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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BRIANNA MORRIS, on behalf of
herself and all others similarly
situated,

Plaintiff,

v.

FPI MANAGEMENT, INC., a
California Corporation,

Defendant.

NO. 2:19-CV-0128-TOR

ORDER GRANTING UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

BEFORE THE COURT is Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement (ECF No. 35). This matter was submitted for consideration without oral argument. The Court has reviewed the record and files herein, the completed briefing, and is fully informed. For the reasons discussed below, Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement (ECF No. 35) is **GRANTED**.

1 **BACKGROUND**

2 Plaintiff Brianna Morris and others similarly situated brought this class
3 action against Defendant FPI Management, Inc., alleging Defendant unlawfully
4 collected information from, and charged fees to, prospective tenants without first
5 providing certain required tenant screening disclosures. ECF No. 36 at 2.
6 Plaintiffs also allege Defendant unlawfully charged them a holding fee for a
7 dwelling unit before unconditionally offering the dwelling unit to the prospective
8 tenants. *Id.* Defendant denies the allegations and has asserted various defenses to
9 the claims. *Id.*

10 In the instant motion, the parties seek preliminary approval of their class
11 action settlement and move the Court to schedule a final fairness hearing. ECF
12 No. 36. The Court has not yet certified the proposed class.

13 **DISCUSSION**

14 **I. Standard for Preliminary Approval of Class Action Settlement**

15 Federal Rule of Civil Procedure 23(e) requires the district court to approve
16 any settlement of a certified class before such a settlement becomes final. Fed. R.
17 Civ. P. 23(e). Approval under Rule 23(e) involves a two-step process in which the
18 Court first determines whether a proposed class action settlement deserves
19 preliminary approval and then, after notice is given to class members, whether
20 final approval is warranted.

1 Regarding preliminary approval of a proposed class action settlement, a
2 court must generally perform two separate inquiries. Where, as here, the “parties
3 reach a settlement agreement prior to class certification, courts must peruse the
4 proposed compromise to ratify both the propriety of the certification and the
5 fairness of the settlement.” *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir.
6 2003).

7 First, a court must make a preliminary determination that certification of the
8 proposed class is appropriate under Rule 23(a) and one of the subsections of Rule
9 23(b). Manual for Complex Litigation (Fourth) § 21.632. In determining whether
10 class certification is appropriate for settlement purposes, the court must pay
11 “undiluted, even heightened, attention” to class certification requirements because
12 the court will not have future opportunities “to adjust the class, informed by the
13 proceedings as they unfold.” *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 620
14 (1997).

15 Second, a court “must make a preliminary determination on the fairness,
16 reasonableness, and adequacy of the settlement terms [under Rule 23(e)(2)] and
17 must direct the preparation of notice of the certification, proposed settlement, and
18 date of the final fairness hearing.” Manual for Complex Litigation (Fourth) §
19 21.632. In making this determination, the “court must carefully consider whether a
20 proposed settlement is fundamentally fair, adequate, and reasonable, recognizing

1 that it is the settlement taken as a whole, rather than the individual component
2 parts, that must be examined for overall fairness.” *Staton*, 327 F.3d at 952
3 (internal quotation marks and alterations omitted) (quoting *Hanlon v. Chrysler*
4 *Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)).

5 **A. Conditional Class Certification**

6 Class certification is governed by Rules 23(a) and 23(b) of the Federal Rules
7 of Civil Procedure. Under Rule 23(a), a plaintiff seeking class certification must
8 demonstrate: (1) that the class is so numerous that joinder of all members is
9 impracticable; (2) there are questions of law or fact common to the class; (3) the
10 claims or defenses of the representative parties are typical of the claims or defenses
11 of the class; and (4) the representative parties will fairly and adequately protect the
12 interests of the class. Fed. R. Civ. P. 23(a)(1)–(4). The court must engage in a
13 “rigorous analysis” of each Rule 23(a) factor and often the evaluation is intimately
14 tied with the merits of the underlying claims. *Ellis v. Costco Wholesale Corp.*, 657
15 F.3d 970, 980 (9th Cir. 2011).

16 A class action plaintiff must also demonstrate that certification is appropriate
17 under Rule 23(b). Where, as in this case, a plaintiff seeks certification of a so-
18 called “damages class” under Rule 23(b)(3), he or she must demonstrate that
19 “questions of law or fact common to class members predominate over any
20 questions affecting only individual members, and that a class action is superior to

1 other available methods for fairly and efficiently adjudicating the controversy.”
2 Fed. R. Civ. P. 23(b)(3); *see* ECF No. 36 at 11. Certification under Rule 23(b)(3)
3 “is appropriate whenever the actual interests of the parties can be served best by
4 settling their differences in a single action.” *Hanlon*, 150 F.3d at 1022 (internal
5 quotation marks and citation omitted). As the party seeking certification, the
6 plaintiff bears the burden of establishing that these requirements have been
7 satisfied. *Mazza v. Am. Honda Motor Co., Inc.*, 666 F.3d 581, 588 (9th Cir. 2012).

8 Here, the proposed settlement class consists of the following:

9 All individuals who (1) from April 16, 2016 through the date of
10 preliminary Court approval of the Agreement, submitted an
11 application to rent a residential property then-managed by FPI and
located in Washington State (“Rental Application”), and (2) meet one
of the following criteria:

- 12 (a) in conjunction with the submission of a Rental Application,
13 paid a tenant screening fee through FPI to the owner of the
14 property for which the individual submitted the Rental
Application;
- 15 (b) in conjunction with the submission of a Rental Application,
16 had one or more consumer credit reports pulled by FPI or
any other entity acting on its behalf; or
- 17 (c) in conjunction with the submission of a Rental Application,
18 paid a holding deposit through FPI to the owner of the
property for which the individual submitted the Rental
Application.

19 Excluded from the class are FPI, any person or entity that has a
controlling interest in FPI, FPI’s current or former directors and
20 officers, as well as the parties’ counsel and their immediate families.
The Plaintiff Class also does not include any persons who validly

1 requests exclusion from the Plaintiff Class under the Opt-out
2 Procedures described in this Agreement.

3 ECF No. 36 at 4. For the reasons discussed below, the Court preliminarily
4 concludes that certification of this settlement class is appropriate under Rules 23(a)
5 and 23(b)(3).

6 *1. Rule 23(a) Prerequisites*

7 a. Numerosity

8 Rule 23(a)(1) requires that a proposed class must be “so numerous that
9 joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). “Whether
10 joinder would be impracticable depends on the facts and circumstances of each
11 case and does not, as a matter of law, require any specific minimum number of
12 class members.” *Smith v. Univ. of Washington Law Sch.*, 2 F. Supp. 2d 1324, 1340
13 (W.D. Wash. 1998). In general, however, a class consisting of forty or more
14 members is presumed to be sufficiently numerous. *In re Washington Mut. Mortg.-*
15 *Backed Secs. Litig.*, 276 F.R.D. 658, 665 (W.D. Wash. 2011) (citation omitted);
16 *Rannis v. Recchia*, 380 F. App’x 646, 651 (9th Cir. 2010).

17 Here, the parties assert the proposed class consists of no more than 53,000
18 potential class members. ECF No. 26 at 5. On the facts of this case, joinder of
19 53,000 individual claims would be impracticable. Accordingly, the Court
20 preliminarily concludes the numerosity requirement has been satisfied.

1 b. Commonality

2 Rule 23(a)(2) requires that “there are questions of law or fact common to the
3 class.” Fed. R. Civ. P. 23(a)(2). For purposes of this rule, “[c]ommonality exists
4 where class members’ situations share a common issue of law or fact, and are
5 sufficiently parallel to insure [sic] a vigorous and full presentation of all claims for
6 relief.” *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1172 (9th Cir.
7 2010) (internal quotation marks and citation omitted). “What matters to class
8 certification . . . is not the raising of common questions . . . but, rather the capacity
9 of a classwide proceeding to generate common *answers* apt to drive the resolution
10 of the litigation.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)
11 (internal quotation marks and citation omitted) (emphasis in original).

12 The Court finds there are question of law and fact common to the class. The
13 parties assert the common questions of law and fact relate to Defendant’s policy of
14 charging prospective tenants a tenant screening fee, without providing the required
15 statutory disclosures; charging prospective tenants a holding fee for a dwelling unit
16 prior to unconditionally offering the unit to the prospective tenant; and Defendant’s
17 unjust enrichment that resulted from these policies. ECF No. 36 at 7. The Court
18 determines that a proceeding involving the proposed class would likely generate
19 common answers to these questions because it appears the same alleged conduct
20 forms the basis of Plaintiff’s claims. Accordingly, the Court preliminarily

1 concludes that Rule 23(a)'s commonality requirement has been satisfied.

2 c. Typicality

3 Rule 23(a)(3) provides that "the claims or defenses of the representative
4 parties [must be] typical of the claims or defenses of the class." Fed. R. Civ. P.
5 23(a)(3). This requirement serves to ensure that "the interest of the named
6 representative aligns with the interests of the class." *Wolin*, 617 F.3d at 1175.
7 Factors relevant to typicality include "whether other members have the same or
8 similar injury, whether the action is based on conduct which is not unique to the
9 named plaintiffs, and whether other class members have been injured by the same
10 course of conduct." *Ellis*, 657 F.3d at 984. In other words, "[t]ypicality refers to
11 the nature of the claim or defense of the class representative, and not to the specific
12 facts from which it arose or the relief sought." *Id.* (quotation marks and citation
13 omitted).

14 For the purpose of preliminary certification, the Court finds that Plaintiff's
15 claims for relief are typical of, if not identical to, the claims of her fellow class
16 members. ECF No. 36 at 8. The claims of the class representative and class
17 members involve the same injury and course of conduct. Defendant allegedly
18 failed to provide the required disclosures prior to obtaining information on Plaintiff
19 and the class members and/or failed to unconditionally offer Plaintiff and the class
20 members a dwelling unit prior to charging them a holding fee. *Id.* It also appears

1 there are no defenses that are unique to Plaintiff. *See Ellis*, 657 F.3d at 984.

2 Accordingly, the Court preliminarily concludes that the typicality requirement has
3 been satisfied.

4 d. Adequacy of Representation

5 Rule 23(a)(4) requires that “the representative parties will fairly and
6 adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). This
7 requirement applies to both the named plaintiff and to his or her attorney. “To
8 determine whether named plaintiffs will adequately represent a class, courts must
9 resolve two questions: (1) do the named plaintiffs and their counsel have any
10 conflicts of interest with other class members and (2) will the named plaintiffs and
11 their counsel prosecute the action vigorously on behalf of the class?” *Ellis*, 657
12 F.3d at 985 (noting that adequate representation depends on the absence of
13 antagonism and the presence of shared interests between the representative and
14 absentees). “Although there are no fixed standards by which ‘vigor’ can be
15 assayed, considerations include competency of counsel and, in the context of a
16 settlement-only class, an assessment of the rationale for not pursuing further
17 litigation.” *Hanlon*, 150 F.3d at 1021.

18 The Court preliminarily concludes that Plaintiff and her counsel, Kirk D.
19 Miller, will fairly and adequately protect the interests of the settlement class. *See*
20 ECF No. 36 at 9–10. First, it does not appear from the record currently before the

1 Court that Plaintiff and her counsel have any conflicts of interest with other class
2 members. *See* ECF No. 37. Second, this Court has no reason to doubt Plaintiff
3 and her counsel will vigorously prosecute this action on behalf of the putative class
4 members. Mr. Miller has submitted a declaration listing his class action
5 experience litigating consumer and tenant class actions. *Id.* at 2, ¶ 5. Finally,
6 counsel represents that the settlement decision arose after the parties engaged in
7 mediation and subsequent arm’s length negotiations. *Id.* at 3, ¶ 9.

8 Accordingly, this Court concludes that the adequacy of representation
9 requirement has been sufficiently satisfied for purposes of preliminary approval of
10 the settlement agreement.

11 2. *Rule 23(b)(3) Requirements*

12 a. Predominance

13 Under Rule 23(b)(3), the relevant inquiry is whether questions of law or fact
14 common to all class members predominate over individualized questions. *See*
15 *Wolin*, 617 F.3d at 1172 (“While Rule 23(a)(2) asks whether there are issues
16 common to the class, Rule 23(b)(3) asks whether these common questions
17 predominate.”). Although Rules 23(a)(2) and 23(b)(3) both address commonality,
18 “the 23(b)(3) test is far more demanding, and asks whether proposed classes are
19 sufficiently cohesive to warrant adjudication by representation.” *Id.* (internal
20 quotation marks and citation omitted). Where the common questions “present a

1 significant aspect of the case and they can be resolved for all members of the class
2 in a single adjudication, there is a clear justification for handling the dispute on a
3 representative rather than on an individual basis.” *Hanlon*, 150 F.3d at 1022
4 (internal quotation marks and citation omitted).

5 Here, this Court preliminarily concludes that the questions of law and fact
6 common to the class members, which were addressed above in Section A(1)(b) of
7 this Order, clearly predominate over individualized questions. Whether Defendant
8 violated Washington law by failing to provide the required disclosures to
9 prospective class members prior to obtaining information on them, by charging its
10 prospective tenants a holding fee for a dwelling unit prior to unconditionally
11 offering the unit, and whether Defendant was unjustly enriched by these actions are
12 the central questions that predominate over any individualized issues. ECF No. 36
13 at 12. The proposed class members are all individuals who submitted rental
14 applications for properties then-managed by Defendant, are all individuals who
15 reside in Washington State, and all share at least one claim in common. *Id.* at 4.
16 Accordingly, the Court preliminarily concludes that the common questions of law
17 and fact predominate.

18 b. Superiority

19 In considering whether class adjudication is superior to separate individual
20 actions, a court must determine “whether the objectives of the particular class

1 action procedure will be achieved in the particular case.” *Hanlon*, 150 F.3d at
2 1023. In general, a court conducting this superiority analysis must consider: (1)
3 the interests of individual class members in pursuing their claims separately; (2)
4 the extent of any existing litigation concerning the same subject-matter; (3) the
5 desirability of concentrating the litigation in a particular forum; and (4) the
6 difficulties of managing the case as a class action. Fed. R. Civ. P. 23(b)(3)(A)–
7 (D). When certification is sought for settlement purposes only, however, a court
8 need not consider the feasibility of managing the case as a class action under Rule
9 23(b)(3)(D). *Windsor*, 521 U.S. at 620 (“Confronted with a request for settlement-
10 only class certification, a district court need not inquire whether the case, if tried,
11 would present intractable management problems, . . . for the proposal is that there
12 be no trial.”) (citation omitted)).

13 The Court finds that adjudication of this case on a class-wide basis is
14 superior to maintaining individual actions. It does not appear that the class
15 members would have a significant interest in litigating their claims separately.
16 Class members do not have a strong interest in controlling their individual claims,
17 as the individual prosecutions would be identical to and duplicative of the class
18 action litigation. *See* ECF No. 36 at 14. Further, class action would efficiently
19 resolve numerous identical claims, avoiding the waste of judicial resources and
20 eliminating the possibility of conflicting decisions. *Id.* Lastly, the Court is not

1 aware of any other litigation concerning Defendant’s alleged violations of the
2 particular state law at issue. Accordingly, the Court preliminarily determines that
3 the superiority requirement has been satisfied.

4 In sum, the Court preliminarily concludes that class certification is
5 appropriate after conducting a complete analysis under Rule 23. The Court will
6 make a final determination whether class treatment is appropriate after the final
7 fairness hearing.

8 **B. Preliminary Assessment of Settlement Terms**

9 Federal Rule of Civil Procedure 23(e)(2) requires a court to ensure that a
10 proposed class action settlement is fair, adequate, and reasonable prior to granting
11 formal approval. Fed. R. Civ. P. 23(e)(2). To assess the fairness of a settlement,
12 the court looks to the following *Churchill* factors:

13 (1) the strength of the plaintiff’s case; (2) the risk, expense,
14 complexity, and likely duration of further litigation; (3) the risk of
15 maintaining class action status throughout the trial; (4) the amount
16 offered in settlement; (5) the extent of discovery completed and the
stage of the proceedings; (6) the experience and view of counsel; (7)
the presence of a governmental participant; and (8) the reaction of the
class members of the proposed settlement.

17 *In re Online DVD-Rental Antitrust Litigation*, 779 F.3d 934, 944 (9th Cir. 2015)
18 (quoting *Churchill Vill., L.L.C., v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)).

19 Additionally, “the settlement may not be the product of collusion among the
20 negotiating parties.” *Churchill*, 361 F.3d at 576. When a settlement agreement is

1 negotiated prior to formal class certification, the agreement “must withstand an
2 even higher level of scrutiny for evidence of collusion or other conflicts of interest
3 than is ordinarily required under Rule 23(e).” *In re Bluetooth Headset Prod. Liab.*
4 *Litig.*, 654 F.3d 935, 946 (9th Cir. 2011). “The district court’s approval order must
5 show not only that it has explored the *Churchill* factors comprehensively, but also
6 that the settlement is not the product of collusion among the negotiating parties.”
7 *Id.* at 947 (internal quotation marks and alterations omitted) (quoting *In re Mergo*
8 *Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000)).

9 For the reasons discussed below, the Court preliminarily concludes that the
10 proposed settlement satisfies the requirements of Rule 23(e).

11 *1. Terms of the Settlement*

12 Pursuant to the Settlement Agreement, Defendant shall provide \$1,600,000
13 to fund the settlement of this action (the “Settlement Fund”). ECF No. 37-1 at 4, ¶
14 2.01. Class representative payments will be approximately \$20.56 if all 53,000
15 class members remain parties to the Settlement Agreement. *Id.* at 4–5, ¶ 2.01.
16 These payments are to be paid out of the Settlement Fund and shall be issued
17 within **fifteen calendar days** following the Court’s final approval of the Settlement
18 Agreement. *Id.* The remaining funds shall be apportioned as \$100,000 for class
19 administration costs, and \$400,000 for attorneys’ fees and costs and \$10,000 for
20 the Service Award, which will be paid to Plaintiff Brianna Morris for her time and

1 effort in connection with this litigation. *Id.* Additionally, Defendant agrees to
2 comply with RCW 59.18.257 for all future collections of applications and
3 screening fees from prospective tenants on behalf of owners of residential
4 properties located in the State of Washington. *Id.* at 6, ¶ 2.07.

5 In consideration of her awarded class representative payments, Plaintiff
6 irrevocably releases and discharges Defendant from all known and unknown
7 claims, promises, causes of action, or similar rights of any type that she presently
8 may have with respect to any released party. *Id.* at 10, ¶ 5.01–5.04. The class
9 members will also irrevocably release and discharge Defendant from any and all
10 claims raised in the action. *Id.* Finally, the parties agree to not issue any press
11 releases to the media and will refrain from making any false, negative, critical, or
12 disparaging statements, representations, or other communications concerning the
13 other party. *Id.* at 12, ¶ 7.03.

14 2. *Preliminary Approval of the Settlement*

15 At this stage of the proceeding, the Court determines that the proposed
16 settlement is within the range of possible approval.

17 In regard to the strength of Plaintiff’s claims, Plaintiff alleges Defendant
18 violated Washington law by collecting information from, and charging fees to,
19 prospective tenants without first providing certain required tenant screening
20 disclosures. ECF No. 36 at 2. Plaintiff further alleges Defendant charged

1 prospective tenants a holding fee for a rental unit prior to unconditionally offering
2 the unit to the prospective tenant, also in violation of Washington law. *Id.*
3 Defendant denies the allegations and has asserted several defenses. *See* ECF No.
4 10. While Plaintiff is confident in her claims, Plaintiff concedes she would still
5 have several hurdles to clear before a successful resolution of the case. ECF No.
6 36 at 20–21. Plaintiff also acknowledges that class certification is subject to
7 decertification at any time before trial. *Id.* at 21. Conversely, a class settlement
8 ensures prompt and certain relief for Plaintiff and all class members. *Id.*

9 As to the negotiation process, it appears the Settlement Agreement is the
10 result of an adversarial, non-collusive, and arms-length negotiation. *Id.* at 18–19.
11 On November 4, 2020, the parties engaged in a full-day settlement negotiation
12 with the assistance of Honorable Sharon S. Armstrong (Ret.). ECF No. 37 at 3, ¶
13 9. While the full-day session did not prove successful, the parties continued the
14 negotiations and ultimately reached an amicable agreement as to the material terms
15 of a settlement on November 11, 2020. *Id.*

16 In addressing the experience of Plaintiff’s counsel, Mr. Miller represents he
17 has extensive experience litigating and settling class actions, including consumer
18 and tenant class actions. *Id.* at 2, ¶ 5.

19 Regarding the extent of discovery completed, Plaintiff’s counsel appears to
20 have thoroughly investigated Plaintiff’s claims over a two-year period. *Id.* at 3, ¶¶

1 8–9. Since the filing of the case in April 2019, Mr. Miller researched the publicly
2 available information for Defendant’s corporate structure, investigated Defendant’s
3 business practices, and engaged in extensive discovery. *Id.* at ¶ 8.

4 Finally, in considering the amount offered in settlement, the proposed
5 payment to class members appears fair. The monetary payment to class members
6 is approximately 15.2% of the assured damages available under the applicable
7 Washington statutes. ECF No. 36 at 20. If every class member opts into the
8 settlement, the average estimate recovery per class member is \$20.56. ECF No.
9 37-1 at 5, ¶ 2.01. Plaintiff’s counsel represents this amount is on par with other
10 similar class action settlements. *See, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.
11 3d 454, 459 (9th Cir. 2000); *Schuchardt v. Law Office of Rory W. Clark*, 314
12 F.R.D. 673, 684 (N.D. Cal. 2016). Additionally, the settlement offer contains an
13 injunctive provision to ensure Defendant’s compliance with the relevant statutes
14 and to prevent further unjust enrichment. ECF No. 31-1 at 6, ¶ 2.07.

15 As to the attorneys’ fees and costs, the Court preliminarily concludes the
16 amount is not excessive. Class counsel intends to seek an award of not more than
17 \$400,000, which is 25% of the total settlement award. ECF No. 36 at 22–23. This
18 amount is in line with the Ninth Circuit’s consistent approval of using 25% as a
19 benchmark for awarding attorneys’ fees and costs out of common funds.
20 *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 260 (N.D. Cal. 2015).

1 Accordingly, the Court determines the Settlement Agreement may be within
2 the range of reasonableness and fairness.

3 **C. Proposed Notice Program**

4 Rule 23(c)(2) requires that the Court “direct to class members the best notice
5 that is practicable under the circumstances, including individual notice to all
6 members who can be identified through reasonable effort.” Fed R. Civ. P.
7 23(c)(2)(B). The best notice practicable is that which is “reasonably calculated,
8 under all the circumstances, to apprise interested parties of the pendency of the
9 action and afford them an opportunity to present their objections.” *Mullane v.*
10 *Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). The notice must
11 “clearly and concisely state in plain, easily understood language” the following:
12 (1) the nature of the action; (2) the definition of the class certified; (3) the class
13 claims, issues, or defenses; (4) each class member’s option to enter an appearance
14 through an attorney; (5) each class member’s option to be excluded from the class
15 action, upon request; (6) the time and manner for requesting exclusion; and (7) the
16 binding effect of the class judgment on members. Fed. R. Civ. P. 23(c)(2)(B)(i)–
17 (vii).

18 The Court approves the proposed manner of distributing notices. The parties
19 propose enlisting the services of Postlethwaite & Nettervill, APAC (“P&N”) as the
20 Settlement Administrator, which will also facilitate class notice. ECF No. 37-1 at

1 7, ¶ 3.03. Within 15 days of entry of the Order Approving Preliminary Class
2 Settlement, Defendant will provide P&N a list of class members' names and last
3 known addresses, if available. *Id.* at ¶ 3.04. Additionally, P&N will establish and
4 maintain a Settlement Website, which will display the operative Complaint, the
5 Notice information, the Settlement Agreement and opt-out form, the Preliminary
6 Approval Order, Class Counsel's Motion for Fees, and any other findings and
7 orders made in connection with this settlement. *Id.* at 8, ¶ 3.06. P&N will send the
8 Notice postcard via U.S. first class mail and post the Notice information to the
9 Settlement Website within 15 days of receiving the Class Member contact and
10 location information from Defendant. *Id.* at 7, ¶ 3.03.

11 Class member exclusion requests or objections to the settlement must be
12 submitted within 60 days from the date the Notice is sent. *Id.* at 8, ¶ 3.09. Any
13 class member who does not submit a valid request for exclusion will be bound by
14 the release claims of the Settlement Agreement. *Id.* at 12, ¶ 7.08. Payments to
15 class members that are deemed undeliverable or remain unnegotiated 60 days after
16 the check mailing date shall be donated in equal amounts to Family Promise
17 Spokane, Consumer Education and Training Services ("CENTS"), and the
18 Northwest Justice Project as *cy pres*. *Id.* at 6, ¶ 2.06.

19 Having reviewed the content of the proposed notice, the Court finds that
20 they satisfy the requirements of Rule 23(c)(2)(B). The notice itself is written in

1 plain language that advises class members of their rights in a clear and concise
2 manner. **HOWEVER**, the notice to settlement class members shall include
3 information communicating that the class member payments are expected to be
4 approximately \$20.56 if all 53,000 expected class members remain parties to the
5 Settlement Agreement. Accordingly, the Court approves the proposed notice
6 program with this additional information.

7 **D. Appointments and Administration of the Settlement**

8 The Court makes the following appointments: (1) Plaintiff Brianna Morris as
9 Class Representative; (2) Kirk D. Miller as Class Counsel; and (3) P&N as
10 Settlement Administrator. ECF No. 36 at 9, 10, 23.

11 The Settlement Administrator will issue the Class Notice, administer the
12 claims process, and process payment to qualified class members. ECF No. 37-1 at
13 5, ¶¶ 2.02, 2.03, 3.05.

14 **E. Final Fairness Hearing**

15 The Final Fairness Hearing shall be held before this Court on **February 3,**
16 **2022, at 10:00 a.m. at the Thomas S. Foley U.S. Courthouse, 920 West**
17 **Riverside Avenue, Courtroom 902, Spokane, Washington.** The parties should
18 be prepared to discuss the issue of class certification and final approval of the
19 settlement, including payment of attorneys' fees.

20 Any settlement class member who wishes to object to the proposed

1 Settlement Agreement must file with the Court and serve on counsel for the parties
2 a written statement objecting to the Settlement. Such written statement must be
3 filed with the Court and served on counsel for the parties no later than 60 calendar
4 days after the initial mailing date.

5 **ACCORDINGLY, IT IS HEREBY ORDERED:**

6 1. Plaintiff's Unopposed Motion for Preliminary Approval of Class Action
7 Settlement (ECF No. 35) is **GRANTED**.

8 2. The Court preliminarily approves the Settlement Agreement and the
9 terms set forth therein, including the relief afforded to the settlement
10 class members and the payment of attorneys' fees and costs to class
11 counsel.

12 3. Pursuant to Fed R. Civ. P. 23(b)(3), the Court provisionally certifies, for
13 the purpose of settlement, the following class:

14 All individuals who (1) from April 16, 2016 through the date of
15 preliminary Court approval of the Agreement, submitted an
16 application to rent a residential property then-managed by FPI and
located in Washington State ("Rental Application"), and (2) meet
one of the following criteria:

17 (a) in conjunction with the submission of a Rental Application,
18 paid a tenant screening fee through FPI to the owner of the
19 property for which the individual submitted the Rental
Application;

20 (b) in conjunction with the submission of a Rental Application,
had one or more consumer credit reports pulled by FPI or
any other entity acting on its behalf; or

1
2 (c) in conjunction with the submission of a Rental Application,
3 paid a holding deposit through FPI to the owner of the
4 property for which the individual submitted the Rental
5 Application.

6 Excluded from the class are FPI, any person or entity that has a
7 controlling interest in FPI, FPI's current or former directors and
8 officers, as well as the parties' counsel and their immediate
9 families. The Plaintiff Class also does not include any persons who
10 validly requests exclusion from the Plaintiff Class under the Opt-
11 out Procedures described in this Agreement.

- 12 4. The Court designates Brianna Morris as Class Representative.
- 13 5. The Court appoints Kirk D. Miller as Class Counsel.
- 14 6. The Court appoints Postlethwaite and Netterville, APAC, as Settlement
15 Administrator.
- 16 7. The Court approves the form and content of the written notice, *see* ECF
17 No. 37-1 at 33–45, **HOWEVER**, the notice to settlement class members
18 **shall** include information communicating that the class member
19 payments are expected to be approximately \$20.56 if all 53,000 expected
20 class members remain parties to the Settlement Agreement.
8. Class Counsel's Fee and Expense Application and all supporting
materials shall be filed within **30 calendar days** after entry of this Order.
9. The Court approves the request for exclusion. Any settlement class
member who wishes to opt out of the Settlement, must send an exclusion

1 request by mail to the Settlement Administrator within **60 calendar days**
2 from the Settlement Notice mailing date.

3 10. Defendant is directed to provide a list of Class Member names and last
4 known address, where available, to the Settlement Administrator within
5 **15 calendar days** of the entry of this Order.

6 11. Settlement Administrator is directed to issue the Settlement Notice
7 directly to the settlement class members by first class mail within **15**
8 **calendar days** of receiving the Class Member contact and location
9 information from Defendant.

10 12. No later than **95 calendar days** after entry of this Order, Class Counsel
11 shall file a list of all persons opting out of the Settlement, a copy of all
12 objections to the Settlement, and a motion requesting that the Court grant
13 final approval of the Settlement Agreement, including the payment of
14 attorneys' fees and expenses, and enter of final judgment in the action.

15 13. The Final Fairness Hearing shall be held before this Court on **February**
16 **3, 2022, at 10:00 a.m. at the Thomas S. Foley U.S. Courthouse, 920**
17 **West Riverside Avenue, Courtroom 902, Spokane, Washington.** The
18 parties should be prepared to discuss the issue of class certification, the
19 actual number of identified and located class members, and final
20 approval of the Settlement, including payment of attorneys' fees.

1 14. Settlement class members will have the opportunity to appear at the
2 Final Fairness Hearing and assert their support of or objection to the
3 Settlement (including the Fee and Expense Application). Any settlement
4 class member who intends to object to the Settlement must also submit to
5 the Settlement Administrator a written statement objecting to the
6 Settlement. Such written statement must be sent to Settlement
7 Administrator no later than **60 calendar days** from the Notice mailing
8 date.

9 15. The Court reserves the right to continue the date of the Final Fairness
10 Hearing without further notice to settlement class members.

11 16. Pending final determination of whether the Settlement Agreement
12 should be ultimately approved, the Court preliminarily enjoins all
13 settlement class members (unless and until the class member has
14 submitted a timely and valid Exclusion Form) from filing or prosecuting
15 any claims, suits, or administrative proceedings regarding claims to be
16 released by the Settlement Agreement.

17 17. If the Court fails to approve the Settlement, or if any appellate court fails
18 to approve the Settlement, (1) the Settlement Agreement shall have no
19 force and effect, and no party shall be bound by any of its terms; (2)
20 Defendant shall have no further obligation to make any payments to the

1 settlement class members or class counsel based on this Settlement; (3)
2 any preliminary approval order, final approval order, and judgment,
3 including any order regarding class certification, shall be vacated; and (4)
4 the Settlement Agreement and all negotiations, statements, proceedings,
5 and data relating thereto shall be protected by Federal Rule of Evidence
6 408 and shall be without prejudice to the rights of any of the Parties, all
7 of whom shall be restored to their respective positions in the action prior
8 to the Settlement.

9 The District Court Executive is directed to enter this Order and furnish
10 copies to counsel.

11 DATED October 13, 2021.



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Thomas O. Rice
THOMAS O. RICE
United States District Judge