without making the disclosure required by 15 U.S.C. § 1681b(b)(2)(A)(i). (Settlement Agreement § III.C.1.)

> The Federal Adverse Action Subclass. There are 720 members of the Federal Adverse Action Subclass. (Declaration of Abel E. Morales ISO Mot. for Final Approval ("Morales Decl."), ¶ 4(b).) An individual is a member of the Federal Adverse Action Subclass if one or the other or both of the following conditions are satisifed: (1) Mantech took adverse action based on a consumer report without first providing the individual with a copy of the consumer report, as required by 15 U.S.C. §1681b(b)(3)(A) or (2) Mantech took adverse action based on a consumer report without providing sufficient notice of the adverse action, as required by 15 U.S.C. § 1681m(a). (Settlement Agreement § III.C.2.)

The California Disclosure Subclass. There are 326 members of the California Disclosure Subclass. (Morales Decl. ¶¶ 4(c), 11.) An individual is a member of the California Disclosure Subclass if the following conditions are satisifed: (1) Mantech failed to provide a clear and conspicuous written disclosure required for investigative consumer reports under Cal. Civ. Code § 1786.16(b), or (2) Mantech failed to provide written notice prior to requesting a credit report as required under Cal. Civ. Code § 1785.20.5(a). (Settlement Agreement § III.C.5.)

The California Adverse Action Subclass. There are 37 members of the California Adverse Action Subclass. (Morales Decl. ¶ 4(d).) An individual is a member of the California Adverse Action Subclass if the following condition is satisfied: Mantech took adverse action without providing proper adverse action notices including the name and address of the consumer reporting agency, as required by Cal. Civ. Code § 1785.20.5(b). (Settlement Agreement § III.C.3.)

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[2/] Though counted here, one class member has opted out of the Settlement Class and the California Disclosure Subclass.

The Settlement Agreement requires Mantech to pay a total of $730,000.00 into a common fund (the "Settlement Fund") to settle all claims alleged in the Complaint.[3/] From the Settlement Fund, Plaintiff requests (1) an attorneys' fee award of 25%, or $182,500.00, (2) litigation costs of $9,512.08,[4/] (3) claims administration expenses of $52,000.00,[5/] and (4) a case contribution award of $7,500.00 to Plaintiff. No portion of the Settlement Fund will be returned to Mantech.

Following preliminary approval of the Settlement Agreement, potential Settlement Class members were notified of the Settlement Agreement and its terms. CPT Group, Inc. mailed notices to the U.S. Postal Service's most recent address for potential members on March 1, 2017. (Morales Decl., ¶¶ 5–6.) Any returned notices were mailed to new addresses found by skip-tracing and forwarded address notifications. (Id., ¶ 7.) As of May 4, 2017, the Settlement Administrator had re-mailed 616 class notices where the notice had either been returned or a putative class member had requested it be mailed again. (Id., ¶ 7.) The Settlement Administrator further made a website containing Court documents and a long-form notice, and set up a toll-free phone number that class members could call with questions. (Id., ¶¶ 8, 9.) The website address and toll-free number were identified in the mailed notice. (See Morales Decl., Exh. A.)

Those who wished to opt out were required to submit an opt-out notice no later than April 17, 2017. The toll free number received 719 calls. (Id., ¶ 9.) The website received 8,512 page views from 3,257 visitors. (Id., ¶ 8.) No objections were made, and only one individual – who would have been a member of the Settlement Class and the California Disclosure Subclass – opted out.[6/]

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[3/] In response to this action, Mantech reviewed and updated its background check disclosure and other forms to ensure compliance with the FCRA, the ICRAA, and the CCRAA. (Orshansky Decl. ISO Final Approval, ¶ 21.)

[4/] While the Motion for Final Approval continues to state that Plaintiff seeks "up to $15,000" in litigation expenses, the Motion for Attorneys' Fees states that the litigation costs sought are $9,512.08. (See Mot. for Attorneys' Fees, 22; Declaration of Anthony J. Orshansky ISO Mot. for Attorneys' Fees (Orshansky Decl. ISO Attorneys' Fees), ¶¶ 36–38.)

[5/] Similarly, while the Motion for Final Approval continues to state that Plaintiff seeks "up to $52,000" for claims administration, the Settlement Administrator attests that the total claims administration fees will be $52,000.00 through completion of settlement distribution. (Morales Decl., ¶ 14.; id., Exh. C (invoice for services).)

[6/] Those potential Settlement Class members who did not opt out are hereinafter referred to as "Class Members."

## II. FINAL APPROVAL OF CLASS ACTION SETTLEMENT

### A. Class Certification

Final approval of a class action settlement first requires that the Court decide whether to certify the settlement class or classes pursuant to Rule 23. Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019–20 (9th Cir. 1998). Here, the Court previously preliminarily approved the Settlement Class and Subclasses for certification. Because no material change has occurred that would alter the Court's analysis of whether to certify the Settlement Class or any subclass, the Court incorporates its class certification analysis as set forth in the order granting preliminary approval.[7/] (See Docket No. 42, 2–7.) The Court adopts its prior findings, and certifies the Settlement Class, the Federal Adverse Action Subclass, the California Disclosure Subclass, and the California Adverse Action Subclass.

### B. Appointment of Class Counsel, Class Representative, and Settlement Administrator

#### 1. Class Counsel

Pursuant to Rule 23(g)(1), upon class certification, the Court must appoint class counsel. In doing so, the Court must consider (1) the work counsel has done in identifying or investigating potential claims in the action; (2) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (3) counsel's knowledge of the applicable law; and (4) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A); Radcliffe v. Hernandez, 818 F.3d 537, 547 (9th Cir. 2016). "Class counsel must fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(4)

Here, CounselOne, P.C. is qualified and competent, and has extensive class action litigation experience. (Orshansky Decl. ISO Final Approval, ¶¶ 45–47; Orshansky Decl. ISO Attorneys' Fees, Exh. 1.) Furthermore, as discussed below, it has adequately investigated the claims of the Settlement Class and Subclasses, has committed resources to represent the classes, and has obtained a fair and adequate settlement for the Settlement Class and Subclasses. No Class Member has opposed their appointment, nor has Mantech. Accordingly, the Court appoints CounselOne, P.C. as Class Counsel.

#### 2. Class Representative

Rule 23(a) requires that representative parties be able to "fairly and adequately protect the interests of the class." Fed. R. Civ. Proc. 23(a)(4). Representation is adequate if (1) "the named plaintiffs and their counsel [do not] have any conflicts of interest with other class members," and

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[7/] The Court resolves previous concerns about the requested attorneys' fees and incentive award in favor of approving the Settlement Agreement. (See Docket No. 42, 10 n.2, 11 n.3; see also infra, at 9–11.)

(2) "the named plaintiffs and their counsel [will] prosecute the action vigorously on behalf of the class . . . ." Ellis v. Costco Wholesale Corp., 657 F.3d 970, 985 (9th Cir. 2011).

Here, there are no apparent conflicts of interest between Plaintiff and the other Class Members. While Plaintiff seeks an incentive award of $7,500 (see infra, at 10–11), this does not inherently create a conflict of interest. Here, Plaintiff sought out counsel and has contributed time and energy to pursue this action. (See Declaration of John Huebner ISO Mot. for Final Approval, ¶¶ 4, 7–11.) As discussed in the order granting preliminary approval, Plaintiff's claims are reasonably co-extensive with those of the unnamed class members and there are no unique defenses that apply to Plaintiff only. In addition, no Class Member has opposed his appointment as Class Representative. Therefore, the Court finds Plaintiff to be an adequate representative of the Settlement Class and Subclasses, and appoints him Class Representative.

3. Settlement Administrator

Finally, the parties agreed upon and proposed that the Court appoint CPT Group, Inc. as Settlement Administrator. Based on CPT Group, Inc.'s experience, and the parties' agreement, the Court appoints CPT Group, Inc. to serve as Settlement Administrator. (See Morales Decl., ¶ 2; Settlement Agreement § III.A.23); see also Morales v. Stevco, Inc., 1:09-cv-00704 AWI JLT, 2011 U.S. Dist. LEXIS 130604, at *40–42 (E.D. Cal. Nov. 10, 2011); Torchia v. W.W. Grainger, Inc., 1:13-cv-01427-LJO-JLT, 2014 U.S. Dist. LEXIS 113277, at *31–33 (E.D. Cal. Aug. 13, 2014).

**C. Fairness of the Class Settlement**

Rule 23(e) requires a district court to determine whether a proposed class action settlement is "fundamentally fair, adequate, and reasonable." Staton v. Boeing Co., 327 F.3d 938, 959 (9th Cir. 2003). To make this determination, courts consider a number of factors, including: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed, and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. See id. Also, the settlement may not be the product of collusion among the negotiating parties. In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 458 (9th Cir. 2000). The Ninth Circuit has declared that a strong judicial policy favors settlement of class actions. Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992). For the following reasons, the Court finds that the Settlement Agreement is fundamentally fair, adequate, and reasonable.

1. The Strength of Plaintiff's Case and the Risk, Expense, Complexity, and Likely Duration of Further Litigation

"When evaluating the strength of a case, the Court should evaluate objectively the strengths and weaknesses inherent in the litigation and the impact of those considerations on the parties' decisions to

reach these agreements." De Santos v. Jaco Oil Co., No. 1:14-cv-0738-JLT, 2015 U.S. Dist. LEXIS 93410, at *16 (E.D. Cal. July 17, 2015). While Plaintiff contends his case is strong, he acknowledges the risks in the absence of settlement. In particular, the availability of affirmative defenses and the difficulty of proving a willful violation, as required for damages under FCRA when no actual harm is suffered, render continued litigation a risk. (Mot. for Final Approval, 16–17.) In addition, Plaintiff acknowledges that some California district courts have rejected FCRA claims based on technical violations similar to those at issue here. (Id.); see also De Santos, 2015 U.S. Dist. LEXIS 93410, at *16. More extensive discovery could reveal that the class members' claims are too individual to meet the commonality requirement. Finally, continued litigation would delay payment to the Class Members and increase the amount of attorneys' fees. These factors weigh in favor of settlement approval.

2. The Amount Offered in the Settlement Agreement

The Settlement Fund amount is $730,000.00. The Motion for Final Approval seeks (1) an attorneys' fee award of 25% of the Settlement Fund, or $182,500.00; (2) reimbursement of litigation expenses of up to $15,000; (3) an incentive payment to Plaintiff in the amount of $7,500.00; and (4) up to $52,000 to pay the Settlement Administrator. Thus, the remainder of the Settlement Fund, approximately $473,000.00 if all Plaintiff's requests were granted in full, would be available for distribution to class members (the "Distribution Fund").[8/] (Orshansky Decl. ISO Final Approval, ¶ 15.) Of the Distribution Fund, 85.38% will be awarded to the Settlement Class, 12.02% to the Federal Adverse Action Subclass, 2.18% to the California Disclosure Subclass, and 0.42% to the California Adverse Action Subclass. (Id., ¶ 17.) Thus, at a minimum, each Class Member would be awarded $53.53, with the following additional awards disbursed to subclass members: $78.96 to each Federal Adverse Action Subclass member; $31.73 to each California Disclosure Subclass member; and $52.28 to each California Adverse Action Subclass member. (Morales Decl., ¶ 11.) The maximum payout for a class member would therefore be $216.50, in the event that individual is a member of each subclass. Unclaimed funds would be delivered to the appropriate government agency for unclaimed property and, if still unclaimed, would be distributed as a cy pres donation to the National Foundation for Credit Counseling. (Orshansky Decl. ISO Final Approval, ¶¶ 19–20.) In return for these awards, the putative class members agree to release Mantech from any and all claims, whether known or unknown, arising from the allegations set forth in the Complaint, and arising during the class period. (Settlement Agreement § V.A.) Class members were not required to take any action to receive their award. (Id. § IV.F.5.)

The amount offered in settlement is reasonable. If class members could prove willfulness, they could be awarded between $100 and $1,000 in statutory penalties under FCRA. (See Mot. for Final Approval, 20.) Here, the award is between 53.53% and 216.5% of the minimum statutory damages that

[8/] Because none of the Settlement Fund will revert to Mantech, any decrease to the requested fees, costs, or awards, would increase the Distribution Fund. (See Orshansky Decl. ISO Final Approval, ¶ 19.)

would be available if willfulness could be proven. See De Santos v. Jaco Oil Co., 1:14-cv-0738-JLT, 2015 U.S. Dist. LEXIS 131790, *53–54 (E.D. Cal. Sept. 29, 2015) (finding award of between $50 and $375 for class and subclass in FCRA/ICRAA/CCRAA action reasonable due to lack of injury). Importantly, class members had the opportunity to opt out or object if dissatisfied with the settlement amount. Given the increased expense and risk that would accompany continued litigation, the weaknesses of Plaintiff's claims, and the presence of the opt-out provision, the total settlement amount and proposed distribution of funds are reasonable and favor of approval of the Settlement Agreement.

3. The Extent of Discovery Completed and the Stage of the Proceedings

Plaintiff and Class Counsel initially contacted Mantech regarding this dispute as far back as October 2014, more than a year before filing this lawsuit. (Orshansky Decl. ISO Final Approval, ¶ 4.) While Plaintiff filed a notice of settlement only one week after filing his Complaint (Docket No. 10), the parties did not file a motion for preliminary approval of settlement until nearly nine months later. The parties engaged in one day of formal mediation before a third-party neutral followed by several months of continued settlement discussions. (Orshansky Decl. ISO Final Approval, ¶ 11–12.) In the process, they conducted informal discovery prior to reaching the Settlement Agreement. (Id., ¶ 40.) These facts suggest that the parties have given adequate thought and made informed decisions in reaching the Settlement Agreement. Therefore, this factor weighs in favor of approval of the Settlement Agreement.

4. The Experience and Views of Counsel

The Court finds that Class Counsel has sufficient experience with class action litigation to appropriately assess the legal and factual issues in this matter and determine whether the proposed Settlement Agreement serves the interests of the Class Members. (See id., ¶¶ 45–47; Orshansky Decl. ISO Attorneys' Fees, Exh. 1.) Class Counsel's belief that the proposed Settlement Agreement is both fair and adequate weighs in favor of approval. (See Orshansky Decl. ISO Final Approval, ¶ 30.)

5. Collusion Between the Parties

To determine whether there has been any collusion between the parties, courts must evaluate whether "fees and relief provisions clearly suggest the possibility that class interests gave way to self interests," thereby raising the possibility that the settlement is the result of misconduct by the negotiators or improper incentives for certain class members. Staton, 327 F.3d at 961. Here, it appears that the Settlement Agreement was the product of informed, arm's-length negotiations between the parties. (See Orshansky Decl. ISO Final Approval, ¶ 40.) Aside from the requested incentive award, Plaintiff will receive no preferential treatment or additional compensation for his role. (See Declaration of John Huebner ISO Mot. for Final Approval ("Huebner Decl."), ¶ 14.) The reasonableness of the amount offered in settlement and lack of reversion of any funds to Mantech further suggest an absence of collusion. The Court finds that the Settlement Agreement is the product of non-collusive negotiations.

6. Presence of Governmental Participant

There is no governmental participant in this action.

7. Reaction of Class Members to Proposed Settlement

Where a settlement agreement enjoys overwhelming support from the class, this lends weight to a finding that the settlement agreement is fair, adequate, and reasonable. Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 529 (C.D. Cal. 2004) ("It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members."); see also Boyd v. Bechtel Corp., 485 F. Supp. 610, 624 (N.D. Cal. 1979) (finding that objections from only 16 percent of the class was persuasive that the settlement was adequate). Class Members were provided notice of the proposed Settlement Agreement pursuant to this Court's order granting the motion for preliminary approval. According to the Settlement Administrator, only one putative class member requested exclusion. As of May 4, 2017, there had been 8,512 page views from 3,257 visitors on the settlement administration website, and 719 calls were made to the toll-free phone number created by the Settlement Administrator for this action. (Morales Decl., ¶¶ 8, 10.) Moreover, no Class Member has objected to or commented on the Settlement Agreement. (Id., ¶ 13.) The overall positive reaction of Class Members is strong evidence that the Settlement Agreement is fundamentally fair and reasonable.

**D. Adequacy of Notice to the Settlement Class**

Under Federal Rule of Civil Procedure 23(e), this Court must "direct notice in a reasonable manner to all class members who would be bound by the proposal." Such notice must be "'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" Klee v. Nissan N. Am., Inc., NO. CV 12–08238 AWT (PJWx), 2015 WL 4538426, at *5 (C.D. Cal. July 7, 2015). Here, the notice given to Class Members was reasonably calculated to reach the Settlement Class. The parties selected a neutral Settlement Administrator who handled all communications to and from the class members. The notices described the essential terms of the proposed Settlement Agreement, defined the classes, set forth the procedure for opting out of the Settlement Class or filing objections to the proposed Settlement Agreement, and provided information on the date, time, and location of the Final Fairness Hearing. They further provided a toll free number for class members to call. The Court therefore concludes that the notice procedure comported with the requirements of Due Process and Federal Rule of Civil Procedure 23(e).[9/]

[9/] In addition, CAFA notice requirements have been satisfied. (Morales Decl. ¶ 4); see 28 U.S.C. § 1715.

## III. ATTORNEYS' FEES, LITIGATION EXPENSES, INCENTIVE AWARD, AND ADMINISTRATION EXPENSES

### A. Attorneys' Fees

The Court is obligated to conduct a careful review of the reasonableness of the requested attorney's fees and costs. See In re Washington Public Power Supply System Sec. Litig., 19 F.3d 1291, 1302 (9th Cir. 1994) ("Because in common fund cases the relationship between plaintiffs and their attorneys turns adversarial at the fee-setting stage, courts have stressed that when awarding attorneys' fees from a common fund, the district court must assume the role of fiduciary for the class plaintiffs."). Plaintiff seeks $182,500.00 in attorneys' fees. This constitutes 25% of the Settlement Fund created by the Settlement Agreement. In common fund cases, "where the settlement or award creates a large fund for distribution to the class, the district court has discretion to use either a percentage or lodestar method." Hanlon, 150 F.3d at 1029. "The percentage method means that the court simply awards the attorneys a percentage of the fund sufficient to provide class counsel with a reasonable fee." Id. The Ninth Circuit has established 25% of the common fund "as a benchmark award for attorney fees." Id. "The 25% benchmark rate, although a starting point for analysis, may be inappropriate in some cases. Selection of the benchmark or any other rate must be supported by findings that take into account all of the circumstances of the case." Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1048 (9th Cir. 2002).

"The lodestar method can 'confirm that a percentage of recovery amount does not award counsel an exorbitant hourly rate . . . .'" In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 945 (9th Cir. 2011) (quoting In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768, 820 (3d Cir. 1995)). Here, the lodestar calculation would be $168,793.50, which is $13,706.50 less than the attorneys' fee award requested by Plaintiff. Plaintiff bases the lodestar calculation on the rates Class Counsel currently charges and the number of hours Class Counsel actually worked, and expected to work, on this action prior to the Final Fairness Hearing. (Decl. of Orshansky ISO Attorneys' Fees, ¶ 33.) Four attorneys spent 297.5 hours working on this case, and projected to spend another 20 hours prior to the Hearing. (Id.) Each of these attorneys has a rate of between $465 and $595 per hour. (Id.) Adding a 1.08 multiplier would align the lodestar with the requested attorneys' fees.

Considering the results achieved, the time expended, the risk of litigation, the skill required, the quality of work, the contingent nature of the fee, the financial burden carried by Class Counsel, and awards made in similar cases, as well as the lack of Class Member objection to this fee award, the Court finds that the requested attorneys' fee award is reasonable. The Court therefore grants Plaintiff's request for $182,500 in attorneys' fees to be awarded from the Settlement Fund.

### B. Litigation Costs

Plaintiff requests $9,512.08 in litigation costs. (See id., ¶ 38.) "Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund are reimbursed proportionately by those class members who benefit by the settlement." In re Media Vision Tech. Sec. Litig., 913 F. Supp. 1362,

1366 (N.D. Cal. 1996). However, expenses which should be considered part of an attorney's overhead, and therefore included within an award of attorneys' fees, should not be characterized as a litigation expense and recovered as a cost item. Id. ("An award of out-of-pocket expenses should be limited to those expenses customarily billed to a fee-paying client.") Class Counsel's declaration identifies these costs as including filing fees, computer research fees, copy charges, postage and courier costs, mediation fees, and travel. (Orshansky Decl. ISO Attorneys' Fees, ¶ 36.) At the Final Fairness Hearing, Class Counsel itemized these costs as follows: $5,075.00 in mediation fees, $1,975.00 in supplemental mediation fees, $400.00 in filing fees, $117.75 in postage, $262.50 in copies, $60.00 in parking, $432.83 in hotel expenses, $1,084.00 in airfare, and $105.00 in taxi fare. The Settlement Class was notified litigation costs of up to $15,000 could be awarded to Class Counsel, and no Class Member objected. The Court concludes that the requested fees are reasonable litigation costs.

### C. Plaintiff's Incentive Award

Plaintiff also requests an incentive award of $7,500.00. "[N]amed plaintiffs, as opposed to designated class members who are not named plaintiffs, are eligible for reasonable incentive payments." Staton, 327 F.3d at 977. However, the district court must evaluate such awards individually to detect "excessive payments to named class members" that may indicate that "the agreement was reached through fraud or collusion." Id. at 975; Radcliffe v. Experian Info. Solutions, Inc., 715 F.3d 1157, 1164 (9th Cir. 2013) ("We once again reiterate that district courts must be vigilant in scrutinizing all incentive awards to determine whether they destroy the adequacy of the class representatives."). Courts may consider the following criteria in determining whether to make an incentive award: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit enjoyed by the class representative as a result of the litigation. Van Vraken v. Atlantic Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995). To assess whether an incentive payment is excessive, district courts balance "the number of named plaintiffs receiving incentive payments, the proportion of the payments relative to the settlement amount, and the size of each payment." Staton, 327 F.3d at 975.

Here, Plaintiff has been involved in the litigation of this dispute and settlement negotiations since seeking legal counsel over two and a half years ago. (Huebner Decl., ¶ 8.) Plaintiff has submitted a declaration explaining that during that time he spent between 60 and 80 hours working on the case, participating in discussions with counsel, producing relevant documents, identifying witnesses, providing factual information in support of his claims, reviewing documents provided by Class Counsel, and participating in mediation and settlement negotiations, and discussing the terms of the proposed and actual settlement with Class Counsel. (See id.; Orshansky Decl. ISO Attorneys' Fees, ¶ 39.) In addition, under the Settlement Agreement, he agrees to execute a general release of all claims, related and unrelated to the action, against Mantech. (Settlement Agreement § V.B.) Finally, Plaintiff had concerns that bringing this action would make him less likely to be hired in his field in the future. (See Huebner Decl., ¶ 9.)

Plaintiff highlights that other cases have found incentive awards between 1% and 2% of the total settlement fund or of $5,000 to be reasonable. (Mot. for Attorneys' Fees, 22 (citing Hopson v. Hanesbrands, Inc., No. CV-08-0844 EDL, 2009 WL 928133, *10 (N.D. Cal. Apr. 3, 2009) [1.2%]; Thieriot v. Celtic Ins. Co., No. C 10-04462 LB, 2011 WL 1522385, *8 (N.D. Cal. Apr. 21, 2011) [1.8%]; Sandoval v. Tharaldson Employee Mgmt., Inc., Case No. EDCV 08-482-VAP (OPx), 2010 WL 2486346, at *10 (C.D. Cal. June 15, 2010) [1%]; Jacobs v. Cal. State Auto. Ass'n Inter-Ins. Bur., No. C 07-00362 MHP, 2009 WL 3562871, at *5 (N.D Cal. Oct. 27, 2009) (noting that in the Northern District of California, a $5,000 payment is "presumptively reasonable"); Williams v. Costco Wholesale, Corp., Civil No. 02cv2003 IEG (AJB), 2010 WL 2721452, at *7 (S.D. Cal. July 7, 2010) (approving incentive award of $5,000 in $440,000 settlement, finding the amount "well within the acceptable range awarded in similar cases")).) However, courts in the Ninth Circuit have expressed concern and decreased requested incentive awards that greatly diverge from the amount received by other class members, or that are disproportionate to the representative's contribution to the case. See, e.g., Roe v. Frito-Lay, Inc., Case No.14-cv-00751-HSG, 2017 U.S. Dist. LEXIS 53902 (N.D. Cal. Apr. 7, 2017) (reducing requested incentive award of $10,000 to $5,000, where named plaintiff took several days off work, was available at a moment's notice and conservatively estimated that she had spent 96 hours on the case because "such contribution would be necessary in any class action"); Torres v. Pet Extreme, Case No. 1:13-cv-01778-LJO-SAB, 2015 U.S. Dist. LEXIS 5136, *35–36 (E.D. Cal. Jan. 2014) (finding an award of $5,000 excessive, where representative would receive five times the maximum statutory damages available and at least 200 times more than the unnamed class members); De Santos, 2015 U.S. Dist. LEXIS 131790, at *23–24 (finding an award of $5,000 excessive where the representative had devoted approximately 40 hours to tasks related to the litigation, and instead awarded $2,500); see also Radcliffe, 715 F.3d at 1165 (reversing a grant of $5000 in incentive fees conditioned on approving settlement that awarded between $150 and $750 per class member). But see Razilov v. Nationwide Mut. Ins. Co., 01-CV-1466-BR, 2006 U.S. Dist. LEXIS 82723, at *10–13 (D. Or. Nov. 13, 2006) (approving incentive awards of $10,000 where representatives were "fully involved and expended considerable time and energy during the course of the litigation" even though individual class members would receive $200 each).

Here, Plaintiff would be awarded 7.5 times the maximum statutory damages for a FCRA violation, approximately 34 times the maximum that other Class Members would receive, and 140 times the amount that the vast majority of Class Members would receive. Plaintiff would be compensated in the amount of $93.75 to $125.00 per hour. Such an award would be excessive. Having considered Plaintiff's level of participation in this litigation, the Court finds an award of $7,500 to be excessive and instead awards Plaintiff $2,500.

**D. Settlement Administration Award**

Finally, Plaintiff seeks final approval of settlement administration costs of $52,000. (See Notice of Mot. for Final Approval, 2.) The Supervising Case Manager for CPT Group, Inc. has provided a declaration in which he identifies the services CPT Group, Inc. has provided (Morales Decl., ¶¶ 3, 14); attached is an invoice that itemizes the fees and costs CPT Group, Inc. has and will incur in performing

its tasks under the Settlement Agreement. (Id., Exh. C.) Based on this information, the Court finds these administration costs reasonable and awards CPT Group, Inc. $52,000 from the Settlement Fund to cover all administration costs through completion of the settlement distribution.

**Conclusion**

For the foregoing reasons, the Court finds that the Settlement Agreement is fundamentally fair, adequate, and reasonable. The Court therefore grants Plaintiff's Motion for Final Approval of Settlement. The Court certifies the Settlement Class, Federal Adverse Action Subclass, California Disclosure Subclass, and California Adverse Action Subclass, as described above. Excluded from the Settlement Class and Subclasses is any individual who timely opted out of the Settlement Agreement. Members of the Settlement Class and Subclasses are bound by the Settlement Agreement unless they submitted timely and valid written requests to be excluded from the settlement. Members of the Settlement Class and Subclasses who did not timely exclude themselves from the settlement have released those claims against Mantech as set forth in the Settlement Agreement.

The Court appoints John Huebner as Class Representative; CounselOne, P.C. as Class Counsel; and CPT Group, Inc. as Settlement Administrator.

The Court also grants in part Plaintiff's Motion for Award of Attorneys' Fees and awards $182,500.00 in fees and $9,512.08 in costs to Class Counsel to be paid from the Settlement Fund. Additionally, the Court grants Plaintiff an incentive award in the amount of $2,500, and approves $52,000.00 for settlement administration costs also to be paid from the Settlement Fund.

The Court orders Mantech to provide the entirety of the Settlement Fund to the Settlement Administrator for disbursement in accordance with the terms of the Settlement Agreement. The Court further orders the Settlement Administrator to pay all members of the Settlement Class in accordance with the terms of the Settlement Agreement. The Court will enter a Judgment consistent with this Order and the Settlement Agreement.

IT IS SO ORDERED.