UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 17-7128-MWF (JPRx) **Date: January 28, 2019**
Title: Jorge A. Perez v. Performance Food Group, Inc. et al.

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:	Court Reporter:
Rita Sanchez	Not Reported
Attorneys Present for Plaintiff:	**Attorneys Present for Defendant:**
None Present	None Present

Proceedings (In Chambers): ORDER RE: MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT [26]

Before the Court is Plaintiff Jorge A. Perez's Motion for Preliminary Approval of Class Action Settlement (the "Motion"), filed on November 30, 2018. (Docket No. 26). No opposition to the Motion was filed.

The Motion was noticed to be heard on January 28, 2019. The Court read and considered the papers on the Motion and deemed the matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78(b); Local Rule 7-15. The hearing was therefore **VACATED** and removed from the Court's calendar.

For the reasons discussed below, the Motion is **GRANTED**. Preliminarily, the proposed settlement seems procedurally and substantively fair, and the proposed class meets the requirements of Federal Rules of Civil Procedure 23(a) and (b)(3). Plaintiff's counsel's contemplated 25% fee award and $5,000 incentive award for Plaintiff both appear reasonable. Finally, the proposed notice and dissemination procedure appear effective and meet the requirements of Federal Rule of Civil Procedure 23(c).

I. BACKGROUND

A. Factual and Procedural Background

On August 18, 2017, Plaintiff commenced this class action in the Los Angeles County Superior Court. (Notice of Removal ("NoR") ¶ 1 (Docket No. 1)). On September 27, 2017, Defendants Performance Food Group, Inc. ("Performance Food Group") and Vistar Transportation, LLC ("Vistar Transportation") timely removed this action. (*See generally id.*).

Based on the allegations in the Complaint:

Plaintiff was employed by Defendants as an hourly, non-exempt employee from May 29, 2013, to June 12, 2014. (Complaint ¶ 4 (Docket No. 1-1)). When Plaintiff applied for employment, Defendants required him to fill out a disclosure and authorization form for a background check. (*Id.* ¶ 20). The disclosure provided by Defendants, however, contained extraneous and superfluous language that did not consist solely of the disclosure as required by federal and state laws. (*Id.* ¶ 21). Among the extraneous and superfluous information were an applicant's contact information, previous addresses, driver's license information, citizenship status, criminal history, employment history, and education history. (*See* Declaration of Shaun Setareh ("Setareh Decl.") ¶¶ 7–8, Exs. 1–2).

A background check was then performed on Plaintiff, and a putative class, in violation of federal and state laws. (*See* Compl. ¶ 22).

Plaintiff's Complaint asserts five claims for relief: (1) failure to make proper disclosure in violation of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681b(b)(2)(A); (2) failure to give proper summary of rights in violation of FCRA, 15 U.S.C. §§ 1681d(a)(1) and 1681g(c); (3) failure to make proper disclosure in violation of California Investigative Consumer Reporting Agencies Act ("ICRAA"), Cal. Civ. Code §§ 1786 *et seq.*; (4) failure to make proper disclosure in violation of

California Consumer Credit Reporting Agencies Act, Cal. Civ. Code §§ 1785 *et seq.*; and (5) unfair business practices under California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.* (*Id.* ¶¶ 23–97).

On July 26, 2018, the parties engaged in settlement negotiation before mediator Michael Dickstein. (Setareh Decl. ¶ 11). The parties appeared to have reached a settlement on the same day. (*Id.* ¶¶ 11, 13).

On November 30, 2018, Plaintiff filed the present Motion, seeking preliminary approval of the parties' settlement and certification of a settlement class pursuant to Rule 23 of the Federal Rules of Civil Procedure.

B. The Settlement

The proposed settlement agreement (the "Agreement") is attached as Exhibit 3 to the Declaration of Shaun Setareh, counsel for Plaintiff. (Setareh Decl. ¶ 14, Ex. 3). The Agreement contains the following key provisions related to class definition, monetary relief, notice, and release:

- "Class Member" is defined as: "all individuals in the United States who: (i) applied for a job with Defendants [Performance Food Group and Vistar Transportation] or . . . related segments . . . includ[ing] the entities Performance Transportation, LLC; Liberty Distribution Company, LLC; Vend Catering Supply, LLC; Continental Concession Supplies, LLC; Institution Food House, Inc.; PFG PFS, LLC; Fox River Foods, Inc.; FRF Transport, Inc.; and Ohio Pizza Products Inc.; and (ii) about whom Defendants requested background checks during the Class Period, except for those that timely opt-out of the Settlement." (Agreement ¶ 1(d));

- Defendants will pay $1,995,000.00 (the "Settlement Amount"), which will be used to (i) pay $5,000.00 in an enhancement award to named Plaintiff (without any opposition by Defendants if the request is for $5,000 or less and subject to

the Court's final approval); (ii) pay up to $69,250.00 in settlement administration costs; and (iii) pay Plaintiff's counsel up to $498,750.00 (25% of the Settlement Amount) in attorneys' fees and up to $20,000.00 in costs (without any opposition by Defendants if the attorneys' fees request is for 25% or less and the costs request is for $20,000.00 or less and subject to the Court's final approval). (*Id.* ¶¶ 1(bb), 12(c)–(e); Mot. at 19);

- The balance remaining from the Settlement Amount after the first round of distribution if $40,000 or less, or the balance remaining after the second round of distribution shall be given to Public Justice, the *cy pres* recipient agreed upon by the parties and subject to the Court's final approval. (Agreement ¶ 12(b));

- Within 14 calendar days of preliminary approval by the Court, Defendants will provide to the agreed upon settlement administrator, KCC LLC ("KCC"), a list of names and last known addresses for the Class Members. Within 14 calendar days of receiving this data from Defendants, KCC will mail each identified Class Member the "Notice Form," which informs Class Members of (1) the nature of the action; (2) that Class Members have the right to object or opt out of the settlement within 45 days; (3) an explanation of how the settlement amount will be allocated; (4) the attorneys' fees and costs requested, as well as the administration costs requested; and (5) that a final approval hearing has been scheduled. (*Id.* ¶ 11; Setareh Decl. ¶ 15, Ex. 4);

- Within 45 calendar days of the Notice Form mailing date, Class Members who wish to object to the settlement must submit written objections stating all reasons for the objection. Within 45 calendar days of the Notice Form mailing date, Class Members who wish to exclude themselves from the settlement must mail KCC a written request for exclusion. (Agreement ¶¶ 11(g)–(h)); and

- All Class Members who do not request exclusion will release "all claims, demands, rights, liabilities, and causes of action . . . whether known or unknown, that were or could have been asserted in the [Complaint]." (*Id.* ¶ 1(v)).

II. PRELIMINARY APPROVAL OF SETTLEMENT

"Approval of a class action settlement requires a two-step process — a preliminary approval followed by a later final approval." *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 319 (C.D. Cal. 2016). The standard of review differs at each stage. At the preliminary approval stage, the Court need only "evaluate the terms of the settlement to determine whether they are within a range of possible judicial approval." *Wright v. Linkus Enters., Inc.*, 259 F.R.D. 468, 472 (E.D. Cal. 2009).

"[P]reliminary approval of a settlement has both a procedural and a substantive component." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007). Procedurally, the Ninth Circuit emphasizes that the parties should have engaged in an adversarial process to arrive at the settlement. *See Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution, and have never prescribed a particular formula by which that outcome must be tested.") (citations omitted). "A presumption of correctness is said to attach to a class settlement reached in arm's-length negotiations between experienced capable counsel after meaningful discovery." *Spann*, 314 F.R.D. at 324 (quoting *In re Heritage Bond Litig.*, 2005 WL 1594403, at *9 (C.D. Cal. June 10, 2005)).

Substantively, the Court should look to "whether the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys." *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. 2008) (quoting *West v. Circle K Stores, Inc.*, No. 04-cv-0438-WBS, 2006 WL 1652598, at *11 (E.D. Cal. June 13, 2006)).

A. Procedural Component

The proposed settlement appears to be procedurally fair to Class Members.

Plaintiff's counsel have extensive experience litigating labor and employment class actions. (*See* Setareh Decl. ¶ 18). For instance, they have represented plaintiffs in numerous class actions in state and federal courts in California. (*See id.*). Plaintiff's counsel have also been appointed lead or co-lead class counsel in many settled class actions. (*See id.*).

The Court is familiar with this action and is confident that it was vigorously litigated on both sides for over a year. The parties conducted substantial discovery prior to resolving the action. (*See id.* ¶¶ 4–10). For instance, Plaintiff's counsel spent over a year investigating the facts of the case, meeting with Plaintiff, reviewing Defendants' background check policies and the actual disclosure and authorization forms, and propounding various interrogatories and requests for production of documents. (*See id.*). Given the parties' diligence and efforts in this case, the Court has no doubts that the settlement is "the product of an arms-length, non-collusive, negotiated resolution[.]" *Rodriguez*, 563 F.3d at 965.

Additionally, the parties attended a mediation session on July 26, 2018, with mediator Michael Dickstein. (Setareh Decl. ¶ 11). During medication, the parties extensively discussed their views of the strengths and weaknesses of the case. (*Id.*). The parties ultimately reached their settlement. The fact that the parties utilized an experienced mediator to reach the settlement agreement supports the notion that it was the product of arms-length negotiation. *See Alberto*, 252 F.R.D. at 666-67 (noting the parties' enlistment of "a prominent mediator with a specialty in [the subject of the litigation] to assist the negotiation of their settlement agreement" as an indicator of non-collusiveness) (citing *Parker v. Foster*, No. 05-cv-0748-AWI, 2006 WL 2085152, at *1 (E.D. Cal. July 26, 2006)); *Glass v. UBS Fin. Servs., Inc.*, No. 06-cv-4068-MMC, 2007 WL 221862, at *5 (N.D. Cal. Jan. 26, 2007)).

The Court concludes that the proposed class is represented by experienced counsel who engaged in meaningful discovery while pursuing arms-length settlement negotiations. The procedural component of the inquiry is met.

B. Substantive Component

The proposed settlement also appears to be generally reasonable and fair to Class Members.

As discussed above, pursuant to the Agreement, Defendants have agreed to pay $1,995,000.00 to Class Members. (Mot. at 1, 19). There are approximately 32,000 potential Class Members. (*Id.* at 19). As Plaintiff notes, if the Court were to ultimately approve Plaintiff's counsel's 25% fee request, after deduction of fees ($498,750.00), costs ($20,000.00), administrative expenses ($69,250.00), and an enhancement payment to the named Plaintiff ($5,000.00), there would be $1,402,000.00 left to be distributed to Class Members. (*Id.*). Class Members will not need to make claims and will be mailed checks directly. (*Id.* at 1). Accordingly, each Class Member would receive a check for approximately $43.81. (*Id.* at 19).

These amounts, of course, are less than the potential $100 to $1,000 in statutory damages for willful violations of the FCRA that each of the Class Members might receive if the class were to successfully litigate this action to a favorable judgment. *See* 15 U.S.C. § 1681n(a)(1)(A). But as Plaintiff notes, continued litigation would be costly and would carry the risk that, among other things: (1) the jury or the Court might conclude that Defendants' conduct was not willful; (2) Defendants would be successful on a motion for summary judgment, thereby reducing or eliminating the total recovery amount; and (3) the rapidly changing landscape "in this relatively new area of statutory law." (Mot. at 17–18). Considering the potential pitfalls posed by continued litigation and ultimately trial, a recovery of approximately $43.81 per eligible Class Member is a reasonable level of compensation. *See, e.g.*, *Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (emphasizing the requirement that courts "consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation") (citation omitted).

Additionally, there will likely be a slightly larger pot of money to be distributed among Class Members, as it is unlikely that 100% of the checks will be cashed during the first round of distribution.

1. Attorneys' fees

In the Ninth Circuit, there are two primary methods to calculate attorneys' fees: the lodestar method and the percentage-of-recovery method. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015) (citation omitted).

"The lodestar method requires 'multiplying the number of hours the prevailing party reasonably expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region and for the experience of the lawyer.'" *Id.* (citation omitted). "Under the percentage-of-recovery method, the attorneys' fees equal some percentage of the common settlement fund; in this circuit, the benchmark percentage is 25%." *Id.* (citation omitted). However, the "benchmark percentage should be adjusted, or replaced by a lodestar calculation, when special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors." *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990).

"The Ninth Circuit has identified a number of factors that may be relevant in determining if the award is reasonable: (1) the results achieved; (2) the risks of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee; (5) the burdens carried by class counsel; and (6) the awards made in similar cases." *Martin v. Ameripride Services, Inc.*, No. 08-cv-440–MMA, 2011 WL 2313604, at *8 (S.D. Cal. June 9, 2011) (citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002)). The choice of "the benchmark or any other rate must be supported by findings that take into account all of the circumstances of the case." *Vizcaino*, 290 F.3d at 1048.

As noted above, Plaintiff's counsel indicate that they intend to apply for a fee award of $498,750.00, which represents 25% of the $1,995,000.00 total settlement amount. (Mot. at 13). The Agreement does not provide that Plaintiff's counsel will receive a $498,750.00 fee award; it simply provides that Defendants will not object to a fee motion that seeks 25% or less. (Agreement ¶ 12(d)). The Agreement also provides that "[t]he failure of the Court . . . to approve in full the request . . . for attorneys' fees, costs, expenses . . . shall not be grounds . . . to revoke, terminate, nullify or void this agreement." (*Id.* ¶ 7). And any remaining portion of the requested attorneys' fees not approved by the Court will be added to the fund for Class Members. (*Id.* ¶ 12(d)).

Plaintiff's counsel believe that the request for 25% attorneys' fees is reasonable in light of the risks of continuing with this litigation. (Mot. at 2). Given that the requested attorneys' fees total no more than 25% of the settlement amount, the Court preliminarily finds the requested fee award reasonable.

2. Service award

Similar to the attorneys' fee provision, the Agreement provides that Plaintiff's counsel will request an enhancement award for Plaintiff in an amount not to exceed $5,000.00 and that Defendants will not oppose such payment. (Agreement ¶ 12(c)). As with the attorneys' fees provision, the Court's decision on the service award is not a precondition for the Court's approval of the Agreement. (*Id.* ¶ 12(d)).

The Court notes that the "[the] $5,000 figure . . . is the typical enhancement award in this Circuit." *Gaudin v. Saxon Mortg. Servs., Inc.*, No. 11-CV-01663-JST, 2015 WL 4463650, at *6 (N.D. Cal. July 21, 2015) (citing cases). Given that the requested service award is $5,000.00, the Court preliminarily finds the service award request reasonable.

In sum, the Court finds the Agreement to be both procedurally and substantively fair. The Motion is therefore **GRANTED** insofar as the Agreement is preliminarily **APPROVED**.

III. CLASS CERTIFICATION

Plaintiff seeks certification of a class for settlement purposes only pursuant to Federal Rule of Civil Procedure 23(b)(3). A court may certify a class for settlement purposes only. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 942. In *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997), the Supreme Court explained the differences between approving a class for settlement and for litigation purposes:

> Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, *see* Fed. Rule Civ. Proc. 23(b)(3)(D), for the proposal is that there be no trial. But other specifications of the Rule — those designed to protect absentees by blocking unwarranted or overbroad class definitions — demand undiluted, even heightened, attention in the settlement context. Such attention is of vital importance, for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold.

Id. at 620.

As discussed above, the proposed settlement class is defined in the Agreement as:

> [A]ll individuals in the United States who: (i) applied for a job with Defendants [Performance Food Group and Vistar Transportation] or . . . related segments . . . includ[ing] the entities Performance Transportation, LLC; Liberty Distribution Company, LLC; Vend Catering Supply, LLC;

> Continental Concession Supplies, LLC; Institution Food House, Inc.; PFG PFS, LLC; Fox River Foods, Inc.; FRF Transport, Inc.; and Ohio Pizza Products Inc.; and (ii) about whom Defendants requested background checks during the Class Period, except for those that timely opt-out of the Settlement.

(Agreement ¶ 1(d)).

Federal Rule of Civil Procedure 23(a) requires the putative class to meet four threshold requirements: numerosity, commonality, typicality, and adequacy of representation. *Id.*; *see also Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 512 (9th Cir. 2013). In addition, the proposed class must satisfy Rule 23(b)(3), which requires that "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Considering these requirements, the Court concludes that class certification is appropriate.

A. Numerosity

Under Rule 23(a)(1), a class must be "so numerous that joinder of all members is impracticable . . . ." *Id.* As noted above, the settlement class consists of approximately 32,000 members. (Mot. at 1, 19). This is more than enough to satisfy Rule 23(a)(1)'s numerosity requirement.

B. Commonality

Rule 23(a)(2) requires that the case present "questions of law or fact common to the class." *Id.* The Supreme Court's decision in *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011), clarified that to demonstrate commonality, the putative class must show that their claims "depend upon a common contention . . . that it is capable of classwide resolution — which means that determination of its truth or falsity will

resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* at 350. That requirement is met here, as (if this case were to proceed to trial) each member of the settlement class would seek resolution of the same legal and factual issue: whether Defendants willfully violated the FCRA and ICRAA by using the allegedly unlawful disclosure forms. (Mot. at 22–23). The commonality requirement is satisfied.

C. Typicality

Rule 23(a)(3) requires the putative class to show that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." *Id.* The claims of the representative parties need not be identical to those of the other putative class members; "[i]t is enough if their situations share a 'common issue of law or fact,' and are 'sufficiently parallel to insure a vigorous and full presentation of all claims for relief.'" *California Rural Legal Assistance, Inc. v. Legal Servs. Corp.*, 917 F.2d 1171, 1175 (9th Cir. 1990) (internal citations omitted). Here, the named Plaintiff's claims are premised on the same practice as those of the absent Class Members: Defendants' failure to use a disclosure form free of extraneous and superfluous language. (Mot. at 23). The typicality requirement is satisfied.

D. Adequacy

Finally, Rule 23(a)(4) requires the representative parties to "fairly and adequately protect the interests of the class." *Id.* "In making this determination, courts must consider two questions: '(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?'" *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1031 (9th Cir. 2012) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)). Additionally, "the honesty and credibility of a class representative is a relevant consideration when performing the adequacy inquiry because an untrustworthy plaintiff could reduce the likelihood of

prevailing on the class claims." *Harris v. Vector Mktg. Corp.*, 753 F. Supp. 2d 996, 1015 (N.D. Cal. 2010) (citation omitted).

As to the first prong, the Court perceives no obvious conflicts between Plaintiff and his counsel on the one hand and the absent Class Members on the other. (*See* Setareh Decl. ¶ 24). As to the second prong, as discussed above, Plaintiff and his counsel have vigorously prosecuted this action, Plaintiff's counsel have substantial experience litigating labor and employment class actions, and there is no reason to believe that Plaintiff and his counsel would not vigorously pursue this action on behalf of the settlement class. (Mot. at 23–24). The adequacy requirement is satisfied.

The requirements imposed by Rule 23(a) are thus satisfied. The Court next considers whether the additional requirements of Rule 23(b)(3) are met.

E. Predominance

"The Rule 23(b)(3) predominance inquiry asks the court to make a global determination of whether common questions prevail over individualized ones." *Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1134 (9th Cir. 2016). That is, "an individual question is one where members of a proposed class will need to present evidence that varies from member to member, while a common question is one where the same evidence will suffice for each member to make a prima facie showing or the issue is susceptible to generalized, class-wide proof." *Id.* (quoting *Tyson Foods v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016)).

Here, the Agreement provides for a set amount of money to be distributed to Class Members "based solely on easily ascertainable criteria," whether they filled out a disclosure and authorization form to perform a background check as part of the employment process. (*See* Agreement ¶ 1(bb)). There are no "purported individual evidentiary and factual issues that could arise in litigation in determining liability or damages." (Mot. at 24).

Accordingly, the predominance requirement is also satisfied.

F. Superiority

Rule 23(b)(3)'s superiority requirement is also met. Rule 23(b)(3) sets out four factors that together indicate that a class action is "superior to other available methods for the fair and efficient adjudication of the controversy":

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

Fed. R. Civ. P. 23(b)(3). "The purpose of the superiority requirement is to assure that the class action is the most efficient and effective means of resolving the controversy." *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (quoting Charles Wright, Arthur Miller & Mary Kay Kane, *Federal Practice and Procedure*, § 1779 at 174 (3d ed. 2005)).

When deciding whether to certify a settlement class, the fourth superiority factor need not be considered. *See Amchem*, 521 U.S. at 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . ."). The three relevant factors favor certifying the proposed settlement class:

First, individual Class Members would likely have little interest in prosecuting separate actions. Each putative Class Member's claim is likely too small to justify the cost or risk of litigation, as willful violations of the FCRA carry a maximum penalty of $1,000. Thus, a class action is a more efficient means for each individual Class Member to pursue his or her claims. *See Wolin*, 617 F.3d at 1175 ("Where recovery on

an individual basis would be dwarfed by the cost of litigating on an individual basis, this factor weighs in favor of class certification."). Moreover, because the claims of all putative Class Members are virtually identical, there is no reason that any given Class Member should need to pursue his or her claims individually. *See Westways World Travel, Inc. v. AMR Corp.*, 218 F.R.D. 223, 240 (C.D. Cal. 2003) ("Here, no one member of the Class has an interest in controlling the prosecution of the action because the claims of all members of the Class are virtually identical.").

Second, there does not appear to be any other litigation currently or previously pending concerning similar claims to those at issue in this action.

Third, Plaintiff, as a resident of California who worked for Defendants in this District, has alleged that Defendants' disclosure forms violate federal and California law. Therefore, this district court is a proper forum for resolution of the action. *Negrete v. Allianz Life Ins. Co. of N. Am.*, 238 F.R.D. 482, 495 (C.D. Cal. 2006) ("[B]ecause plaintiffs have alleged an overarching fraudulent scheme and include a California sub-class, it is desirable to consolidate the claims in this forum.").

Accordingly, the Motion is **GRANTED** insofar as the proposed class is **CERTIFIED** for purposes of settlement.

IV. NOTICE AND SETTLEMENT ADMINISTRATION

After the Court certifies a class under Rule 23(b)(3), it must direct to class members the best notice practicable under the circumstances. Fed. R. Civ. P. 23(c)(2)(B).

> The notice must clearly and concisely state in plain, easily understood language: (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 though 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; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Id. Class 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." *Mullane v. Central Hanover Trust*, 339 U.S. 306, 314 (1950).

The Agreement sets forth a fairly detailed notice and opt-out regime involving, in short, KCC mailing a Notice Form to all Class Members for whom KCC has (or is able to locate) address information. (Agreement ¶ 11(b)). As discussed above, the Notice Form will inform recipients of the nature of the action and provide information about, among other things, how to submit objections or opt out, how the settlement amount will be allocated, and when the final approval hearing is scheduled. (*Id.* ¶ 11; Setareh Decl. ¶ 15). Undelivered Notice Forms will then be re-mailed to the forwarding address provided, or if none is provided, KCC shall attempt to determine a correct address by lawful skip-tracing or other search methods. (Agreement ¶ 11(d)). The Court has reviewed the contemplated notice regime and the form and substance of the proposed Notice Form, and concludes that the proposed class notice satisfies the requirements set forth in Rule 23(c)(2)(B).

Accordingly, the proposed notice and plan of dissemination are **APPROVED**.

V. CONCLUSION

For the reasons discussed above, the Motion is **GRANTED** insofar as the proposed settlement agreement is preliminarily **APPROVED**; the class is provisionally **CERTIFIED** for purposes of settlement only; and the notice and plan of dissemination are **APPROVED**.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 17-7128-MWF (JPRx) **Date: January 28, 2019**
Title: Jorge A. Perez v. Performance Food Group, Inc. et al.

The Proposed Order Granting Preliminary Approval of Class Action Settlement (Docket No. 26-7) is adopted and incorporated into this Order, as Exhibit A.

The Final Approval Hearing is scheduled for **April 29, 2019 at 10:00 a.m.**

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 17-7128-MWF (JPRx) **Date: January 28, 2019**
Title: Jorge A. Perez v. Performance Food Group, Inc. et al.

EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 17-7128-MWF (JPRx) **Date: January 28, 2019**
Title: Jorge A. Perez v. Performance Food Group, Inc. et al.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JORGE PEREZ, on behalf of himself, and all others similarly situated, and the general public; Plaintiff, vs. PERFORMANCE FOOD GROUP, INC., a Colorado Corporation; VISTAR TRANSPORTATION, LLC, a Delaware limited liability company; ROMA FOOD ENTERPRISES, INC., a California corporation; and DOES 1–50, inclusive; Defendants.	Case No.: 2:17-CV-07128-MWF-JPR [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiff's Motion for Preliminary Approval of Class Action Settlement came for hearing before this Court on January 28, 2019. The Court hereby determines and orders as follows:

1. The Settlement Agreement is hereby provisionally approved subject to further consideration at the Final Approval hearing.

2. The Court finds that the proposed Settlement is "fair, reasonable and adequate" based on the value of the claims in the case, the monetary value of the proposed settlement and the risks that the plaintiffs would face in proceeding with litigation. The Settlement was arrived at after sufficient investigation and discovery and was based on a mediator's proposal from an experienced mediator. It appears that the settlement negotiations were at arm's-length.

3. The Court finds for settlement purposes only that: (i) the proposed Settlement Class is so numerous that joinder would be impracticable; (ii) that commonality exists as to the Settlement Class; (iii) there are questions of law and fact common to the Settlement Class which predominate over any individual questions; (iv) the claims of Plaintiff are typical of the Settlement Class; (v) Plaintiff and Class Counsel will fairly and adequately represent the interests of the Settlement Class; and (vi) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

4. For settlement purposes, the Court certifies the following class:

> "all individuals in the United States who: (i) applied for a job with Defendants or Performance Food Group, Inc.'s related segments Vistar and Performance FoodService, which segments include the entities Performance Transportation, LLC; Liberty Distribution Company, LLC; Vend Catering Supply, LLC; Continental Concession Supplies, LLC; Institution Food House, Inc.; PFG PFS, LLC; Fox River Foods, Inc.; FRF Transport, Inc.; and Ohio Pizza Products Inc.; and (ii) about whom Defendants requested background checks during the Class Period, except

for those that timely opt-out of the Settlement."

5. The Court appoints the Setareh Law Group as Class Counsel for the Settlement Class.

6. The Court appoints Jorge Perez as the representative of the Settlement Class.

7. The Long Form Notice and Postcard Notice and provisions for disseminating those materials and information, attached to the Declaration of Shaun Setareh, are consistent with Federal Rule of Civil Procedure Rule 23 and are approved. These materials (a) provide the best notice practicable under the circumstances; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the action, the terms of the proposed Settlement, and of their right to exclude themselves from, or object to, the proposed settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and (d) fully comply with United States law.

8. The Court hereby approves and appoints KCC LLC as the Settlement Administrator.

9. The Court orders the following Settlement deadlines, which assume a preliminary approval date of January 28, 2019:

Defendant's Production of Class List to Settlement Administrator (14 days after the Preliminary Approval Date)	February 11, 2019
Mailing of Postcard Notice and Emailing of Notice (14 days after production of class list)	February 25, 2019
Objection Deadline (45 days after the Settlement Administrator mails Postcard Notices)	April 11, 2019
Request for Exclusion Deadline (45 days after the Settlement Administrator mails Postcard Notices)	April 11, 2019
Deadline for Filing Motion for Attorney Fees	March 28, 2019
Deadline for Filing Motion for Final Approval Motion	March 28, 2019
Final Approval Hearing	April 29, 2019 at 10:00 a.m.

IT IS SO ORDERED.