



1 use consumer report information for employment purposes for Plaintiff and all the FCRA Class  
2 Members, and Defendant therefore obtained consumer reports regarding Plaintiff and the Class  
3 Members without proper authorization in violation of 15 U.S.C. § 1681 b(b)(2)(A)(ii). The complaint  
4 further alleged Defendant failed to provide lawful meal and rest breaks to the proposed California  
5 Class Members.

6 On May 3, 2019, Defendant filed a motion to dismiss the complaint in part and to strike  
7 Plaintiff's third and fourth causes of action. (Doc. 10.) Subsequently, on May 20, 2019, Plaintiff filed  
8 his first amended complaint removing his third and fourth cause of action. (Doc. 12.) The first  
9 amended complaint alleges claims for (1) violation of the Fair Credit Reporting Act for failure to make  
10 proper disclosures, 15 U.S.C. § 1681 b(b)(2)(A)(i); and (2) violation of the Fair Credit Reporting Act  
11 for failure to obtain proper authorization, 15 U.S.C. § 1681 b(b)(2)(A)(ii).

12 The parties exchanged initial discovery disclosures, and engaged in extensive discussions  
13 about their respective positions and the information and data needed to properly evaluate the merits of  
14 the claims alleged. The parties reached a proposed class action settlement on September 6, 2019  
15 through arms-length direct negotiations, now submitted to this Court for preliminary approval.

16 The first amended complaint defined the class as: "All applicants in the United States who  
17 filled out WM. BOLTHOUSE FARMS, INC.'s standard "Consent to Request Consumer Report &  
18 Investigative Consumer Report Information" form at any time during the period beginning five (5)  
19 years prior to the filing of this action to the present." (Doc. 12 at 3.) The Settlement Class, which  
20 includes approximately 1,245 individuals, is defined as: "all applicants in the United States who filled  
21 out WM. BOLTHOUSE FARMS, INC.'s standard 'Consent to Request Consumer Report &  
22 Investigative Consumer Report Information' form as administered by Sterling Infosystems Inc. during  
23 the Class Period." (Doc. 25-1 at 3.) The "Class Period" is March 17, 2017 to July 31, 2018. (Doc. 25 at  
24 10.)

25 Plaintiff filed the motion for preliminary approval of the settlement now pending before the  
26 Court on November 8, 2019. (Doc. 25.)

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**THE PROPOSED SETTLEMENT**

Pursuant to the proposed settlement (the "Settlement"), the parties agree to a gross settlement amount not to exceed \$118,275.00. (Doc. 25 at 10; Doc. 25-2 at 6.)

**I. Payment Terms**

The Settlement provides a maximum recovery of \$118,275.00. (Doc. 25 at 10; Doc. 25-2 at 6.) If the Court approves the Settlement, the following estimates the breakdown of payments from this amount:

- \$54,350.00 for estimated settlement funds to the Settlement Class (the "Net Settlement Amount");
- \$18,500 for administration costs regarding the Settlement;
- \$5,000 for a Service Award to Plaintiff; and
- \$39,425.00 for attorneys' fees and \$1,000.00 in litigation costs.

(Doc. 25 at 10-11.)

Plaintiff asserts that the amount each Class Member receives from the Net Settlement Amount is contingent on the number of consumer reports obtained on individuals who remain in the Settlement Class. (Doc. 25 at 11.) The number of consumer reports obtained for each Class Member may differ, and thus Class Members may be entitled to more, or less, than others, based on the number of consumer reports obtained for each of them. (Doc. 25 at 11.) During the Class Period, Defendant estimated there to be approximately 1,245 members of the Settlement Class. (Doc. 25 at 11.) Based on this data, the parties anticipate the approximate gross payment per class member on average will be \$95.00 with an approximate net payment on average of \$43.65. (Doc. 25 at 11.) According to Plaintiff, this is a non-reversionary, total payout Settlement. (Doc. 25 at 11.) Any funds remaining in the Gross Settlement Amount due to uncashed Settlement checks (after a 180-day negotiability period) will be remitted to the California Legal Aid Fund. (Doc. 25 at 11.)

**II. Releases**

Class Members will release Defendant and others "from any and all claims of any kind whatsoever, whether known or unknown, whether based on common law, regulations, statute, or a constitutional provision, under state, federal or local law, arising out of the allegations made in the

1 First Amended Complaint and that reasonably arise, or could have arisen, out of the facts alleged in  
2 the First Amended Complaint as to the Class Members, including, but not limited to, claims arising  
3 from the procurement of a consumer report on them by any of the Released Parties, and any other  
4 claims for violations of the Fair Credit Reporting Act, 15 U.S.C. §16816, *et seq.*, whether willful, or  
5 otherwise, for declaratory relief, statutory damages, punitive damages, costs, and attorneys' fees.  
6 Notwithstanding the foregoing, nothing in the Settlement releases any claims that cannot be released  
7 as a matter of law." (Doc. 25 at 12, Doc. 25-2 at 21-22.) According to Plaintiff, the release is narrowed  
8 to the facts and claims arising out of the operative complaint.

9 **III. Objections and Opt-Out Procedure**

10 Any class member who wishes may file objections or elect not to participate in the Settlement.  
11 The Notice of Class Action Settlement explains the claims that are released as part of the Settlement.  
12 (Doc. 25-2 at 43.) In addition, it explains the procedures to claim a share of the settlement, object to  
13 the settlement, or elect not to participate in the Settlement. (Doc. 25-2 at 40-46.)

14 **PRELIMINARY APPROVAL OF A CLASS SETTLEMENT**

15 When parties settle the action prior to class certification, the Court has an obligation to "peruse  
16 the proposed compromise to ratify both the propriety of the certification and the fairness of the  
17 settlement." *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). Preliminary approval of a class  
18 settlement is generally a two-step process. First, the Court must assess whether a class exists. *Id.*  
19 (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997)). Second, the Court must "determine  
20 whether the proposed settlement is fundamentally fair, adequate, and reasonable." *Id.* (citing *Hanlon v.*  
21 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 2998)). The decision to approve or reject a settlement is  
22 within the Court's discretion. *Hanlon*, 150 F.3d at 1026.

23 **I. Class Certification**

24 Parties seeking class certification bear the burden of demonstrating the elements of Rule 23 are  
25 satisfied, and "must affirmatively demonstrate . . . compliance with the Rule." *Wal-Mart Stores, Inc.*  
26 *v. Dukes*, 131 S. Ct. 2541, 2551 (2011); *Doninger v. Pacific Northwest Bell, Inc.*, 563 F.2d 1304, 1308  
27 (9th Cir. 1977).

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1           **A.     Rule 23(a) Requirements**

2           The prerequisites of Rule 23(a) “effectively limit the class claims to those fairly encompassed  
3 by the named plaintiff’s claims.” *General Telephone Co. of the Southwest. v. Falcon*, 457 U.S. 147,  
4 155-56 (1982). Certification of a class is proper if:

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

9 Fed. R. Civ. P. 23(a). These prerequisites are generally referred to as numerosity, commonality,  
10 typicality, and adequacy of representation. *Falcon*, 457 U.S. at 156. If an action meets the  
11 prerequisites of Rule 23(a), the Court must consider whether the class is maintainable under one or  
12 more of the three alternatives set forth in Rule 23(b). *Narouz v. Charter Communs., LLC*, 591 F.3d  
13 1261, 1266 (9th Cir. 2010).

14                   1.     Numerosity

15           A class must be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P.  
16 23(a)(1). This requires the Court to consider “specific facts of each case and imposes no absolute  
17 limitations.” *General Telephone Co. v. EEOC*, 446 U.S. 318, 330 (1980). Although there is not a  
18 specific numerical threshold, joining more than one hundred plaintiffs is impracticable. *See*  
19 *Immigrant Assistance Project of Los Angeles Cnt. Fed’n of Labor v. INS*, 306 F.3d 842, 869 (9th Cir.  
20 2002) (“find[ing] the numerosity requirement . . . satisfied solely on the basis of the number of  
21 ascertained class members . . . and listing thirteen cases in which courts certified classes with fewer  
22 than 100 members”). Here, approximately 1,245 individuals are potential members of the class. (Doc.  
23 25 at 15.) Therefore, the class is sufficiently numerous.

24                   2.     Commonality

25           Rule 23(a) requires “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2).  
26 The commonality requirement has been construed permissively; not all questions of law and fact need  
27 to be common. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). “However, it is  
28 insufficient to merely allege any common question.” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970,  
981 (9th Cir. 2011). Commonality must be shown by a “common contention” that is “of such a nature

1 that it is capable of classwide resolution—which means that determination of its truth or falsity will  
2 resolve an issue that is central to the validity of each one of the claims in one stroke.” *Dukes*, 564 U.S.  
3 at 338.

4 Plaintiff contends that under the FCRA, an employer, or prospective employer, cannot  
5 "procure, or cause a consumer report to be procured, for employment purposes with respect to any  
6 consumer unless . . . a clear and conspicuous disclosure has been made in writing to the consumer at  
7 any time before the report is procured or caused to be procured, in a document that consists solely of  
8 the disclosure, that a consumer report may be obtained for employment purposes." (Doc. 25 at 16,  
9 citing 15 U.S.C. § 1681 b(b)(2)(A)(i)). Plaintiff asserts that the question of law and fact common to  
10 the proposed class that predominate over questions that may affect individual class members are: (a)  
11 whether Defendant's standard FCRA disclosure meets 15 U.S.C. § 19 § 1681 b(b)(2)(A)(i)' s "clear  
12 and conspicuous disclosure" requirement; (b) whether Defendant's standard FCRA disclosure is "in a  
13 document that consists solely of the disclosure"; (c) whether Defendant acquires applicants' consumer  
14 reports without authorization in violation of 15 U.S.C. § 1681 b(b)(2)(A)(ii); and (d) whether  
15 Defendant "willfully" violated the FCRA pursuant to 15 U.S.C. § 1681n. (Doc. 25 at 16.)

16 Plaintiff contends that all members of the class executed the same FCRA disclosure form and  
17 suffer from the same types of injury arising from the same conduct committed by Defendant in regard  
18 to the claims alleged. (Doc. 25 at 16.) Because of these common factual and legal issues, the Court  
19 finds the commonality requirement is satisfied.

### 20 3. Typicality

21 This requirement requires a finding that the “claims or defenses of the representative parties  
22 are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). The standards under this  
23 rule are permissive, and a claim or defense is not required to be identical, but rather “reasonably  
24 coextensive” with those of the absent class members. *Hanlon*, 150 F.3d at 1020. “The test of  
25 typicality is whether other members have the same or similar injury, whether the action is based on  
26 conduct which is not unique to the named plaintiffs, and whether other class members have been  
27 injured by the same course of conduct.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir.  
28 1992) (internal quotation marks and citation omitted); *see also Kayes v. Pac. Lumber Co.*, 51 F.3d

1 1449, 1463 (9th Cir. 1995) (the typicality requirement is satisfied when the named plaintiffs have the  
2 same claims as other members of the class and are not subject to unique defenses).

3 Plaintiff alleges that on or about May of 2017, he was required to sign a standardized form  
4 labeled "Consent to Request Consumer Report & Investigative Consumer Report Information,"  
5 provided by Sterling Infosystems Inc., a company hired by Defendant to obtain a consumer report  
6 verifying employees' background and experience. (Doc. 25 at 17.) According to Plaintiff, Defendant  
7 required all applicants to complete the same form that violated the FCRA's prohibition against  
8 including extraneous information in a required disclosure. (Doc. 25 at 17.) Plaintiff therefore contends  
9 that the claims of Plaintiff and the class arise from the same alleged course of conduct by Defendant  
10 and are based on the same legal theories. (Doc. 25 at 17.) Although Defendant does not admit these  
11 allegations, for purposes of approving this Settlement, Defendant does not oppose Plaintiff's assertion  
12 that sufficient typicality exists. (Doc. 25 at 17.) Accordingly, the Court finds the typicality requirement  
13 is satisfied.

14 4. Fair and Adequate Representation

15 Absentee class members must be adequately represented for judgment to be binding upon  
16 them. *Hansberry v. Lee*, 311 U.S. 32, 42-43 (1940). Accordingly, this prerequisite is satisfied if the  
17 representative party "will fairly and adequately protect the interests of the class." Fed. R. Civ. P.  
18 23(a)(4). "[R]esolution of this issue requires that two questions be addressed: (a) do the named  
19 plaintiffs and their counsel have any conflicts of interest with other class members and (b) will the  
20 named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *In re Mego*  
21 *Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462 (9th Cir. 2000) (citing *Hanlon*, 150 F.3d at 1020).

22 Plaintiff states that Plaintiff and class counsel do not have interests antagonistic to those of the  
23 Settlement Class. (Doc. 25 at 18.) Plaintiff contends that, to the contrary, Plaintiff shares the same  
24 interest-i.e., recovering damages resulting from alleged violations of Defendant's FCRA obligations.  
25 (Doc. 25 at 18.) Plaintiff also reports that class counsel have extensive experience prosecuting similar  
26 such class actions. (Doc. 25 at 18.) Additionally, Plaintiff reports that Kingsley & Kingsley is  
27 experienced in prosecuting and defending employment and consumer matters, and the firm has  
28 focused its practice since 2000 on complex litigation including wage and hour and consumer class



1 actions. (Doc. 25 at 18.) Kingsley & Kingsley currently serves as class counsel for dozens of pending  
2 class action lawsuits in Northern, Eastern, Central, and Southern California, and a list of representative  
3 cases that Kingsley & Kingsley has handled is included in the accompanying declaration of Kelsey M.  
4 Szamet. (Doc. 25 at 18, Doc. 25-1 at 7-9.) Thus, Plaintiff contends that Plaintiff and class counsel are  
5 adequate representatives for the class. (Doc. 25 at 18.) Plaintiff also reports that the firm has diligently  
6 and aggressively pursued this action. (Doc. 25 at 18.) Therefore, the Court finds the class counsel to be  
7 adequate.

8 **B. Certification of a Class under Rule 23(b)(3)**

9 As noted above, once the requirements of Rule 23(a) are satisfied, a class may only be certified  
10 if it is maintainable under Rule 23(b). Fed. R. Civ. P. 23(b); *see also Narouz*, 591 F.3d at 1266.  
11 Plaintiff asserts certification is appropriate under Rule 23(b)(3), which requires finding that (1) “the  
12 questions of law or fact common to class members predominate over any questions affecting only  
13 individual members,” and (2) “a class action is superior to other available methods for fairly and  
14 efficiently adjudicating the controversy.”

15 Plaintiff contends that the predominance requirement is satisfied because, “as in numerous other  
16 class actions, Plaintiff’s claim is premised on his allegation Defendant maintained a uniform policy of  
17 providing the Settlement Class with a standardized form facially violating the FCRA, and Plaintiff’s  
18 claim is based on factual and legal questions about Defendant’s policy that are not only common to the  
19 Settlement Class, but predominate under FRCP 23(e).” (Doc. 25 at 19.) In addition, Plaintiff asserts  
20 that the superiority requirement is met because “given that there are over 1,000 putative class members,  
21 each of whom, on their own, can only recover a small amount of damages for the alleged violations, a  
22 class action is the superior method for adjudicating their claims as it will reduce litigation costs and  
23 promote greater efficiency.” (Doc. 25 at 19.) Therefore, the Court finds certification of the conditional  
24 settlement class is proper under Rule 23(b)(3).

25 **II. Evaluation of the Settlement Terms**

26 Settlement of a class action requires approval of the Court, which may be granted “only after a  
27 hearing and on finding that [the settlement] is fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2).  
28 Approval is required to ensure settlement is consistent with Plaintiffs’ fiduciary obligations to the



1 class. *See Ficalora v. Lockheed Cal. Co.*, 751 F.2d 995, 996 (9th Cir. 1985). The Ninth Circuit has  
2 set forth several factors to determine whether a settlement agreement meets these standards, including:

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

8 *Staton*, 327 F.3d at 959 (citation omitted). Further, a court should consider whether settlement is “the  
9 product of collusion among the negotiating parties.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 458  
10 (citing *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1290 (9th Cir. 1992)). Reviewing the settlement  
11 terms, “[t]he court need not reach any ultimate conclusions on the contested issues of fact and law  
12 which underlie the merits of the dispute.” *Class Plaintiffs*, 955 F.2d at 1291 (internal quotation marks  
13 and citation omitted).

#### 14 **A. Strength of Plaintiff's Case**

15 When evaluating the strength of a case, the Court should “evaluate objectively the strengths  
16 and weaknesses inherent in the litigation and the impact of those considerations on the parties’  
17 decisions to reach these agreements.” *Adoma v. Univ. of Phoenix, Inc.*, 913 F. Supp. 2d 964, 975  
18 (E.D. Cal. 2012) (quoting *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F.Supp 1379, 1388 (D.  
19 Az. 1989)). According to Plaintiff:

20 There is risk associated with continued litigation, including the prospect that a class might not  
21 be certified, or a certified class may be significantly smaller than proposed. In the Lawsuit, of  
22 particular importance to determining the reasonableness of the Settlement are the significant  
23 liability questions regarding purported violations of the FCRA.

24 While Plaintiff maintains his confidence in Defendant's liability for violation of the FCRA on  
25 two separate grounds, Plaintiff must acknowledge that Defendant's likely arguments posed  
26 risks. Defendant likely would have advanced an argument that Plaintiff lacked standing  
27 because he did not suffer, or allege, a concrete injury under the Supreme Court's *Spokeo*  
28 decision. Because of the uncertainty regarding FCRA liability, the \$118,275.00 Gross  
Settlement Amount is more than reasonable.

Risks and uncertainties are also present regarding damages. In particular, Plaintiff seeks  
statutory damages under the FCRA ranging between \$100 and \$1,000 per violation. Defendant  
would have certainly argued the alleged violations were technical, and thus did not result in  
any injuries or damages. For example, in *Hillson v. Kelly Services*, E.D. Mich. No. 2:15cv1  
0803, 2017 WL 279814, at \*7-8 (E.D. Mich. Jan. 23, 2017), the court preliminarily approved a  
settlement awarding \$19 to each class member for an alleged FCRA standalone disclosure

1 violation. In *Hillson*, the court assumed each individual class member would recover \$100 at  
2 trial, and observed, "once the \$100 award is discounted by the likelihood of success at trial  
3 (which is conceivably in the ballpark of 19%), the amount of recovery under the settlement  
appears reasonable." *Id.* at 2 \*7.

4 Here, estimating the average number of reports procured for each Class Member to be 1, the  
5 proposed Gross Settlement Amount represents 95% of Plaintiff's likely recovery at trial if  
6 Defendant's conduct was not found to be willful (1,245 reports x \$100), with an average gross  
settlement amount of \$95 to each proposed class member. Thus, the proposed settlement falls  
well above the approved discounted range for similar class settlements.

7 (Doc. 25 at 25-26, citations and footnotes omitted.) Accordingly, this factor weighs in favor of  
8 preliminary approval of the Settlement.

9 **B. Risks, Expenses, Complexity, and Likely Duration of Further Litigation**

10 Approval of settlement is "preferable to lengthy and expensive litigation with uncertain  
11 results." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004). If  
12 the settlement were to be rejected, the parties would have to engage in further litigation. The time and  
13 expense of continued litigation could outweigh any additional recovery. According to Plaintiff:

14 Defendant denies all of the contentions alleged in Plaintiff's complaint, asserts many  
15 defenses thereto, and denies any wrongdoing or legal liability arising out of the conduct  
16 allege[d]. Defendant concluded that this action may be settled in the manner and on the  
17 terms and conditions in the Settlement to avoid the expense, inconvenience, and burden  
of further legal proceedings, and the uncertainties of trial and appeals.

18 (Doc. 25 at 23.) Plaintiff asserts that "while Class Counsel believe Plaintiff's claims are meritorious,  
19 they are experienced class action litigators, and understand the outcome of class certification, trial, and  
20 any attendant appeals are inherently uncertain, as well as likely to consume many months or years."

21 (Doc. 25 at 26.) On the other hand, the proposed settlement provides for "substantial, prompt, and  
22 efficient relief" for the class. (Doc. 25 at 27.) Therefore, this factor weighs in favor of approval of the  
23 Settlement.

24 **C. Risk of Maintaining Class Status throughout the Trial**

25 Plaintiff notes that this case has not been certified to be tried as a class action. (Doc. 25 at 27.)  
26 While Plaintiff believes there is strong evidence to support certification of the proposed class, Plaintiff  
27 states that certification is always hard fought and subject to judicial discretion. (Doc. 25 at 27.)  
28 Moreover, Plaintiff notes that in class actions, decertification is always a possibility. (Doc. 25 at 27.)

1 Plaintiff reports that in attempting to certify a class, the parties would need to conduct multiple  
2 depositions, including person(s) most knowledgeable regarding Defendant's hiring and background  
3 check policies. (Doc. 25 at 27.) Plaintiff contends that there is a risk for both sides as to what these  
4 depositions will reveal and whether they will support class certification to the extent expected. (Doc. 25  
5 at 27.) Due to the risk to the claims of class members, this factor supports approval of the Settlement.

6 **D. Amount Offered in Settlement**

7 The Ninth Circuit observed “the very essence of a settlement is compromise, ‘a yielding of  
8 absolutes and an abandoning of highest hopes.’” *Officers for Justice v. Civil Serv. Commission*, 688  
9 F.2d 615, 624 (9th Cir. 1982) (citation omitted). Thus, when analyzing the amount offered in  
10 settlement, the Court should examine “the complete package taken as a whole,” and the amount is “not  
11 to be judged against a hypothetical or speculative measure of what *might* have been achieved by the  
12 negotiators.” *Id.*, 688 F.2d at 625, 628.

13 The maximum recovery is \$118,275.00. (Doc. 25 at 10.) During the Class Period, Defendant  
14 estimated there to be approximately 1,245 members of the Settlement Class. (Doc. 25 at 11.) Based on  
15 this data, the parties anticipate the approximate gross payment per class member on average will be \$95  
16 with an approximate net payment on average of \$43.65. (Doc. 25 at 11.) In addition, this is a non-  
17 reversionary, total payout Settlement. (Doc. 25 at 11.) Any funds remaining in the Gross Settlement  
18 Amount due to uncashed Settlement checks (after a 180-day negotiability period) will be remitted to  
19 the California Legal Aid Fund. (Doc. 25 at 11.) Accordingly, the Court finds the amount offered  
20 supports approval of the Settlement.

21 **E. Extent of Discovery Completed and Stage of the Proceedings**

22 Plaintiff reports that “[t]he Parties arrived at this settlement only after initial discovery,  
23 extensive investigation and discussion, and a careful evaluation of the law, risks, and all information  
24 substantiating the amount of damages reasonably likely to be awarded to the Class were the trier of fact  
25 to find Defendant was liable.” (Doc. 25 at 23-24.) According to Plaintiff: “Class Counsel conducted a  
26 thorough investigation into the facts of the claims alleged. The agreement to settle did not occur until  
27 Counsel possessed sufficient information to make an informed judgment regarding the likelihood of  
28 success on the merits and the results that could be obtained through further litigation.” (Doc. 25 at 33-

1 34.) Consequently, this factor supports preliminary approval of the Settlement.

2 **F. Experience and Views of Counsel**

3 In general, “[g]reat weight is accorded to the recommendation of counsel, who are most closely  
4 acquainted with the facts of the underlying litigation.” *See Nat’l Rural Telecomms.*, 221 F.R.D. at 528.  
5 Plaintiff reports that the parties were represented by experienced class action counsel throughout the  
6 negotiations. (Doc. 25 at 23.) Plaintiff states that class counsel regularly litigates and tries FCRA class  
7 actions, and have considerable experience settling such actions, and Morgan Lewis, which operates a  
8 highly-respected nationwide class action defense practice, represented Defendant. (Doc. 25 at 23.)  
9 Plaintiff’s counsel believes that the proposed settlement is fair and reasonable. (Doc. 25 at 24, Doc. 25-  
10 1 at 9-10.) Defendant and its counsel also agree that the Settlement is fair and in the best interest of the  
11 class members. (Doc. 25 at 24.)

12 **G. Reaction of Class Members to the Proposed Settlement**

13 Plaintiff has agreed to the terms of the Settlement Agreement. However, this factor shall be  
14 revisited prior to final approval of the Settlement because Class Members have not yet received notice  
15 of the Settlement terms.

16 **H. Collusion between Negotiating Parties**

17 The inquiry of collusion addresses the possibility that the settlement agreement is the result of  
18 either “overt misconduct by the negotiators” or improper incentives of class members at the expense of  
19 others. *Staton*, 327 F.3d at 960. Plaintiff reports that “[t]his settlement is the result of adversarial, non-  
20 collusive, and arms-length negotiations.” (Doc. 25 at 23.) Defendant and its counsel also agree that the  
21 Settlement is fair and in the best interest of the class members. (Doc. 25 at 24.) Because there is no  
22 indication the agreement was the product of collusive conduct, this factor weighs in favor of approval  
23 of the Settlement.

24 **I. Attorneys’ Fees**

25 Class counsel requests attorneys’ fees that total \$39,425.00, which represents 33% of the  
26 \$118,275.00 common fund. (Doc. 25 at 30.) The typical range of acceptable attorneys’ fees in the Ninth  
27 Circuit is 20% to 33 1/3% of the total settlement value, with 25% considered the benchmark. *Powers v.*  
28 *Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000).

1 In general, the party seeking fees bears the burden of establishing that the fees and costs were  
2 reasonably necessary to achieve the results obtained. *See Fischer v. SJB-P.D., Inc.*, 214 F.3d 1115,  
3 1119 (9th 2000). Therefore, a fee applicant must provide time records documenting the tasks  
4 completed and the amount of time spent on the action. *Hensley v. Eckerhart*, 461 U.S. 424, 424  
5 (1983); *Welch v. Metropolitan Life Ins. Co.*, 480 F.3d 942, 945-46 (9th Cir. 2007). Because the  
6 percentage of the gross fund is within the accepted range outlined by the Ninth Circuit, this amount is  
7 approved preliminarily. The Court will determine the exact amount of the fee award upon application  
8 by Class Counsel for approval of fees.

9 **J. Class Representative Enhancement**

10 The Settlement provides that Plaintiff may seek an enhancement payment “up to” \$5,000.  
11 (Doc. 25-2 at 42.) Incentive awards, or enhancements, for class representatives are not to be given  
12 routinely by the Court. In *Staton*, 327 F.3d at 975, the Ninth Circuit explained:

13 Indeed, “[i]f class representatives expect routinely to receive special awards in addition  
14 to their share of the recovery, they may be tempted to accept suboptimal settlements at  
15 the expense of the class members whose interests they are appointed to guard.” *Weseley*  
16 *v. Spear, Leeds & Kellogg*, 711 F. Supp. 713, 720 (E.D.N.Y. 1989); *see also Women’s*  
*Comm. for Equal Employment Opportunity v. Nat’l Broad. Co.*, 76 F.R.D. 173, 180  
(S.D.N.Y. 1977) (“[W]hen representative plaintiffs make what amounts to a separate  
peace with defendants, grave problems of collusion are raised.”).

17 In fact, “excessive payments to named class members can be an indication that the agreement was  
18 reached through fraud or collusion.” *Id.* (citation omitted). In evaluating the enhancement award to a  
19 class representative, a court should consider all “relevant factors including the actions the plaintiff has  
20 taken to protect the interests of the class, the degree to which the class has benefitted from those  
21 actions, . . . the amount of time and effort the plaintiff expended in pursuing the litigation . . . and  
22 reasonable fears of workplace retaliation.” *Staton*, 327 F.3d at 977.

23 The documents explain that the enhancement is to be given to Plaintiff for his participation in  
24 all stages of the litigation and for taking on the risk of litigation. (Doc. 25-2 at 46, Doc. 25-3 at 2-3.)  
25 Plaintiff declares that he has spent significant time throughout this class action working with Class  
26 Counsel. (Doc. 25-3 at 2.) He reports that he “assisted the attorneys with investigation and gathering  
27 of information including discussing [his] work experience and the experience of others that [he] had  
28 observed while working for Bolthouse and provided all relevant employment documents in [his]

1 possession.” (Doc. 25-3 at 2.) Plaintiff also states that he maintained regular contact with Class  
2 Counsel and assisted by providing information and making himself available as needed. (Doc. 25-3 at  
3 2.) Specifically, Plaintiff reports that his time included “researching and identifying competent counsel  
4 with relevant expertise, providing information to Class Counsel regarding the claims at issue,  
5 compiling documents, conducting several meetings and telephone conferences with his attorneys to  
6 discuss the status of the case and the theories of liability, and reviewing all relevant case documents.”  
7 (Doc. 25 at 33.) Additionally, “Plaintiff incurred personal risk by bringing the Lawsuit; he could have  
8 been responsible for Defendant's costs, and his potential employment opportunities may have been  
9 impacted by his public prosecution of the Lawsuit.” (Doc. 25 at 33.) Plaintiff also states that he  
10 “always maintained the best interest of the Class while performing [his] Class Representative duties.”  
11 (Doc. 25-3 at 3.) Given the actions taken on behalf of the class and the flexibility for an award *up to*  
12 \$5,000, approval of a class representative enhancement is appropriate.<sup>1</sup>

### 13 **APPROVAL OF CLASS NOTICE**

14 A class notice must satisfy the requirements of the Federal Rules of Civil Procedure, which  
15 provides the notice “must clearly and concisely state in plain, easily understood language” the  
16 following information:

17 (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims,  
18 issues, or defenses; (iv) that a class member may enter an appearance through an attorney  
19 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).

20 Fed. R. Civ. P. 23(c)(2)(B). A class notice must be “reasonably calculated, under all circumstances, to  
21 apprise interested parties of the pendency of the action and afford them an opportunity to present their  
22 objections.” *See Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

#### 23 **I. Content of the Notice**

24 Plaintiff has submitted the proposed Notice of Class Action Settlement (collectively, “Notice  
25 Packet”). (Doc. 25-2 at 39-48.) Upon review of the proposed Notice Packet, the Court finds the content  
26 is adequate. It provides information regarding the background of the action and claims asserted. (Doc.  
27

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28 <sup>1</sup> Plaintiff is cautioned that in his petition for final approval of the settlement he must provide specifics under oath as to how much time he spent on the action and how this time was spent. Vague assertions do not suffice.

1 25-2 at 39-40.) In addition, the Notice Packet explains the rights and procedures to receive a share of  
2 the Settlement, object to the Settlement, or elect not to participate in the Settlement, and will include  
3 the applicable deadlines. (Doc. 25-2 at 40-41.) The Notice Packet provides additional basic  
4 information, explains the Settlement benefits, and how to get a Settlement payment. (Doc. 25-2 at 41-  
5 44.) It also provides additional information on excluding oneself from the Settlement and objecting to  
6 the Settlement. (Doc. 25-2 at 44-46.) Finally, the Notice Packet provides information on the lawyers  
7 representing the class, the Court's Final Approval Hearing, and how to get more information about the  
8 Settlement. (Doc. 25-2 at 46-47.)

9 **II. Method and Administration of Notice Packet**

10 The Settlement Administrator will establish the Settlement Fund, issue the funds, send W-9  
11 forms, if needed, and 1099 forms, and send all required notices. (Doc. 25 at 13.) Within fourteen days  
12 entry of this Order, Defendant will give the appointed Settlement Administrator the Class List and  
13 Data. (Doc. 25-2 at 22.) Within fifteen days of receiving this data, the Settlement Administrator will  
14 mail the Notice Packets to all Class Members. (Doc. 25-2 at 23.) For any Notice Packet returned due to  
15 an incorrect address, the Settlement Administrator will re-send to the forwarding address and indicate  
16 the date of such re-mailing. (Doc. 25-2 at 23.) If no forwarding address is provided, the Settlement  
17 Administrator will attempt to determine the correct address and perform a re-mailing. (Doc. 25-2 at  
18 23.)

19 Class members who desire to be excluded from the action may opt out from the Settlement  
20 within sixty days of mailing. (Doc. 25-2 at 24.) Similarly, Class Members who wish to object to the  
21 Settlement must mail a written objection to the Settlement Administrator within sixty days of mailing.  
22 (Doc. 25-2 at 25.)

23 **III. Required Revisions to the Notice Packet**

24 The Notice Packet must be modified to include information in this Order, including the date of  
25 this Court's preliminary approval and Final Approval Hearing, and deadlines for filing an Opt Out  
26 Statement or Objection to the Settlement. Likewise, the documents must be modified to include the  
27 relevant information, including the address and phone numbers of the Settlement Administrator. If  
28 Plaintiff intends to issue a Spanish language translation of the Notice Packet, they are reminded that



1 this Court requires a declaration that the Notice Packet was translated by a certified court interpreter,  
2 asserting the translation is an accurate translation of the Court-approved English version of the Notice  
3 Packet.

#### 4 APPOINTMENT OF CLAIMS ADMINISTRATOR

5 The parties propose that the Court appoint JND Legal to serve as the Settlement Administrator.  
6 (Doc. 25 at 13.) Under the terms of the Settlement, the Settlement Administrator “will be responsible  
7 for establishing the Settlement Fund and issuing (a) all funds by way of negotiable instrument from the  
8 Global Settlement Fund, (b) W-9 Forms (if required), (c) 1099 forms; and (d) all required notices under  
9 the Class Action Fairness Act 2005, 28 U.S.C. § 1711, *et seq.*” (Doc. 25-2 at 21.) The Settlement  
10 Administrator's fees are to be paid from the Global Settlement Fund. (Doc. 25 at 13, Doc. 25-2 at 21.)  
11 The Settlement Administrative Costs are estimated to be no more than \$18,500. (Doc. 25 at 13, Doc.  
12 25-2 at 42.) Based upon the recommendation and request of the parties, JND Legal is appointed as the  
13 Settlement Administrator.

#### 14 CONCLUSION AND ORDER

15 Based upon the foregoing, the Court finds the proposed class settlement is fair, adequate, and  
16 reasonable. The factors set forth by the Ninth Circuit weigh in favor of preliminary approval of the  
17 settlement agreement. Moreover, preliminary approval of a settlement and notice to the proposed  
18 class is appropriate “if [1] the proposed settlement appears to be the product of serious, informed,  
19 noncollusive negotiations, [2] has no obvious deficiencies, [3] does not improperly grant preferential  
20 treatment to class representatives or segments of the class, and [4] falls within the range of possible  
21 approval.” *In re Tableware Antitrust Litig.*, 484 F.Supp.2d 1078, 1079 (N.D. Cal. 2007) (quoting  
22 *Manual for Complex Litigation*, Second § 30.44 (1985)). Here, the proposed settlement agreement  
23 satisfies this test. Accordingly, the Court **ORDERS**:

- 24 1. Plaintiff’s request for conditional certification is **GRANTED**, and the Settlement class is  
25 defined as follows: “All applicants in the United States who filled out WM. BOLTHOUSE  
26 FARMS, INC.’s standard ‘Consent to Request Consumer Report & Investigative Consumer  
27 Report Information’ form as administered by Sterling Infosystems Inc. during the Class  
28 Period of March 17, 2018 through July 31, 2018.”

- 1           2. Eric Felix is **APPOINTED** as the representative of the Settlement Class;
- 2           3. Eric B. Kingsley and Kelsey M. Szamet of Kingsley & Kingsley APC and Emil Davtyan of
- 3           Davtyan Professional Law Corporation are **APPOINTED** as attorneys for the Settlement
- 4           Class;
- 5           4. JND Legal Administration is **APPOINTED** as the Settlement Administrator, with
- 6           responsibilities pursuant to the terms set forth in the Settlement Agreement;
- 7           5. The Class Representative enhancement request is **GRANTED** preliminarily up to the
- 8           amount of \$5,000, subject to a petition and review at the Final Approval Hearing. Class
- 9           Members and their counsel may support or oppose this request, if they so desire, at the Final
- 10          Approval Hearing;
- 11          6. Class Counsel's request for fees that total \$39,425.00, which represents 33% of the
- 12          \$118,275.00 common fund are **GRANTED** preliminarily, subject to counsel's petition for
- 13          fees and review at the Final Approval Hearing. Class Members and their counsel may
- 14          support or oppose this request, if they so desire, at the Final Approval Hearing;
- 15          7. The petition for attorneys' fees and for the class representative enhancement fee shall be
- 16          filed no later than **February 21, 2020**;
- 17          8. Costs of settlement administration shall not exceed \$18,500;
- 18          9. The proposed Notice Packet is preliminarily **APPROVED**, and the parties **SHALL** file a
- 19          finalized Notice Packet with the required revisions for the Court's approval no later than
- 20          **January 13, 2020**;
- 21          10. The parties **SHALL** provide the Settlement Administrator with the Class List and Data no
- 22          later than **January 27, 2020**;
- 23          11. The Settlement Administrator **SHALL** mail the approved Notice Packet no later than
- 24          **January 28, 2020**;
- 25          12. Class Members who desire to be excluded from the action may opt out from the Settlement
- 26          within sixty days, or no later than **March 6, 2020**;
- 27          13. Class Members who wish to object to the Settlement must mail a written objection to the
- 28          Settlement Administrator within sixty days, or no later than **March 6, 2020**;

1 14. A Final Approval Hearing shall be held on **March 27, 2020**, at 9:00 a.m. at the United  
2 States Courthouse located at 510 19th Street, Bakersfield, CA 93301. At this hearing, the  
3 Court shall determine whether the Settlement should be granted final approval as fair,  
4 reasonable, and adequate as to the Class Members. The Court shall hear all evidence and  
5 argument necessary to evaluate the Settlement and other motions and requests, including the  
6 class representative enhancement request and motion for attorneys' fees.

7 15. Class Members may appear at the hearing on **March 27, 2020**, in person or through his or  
8 her own attorney, to show cause why this Court should not approve the Settlement  
9 Agreement, or to object to the motion for attorneys' fees or class member representative  
10 enhancement award. For comments or objections to be considered at the hearing, the Class  
11 Member must file comments with the Clerk of this Court indicating briefly the nature of the  
12 Class Member's comments, support, or objection.

13 16. The Court reserves the right to vacate the Final Approval Hearing if no comments or  
14 objections are filed with this Court on or before **March 6, 2020**;

15 17. The Court reserves the right to continue the Final Approval Hearing without further notice  
16 to members of the Settlement Class; and

17 18. The Court retains jurisdiction to consider all further applications arising from or related to  
18 the Settlement Agreement.

19  
20 IT IS SO ORDERED.

21 Dated: January 7, 2020

/s/ Jennifer L. Thurston  
22 UNITED STATES MAGISTRATE JUDGE