UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

Benjamin McKey, individually and as a representative of the Class,

Plaintiff,

v.

TenantReports.com, LLC,

Defendant.

Case No. 2:22-cv-01908-GJP

MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiff Benjamin McKey ("Plaintiff"), individually and on behalf of the proposed Settlement Class, respectfully moves the Court for preliminary approval of the proposed class action settlement with Defendant TenantReports.com, LLC ("Defendant"). Plaintiff respectfully requests the Court: (1) preliminarily approve the proposed Settlement, (2) certify the Settlement Class for settlement purposes, (3) direct notice to be distributed to the Settlement Class, and (4) schedule a final approval hearing. Defendant does not oppose the relief sought in this Motion.

Dated: June 5, 2023

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Benjamin McKey, individually and as a representative of the Class, Plaintiff, v. TenantReports.com, LLC, Defendant.	Case No. 2:22-cv-01908-GJP

MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiff Benjamin McKey ("Plaintiff" or "Class Representative"), individually and on behalf of the Settlement Class[1], seeks preliminary approval of the proposed class action Settlement with Defendant Tenantreports.com, LLC ("Defendant") (together with Plaintiff, the "Parties") of this putative class action brought under the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* ("FCRA"). This Settlement, if approved, will resolve all claims of Plaintiff and the Settlement Class Members in exchange for Defendant's agreement to pay $877,800 into a common fund, and to implement procedures to avoid reporting outdated adverse information in the future. The Settlement provides substantial relief for the Class, both on a monetary and prospective basis, and compares favorably with comparable class settlements of similar claims. The proposed Settlement follows extensive arms-length negotiations by experienced and informed counsel as well as substantive discovery, and provides substantial relief for the Settlement Class. Its terms are far beyond "fair, reasonable, and adequate" and it warrants preliminary approval. Fed. R. Civ. P. 23(e)(2).

I. BACKGROUND

A. Procedural History

Prior to reaching the Settlement in this matter, the Parties engaged in significant litigation. On April 8, 2022, Plaintiff filed his class action complaint with the Philadelphia Court of Common Pleas, alleging that Defendant had violated the FCRA, 15 U.S.C. § 1681c(a) by including non-conviction adverse information in consumer reports that antedated the reports by more than seven

[1] Unless otherwise defined herein, all terms have the same meanings as those set forth in the Settlement Agreement ("SA" or "Settlement"), attached to the Declaration of Joseph C. Hashmall ("Hashmall Decl.") as Exhibit 1.

years. (ECF No. 1-1.) Defendant removed the action to this Court on May 16, 2022. (ECF No. 1.) On June 17, 2022, Defendant answered the complaint (ECF No. 11), and the case moved into the scheduling and discovery phase (ECF No. 17). During the course of discovery, Plaintiff determined there were additional factual details to add to the complaint that would clarify allegations for Defendant (ECF No. 21), thus, following a stipulation and order, Plaintiff filed the operative First Amended Complaint on July 28, 2022 (ECF No. 23, "FAC"). The FAC alleges the same claim as the initial complaint, that Defendant violated 15 U.S.C. § 1681c(a), by including non-conviction adverse information on consumer reports that antedate the reports by more than seven years. (*Id.*) Defendant answered the FAC on August 11, 2022 (ECF No. 24).

During the course of discovery, the Parties both exchanged written requests and responses, and produced documents. Plaintiff took the deposition of Defendant's 30(b)(6) representative, and Plaintiff himself was deposed. Additionally, the Parties engaged in substantial third party discovery with Defendant's data vendor. Plaintiff also worked to depose a key former employee of Defendant's, including filing a motion with the Court regarding service. (ECF No. 27.) Defendant also produced data samples, as did the third party vendor, and Plaintiff retained an expert to review and analyze the same, ultimately providing a formal written report in March 2023. (Hashmall Decl. ¶ 4.)

On March 17, 2023, the Parties attended a full-day mediation with third party neutral Steven Jaffe of Upchurch Watson White & Max, at which the Parties reached a settlement in principle. Following the mediation, the Parties continued negotiations, through counsel, resulting in a binding Terms Sheet in April. The Parties continued working to formalize the Settlement, and executed the final Settlement Agreement presented here in June 2023.

B. The Settlement

1. Settled Claims

As alleged in the FAC, the FCRA generally prohibits consumer reporting agencies from including adverse information in a consumer report that is older than seven years from the date of the report. (FAC ¶ 18; *see also* 15 U.S.C. § 1681c.) This general restriction does not apply to criminal conviction records, which may be reported indefinitely. (*Id.*) However, non-criminal conviction information, such as dismissed charges, may not be included in a consumer report if the information predates the report by more than seven years, with certain exceptions. (*Id.*)

Plaintiff alleges that Defendant violated this provision of the FCRA by producing consumer reports that included information relating to dismissed charges that predated the reports by more than seven years. (FAC ¶¶ 17-18, 33-43.) Specifically, Plaintiff alleged that when he was applying for housing, Defendant issued a report containing a number of criminal charges older than seven years which had been dismissed, and that the inclusion of that information had a negative impact on his ability to obtain housing. (*Id.*) Plaintiff alleges this claim on behalf of a class of those similarly situated, and sought statutory damages of $100-$1,000 for Defendant's allegedly willful violations. (*Id.* ¶¶ 44, Claim for Relief.)

The rights that Plaintiff sought to protect in this action are important. In order to protect individual privacy, Congress restricted the age of information that could be included in consumer reports. The FCRA forbids consumer reporting agencies from reporting adverse information (other than convictions of crimes) older than seven years. 15 U.S.C. § 1681c. According to the federal government, "Section 1681c's restrictions on disclosing older adverse information serve

the governmental interest in protecting individuals' privacy."[2] "By limiting the disclosure of potentially embarrassing, harmful, and irrelevant information, the provision necessarily and automatically protects individuals' interests in keeping that information private." *Id.* Even though many records which find their way into background reports are public, gathering and compiling older records requires significant effort. By preventing their dissemination, the FCRA protects consumers' interests "in maintaining the [records'] 'practical obscurity.'" *See King v. Gen. Info. Servs., Inc.*, 903 F. Supp. 2d 303, 311-12 (E.D. Pa. 2012).

In this action, Plaintiff sought to ensure that individuals whose privacy interests had been impinged upon received compensation, and that further violations would not occur in the future. With this Settlement, Plaintiff has achieved both goals.

2. Settlement Class

The Settlement contemplates a Settlement Class defined as:

> all persons residing in the United States of America (including its territories and Puerto Rico) who: (1) were the subject of a background report prepared by the Tenantreports.com line of business between April 8, 2020 and April 9, 2023; (2) where the report contained at least one record of a criminal non-conviction, based on the Parties' review of Defendant's records, that predated the date the report was issued by seven years or more.

(SA ¶ 2.19.) The Parties estimate this Class to consist of approximately 4,615 consumers. (*Id.* ¶ 4.1.1.)

Using data obtained in discovery, Plaintiff's expert was able to identify class members by parsing the text of Defendant's reports, comparing the date of events listed on the reports with the date of the report itself to identify items older than seven years, and using a list of terms associated

[2] Mem. of the U.S. in Supp. of the Constitutionality of §1681c of the FCRA, *King v. Gen. Info. Servs., Inc.*, No. 2:10-cv-6850, ECF No. 52 at 10 (E.D. Pa. May 3, 2012).

with non-convictions (such as "dismissed" or "acquitted") to identify non-convictions older than seven years.[3] (Hashmall Decl. ¶ 5.)

The Settlement Class, in exchange for the relief provided, will provide a limited release of claims related only to the inclusion of adverse information older than seven years on reports through the Tenantreports.com line of business. (SA ¶ 4.4.)

3. Relief Provided

Under the Settlement, Defendant will create a common fund of $877,800. (*Id.* ¶ 2.24.) After Court-approved deductions for attorneys' fees and costs, settlement administration expenses, and a service award for Plaintiff, the entire remaining balance of the fund will be allocated *pro rata* to Settlement Class Members based on settlement shares. (*Id.* ¶ 4.3.2.) All Settlement Class Members will automatically be allocated one settlement share. (*Id.*) Settlement Class Members will also be afforded the opportunity to return a Claim Form which will entitle them to three additional settlement shares. The Claim Form requires an attestation of additional harm as a result of Defendant's reporting. (*Id.* ¶ 4.3.2.1.) Class Members will receive the settlement payments via check. Following the check negotiation period, any remaining funds will be divided equally between the two *cy pres* organizations the Parties propose – Public Justice and Community Action Agency of Delaware County, Inc., both non-profit charitable organizations. (*Id.* ¶ 2.12.) No portion of the fund will revert to Defendant.

Defendant has also agreed to important injunctive relief as a result of the Settlement. For at least three years after final approval of the Settlement, Defendant will implement automatic filters to search for records that are slated to be included on a consumer report that (1) are criminal

[3] After the basic terms of the Settlement were agreed, Defendant's expert engaged in a similar process to identify a small number of additional class members.

in nature and associated with an offense that did not result in a conviction and (2) the earliest date associated with the record is more than seven years before the date of the report. (*Id.* ¶ 4.3.1, Ex. B.) These identified records will be removed before the consumer report at issue is sent to the end-user. (*Id.*)

4. Form of Notice to the Class

The Parties have agreed to a notice plan which provides for direct notice to all Settlement Class Members through a mailed postcard notice and tear-away Claim Form (SA, Ex. D), and a long form notice on the Settlement Website (SA, Ex. F). The postcard notice will be sent to the last known mailing address for each Settlement Class Member from Defendant's records, as updated by the Settlement Administrator. (SA ¶ 4.2.3.) The Settlement Website, where the long form notice will be posted, will also contain the FAC, the Settlement Agreement, this Motion, and the forthcoming Motion for Attorneys' Fees, Costs and Named Plaintiff Award, and Motion for Final Approval. (*Id.* ¶ 4.2.4.) The Website will also have FAQs, and a place for Class Members to submit a Claim Form and/or update their contact information. (*Id.*)

All forms of notice inform Class Members of their rights under the Settlement and the deadlines by which to exercise them. (SA, Exs. D, F.) As the Settlement contemplates the Settlement Class being certified under Fed. R. Civ. P 23(b)(3), this includes the right to opt out and the right to object. Settlement Class Members may opt-out of the Settlement by sending a written request to be excluding to the Settlement Administrator, postmarked by the Opt-Out & Objections Deadline. (SA ¶ 4.4.4.1.) To object, Class Members must object in writing, with specified information included (*id.* ¶ 4.4.4.4) and mail their written objection to the Settlement Administrator, postmarked by the Opt-Out & Objections Deadline. (*Id.*) Settlement Class

Members who fail to make objections in the manner specified shall be deemed to have waived any objections to the Settlement. (*Id.*)

Defendant will also comply with the notice requirements of the Class Action Fairness Act, 28 U.S.C. § 1715. (*Id.* ¶ 4.2.5.)

5. Fees, Costs, and Service Award

Plaintiff's Counsel will petition the Court for attorneys' fees not to exceed one-third of the common fund, as well as reimbursement of documented, out-of-pocket expenses incurred to date. (SA ¶ 5.3.) Additionally, Plaintiff will request approval of a service award, for his efforts as Class Representative, in the amount of $7,500. (*Id.*) These amounts would be requested to be paid from the common fund and would be formally requested no later than forty-five (45) days following the mailing of Notice (and thus prior to the Opt-Out & Objections Deadline) so that Settlement Class Members have the opportunity to review the motion papers prior to their deadline to act. (*Id.*) Neither the settlement amount, nor approval of the Agreement, are contingent upon the full amount of any requested fees or service award being approved. (*Id.*)

Additionally, the Parties have agreed that the Settlement Administrator's expenses for its work in preparing and distributing notice to the Settlement Class, securing and maintaining the Settlement Website and phone support, eventual preparation and mailing of payments, and other administrative tasks should be deducted from the common fund as well, subject to Court approval. (*Id.* ¶ 5.3.1.)

II. ARGUMENT

A. The Settlement Terms are Fair, Reasonable, and Adequate

Class action settlements are subject to Court approval. Fed. R. Civ. P. 23(e). This is a two-step process, and during the initial preliminary approval step, the Court considers whether the

settlement "falls within the range of possible approval," such that notice of the settlement may be sent to the class members. *Mehling v. N.Y. Life Ins. Co.*, 246 F.R.D. 467, 472 (E.D. Pa. 2007). In the second step, after notice of the proposed settlement is sent to the class and they have an opportunity to respond, the Court holds a final fairness hearing and considers whether the settlement is fair, reasonable, and adequate, and warrants final court approval. *Id.*

The decision whether to approve a proposed class action settlement is a matter of judicial discretion. *See In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 299 (3d Cir. 1998) (quoting *Girsh v. Jepson*, 521 F.2d 153, 156 (3d Cir. 1975)). There is a strong presumption, however, in favor of settlements, especially in "'class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.'" *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594-95 (3d Cir. 2010) (quoting *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995)). The central question on preliminary approval is whether there are obvious deficiencies in the proposed settlement or reasons to doubt its fairness, and whether the settlement is the result of arms-length negotiations. *Mehling*, 246 F.R.D. at 472; *Klingensmith v. BP Prods. N. Am., Inc.*, 2008 WL 4360965, *5 (W.D. Pa. 2008); *Hanlon v. Palace Entertainment Holdings, LLC*, 2012 WL 27461, *5 (W.D. Pa. Jan. 3, 2012). The Court is not required to "reach ultimate conclusions on law and fact at this stage of the litigation." *Id.*

Courts in this Circuit consider certain factors in making this approval determination, including (1) whether the negotiations occurred at arms-length; (2) whether there was sufficient discovery; and (3) whether the proponents of the settlement are experienced in similar litigation.

In re Gen. Motors Corp., 55 F.3d at 785.[4] Courts may also balance the value of the settlement against the plaintiffs' expected recovery. *In re NFL Players' Concussion Injury Litig.*, 961 F. Supp. 2d 708, 714 (E.D. Pa. 2014). Here, the Settlement more than satisfies this criteria.

1. The Proposed Settlement was Reached After Exchange of Substantial Discovery, and Arms-Length Negotiations

As set forth above, the Parties undertook significant efforts in the litigation and settlement of this matter. These efforts included the exchange of written requests and responses, productions of documents by both sides, depositions of both Plaintiff and Defendant's 30(b)(6) representative, and third party discovery with Defendant's data vendor. Defendant also produced data samples, as did the third party vendor, and Plaintiff retained an expert to review and analyze the same, ultimately providing a formal written report in March 2023. (Hashmall Decl. ¶ 4.) The significant discovery taken in this case allowed the Parties to make reasoned and informed decisions regarding the strengths, weaknesses, and the value of the claims asserted. *In re Gen. Motors Corp.*, 55 F.3d at 785; *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 537 (3d Cir. 2004) (question on this factor is "whether counsel had an adequate appreciation of the merits of the case before negotiating"); *Myers v. Jani-King of Phila., Inc.*, No. 09-1738, 2019 WL 2077719, *3 (E.D. Pa. May 10, 2019) (preliminary approval granted where "counsel engaged in pre-filing research, an analysis of Plaintiffs' claims" and "review[ed] [] class member documents."); *see also In re Prudential*, 148 F.3d at 319 ("To ensure that a proposed settlement is the product of informed negotiations, there should be an inquiry into the type and amount of discovery the parties have undertaken.").

[4] Another factor for review considers the reaction of the class members, *see In re Prudential*, 148 F.3d at 318, but Plaintiff will address that factor at final approval, following notice to the Settlement Class and once they have had an opportunity to review and respond to the Settlement's terms.

Moreover, the Parties attended a full-day mediation with third party neutral Steve Jaffe of Upchurch Watson White & Max, and following the mediation, the Parties continued negotiations, through counsel, before the terms were agreed upon. The Parties' counsel have extensive expertise in class actions, and FCRA cases in particular. (Hashmall Decl. ¶¶ 9-15; *see also* https://www.troutman.com/professionals/david-m-gettings.html.) Further, the attorneys' fees and service award contemplated were not discussed or negotiated until all other material terms of the Settlement had been agreed upon, eliminating the possibility of a trade-off between compensation for the Settlement Class and compensation for Plaintiff or Plaintiff's Counsel. (SA ¶ 5.3.)

All of these circumstances demonstrate the Settlement is fair. *See, e.g., In re Auto. Refinishing Paint Antitrust Litig.*, 617 F. Supp. 2d 36, 341 (E.D. Pa. 2007); *Petruzzi's, Inc. v. Darling-Delaware Co., Inc.*, 880 F. Supp. 292, 301 (M.D. Pa. 1995).

2. The Settlement is Well Within the Range of Approval

i. Recovery for the Settlement Class is Substantial

When determining whether a settlement meets the requirements for preliminary approval, courts may also compare the settlement value to the expected recovery to ensure the settlement is adequate in light of the risks of continued litigation. *In re NFL Players' Concussion Injury Litig.*, 961 F. Supp. 2d at 714. For example, when the "attendant risks of litigation for the Plaintiffs are relatively and admittedly high," or when "the litigation is likely to be … protracted and expensive," these factors weigh in favor of preliminary approval. *Gates v. Rohm & Haas Co.*, 248 F.R.D. 434, 444-45 (E.D. Pa. 2008). In considering this factor, "the court should avoid conducting a mini-trial and must 'to a certain extent, give credence to the estimation of the probability of success proffered by class counsel, who are experienced with the underlying case, and the possible defenses which

may be raised to their causes of action.'" *In re Ikon Office Sols., Inc. Sec. Litig.*, 209 F.R.D. 94, 105-6 (E.D. Pa. 2002).

Plaintiff filed this action seeking statutory damages under the FCRA, which provides for between $100 and $1,000 for each willful violation. 15 U.S.C. § 1681n(a)(1). The FCRA itself does not provide guidance to courts in choosing the appropriate recovery for a statutory violation, *see id.*, but courts have looked instead to "the importance, and hence the value, of the rights and protections" at issue in the case. *Ashby v. Farmers Ins. Co. of Oregon*, 592 F. Supp. 2d 1307, 1318 (D. Or. 2008); *In re Farmers Ins. Co., Inc., FCRA Litig.*, 741 F. Supp. 2d 1211, 1224 (W.D. Okla. 2010). Here, should the Court approve the contemplated deductions from the fund for attorneys' fees, costs, settlement administration expenses, and service award, and assuming that 10% of class members request additional settlement shares, the net monetary recovery per settlement share is $87. This expected recovery is a substantial percentage of the likely award should the case have proceeded all the way through a final judgment in Plaintiff's favor. *See City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 n.2 (2d Cir. 1974), *abrogated on other grounds Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000) ("[T]here is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery").

The recovery also compares favorably with other settlements of similar claims. *See*, *e.g.*, *Bankhead v. First Adv.*, No. 17-cv-2910 (N.D. Ga. Sept. 19, 2019) (approving § 1681c settlement that provided class members approximately $60); *Haley v. TalentWise, Inc.*, No. 13-cv-1915 (W.D. Wash. June 16, 2015) (approving settlement that provided class members approximately $50 each for their claims under § 1681c); *King v. General Info. Servs.*, No. 10-cv-6850 (E.D. Pa. Nov. 4,

2014) (approving settlement that provided class members approximately $50 each for their claims under § 1681c).

This recovery is all the more significant in the face of the amount of litigation left to be conducted at the time of settlement, and the risks faced by the Settlement Class, further outlined in the next section below, but that ultimately could have resulted in no recovery at all.

Moreover, the allocation of shares between class members is reasonable. The Settlement calls for the certification of a single Settlement Class. Every Settlement Class Member will receive an automatic settlement share and have an equal opportunity to request additional shares if they provide a straight-forward attestation of additional harm. This method of allocation is common in FCRA settlements. *See, e.g.*, *Saylor v. RealPage, Inc.*, No. 22-cv-53 (E.D. Va. Sept. 26, 2022) (approving distribution of FCRA settlement that provided one settlement share to all class members and two shares to those who returned a form attesting to additional harm); *Thomas v. Backgroundchecks.com*, No. 13-cv-29 (E.D. Va.) (approving FCRA settlement with provision for class members to receive additional payments if assert that background check caused certain harms).

The Settlement does provide for a modest service award for Plaintiff, but it is subject to the Court's review and approval. Furthermore, service awards to named plaintiffs in class actions do not render a settlement unfair or unreasonable. *See, e.g.*, *Cullen v. Whitman Med. Corp*., 197 F.R.D. 136, 145 (E.D. Pa. 2000).

Additionally, the Settlement includes injunctive relief, wherein Defendant has agreed to implement filters that will search for and remove outdated non-conviction records. This further weighs in favor of the reasonableness of the Settlement, especially given that the FCRA has been found to not permit private litigants to pursue injunctive relief. *See McIntyre v. RealPage, Inc.*,

No. 18-3934, 2023 WL 2643201, *2 n.4 (E.D. Pa. March 24, 2023) (collecting cases, finding this to weigh in favor of approving settlement that provides injunctive relief).

ii. Plaintiff Faces Significant Risks in the Absence of Settlement.

The relief outlined above is even more impressive when viewed in light of the risks of continuing the litigation. *See Fisher Bros. v. Phelps Dodge Indus., Inc.*, 604 F. Supp. 446, 451 (E.D. Pa. 1985) (noting "inherent risks of litigation" favor settlement approval). Here, Plaintiff had yet to survive class certification or summary judgment on his claims. While Plaintiff is confident that these obstacles could have been overcome, each phase presents serious risks which the Settlement allows Plaintiff and the Settlement Class to avoid.

Plaintiff did not just face generic litigation risk. He faced specific risk on the issue of willfulness. The FCRA is not a strict liability statute. *Dalton v. Capital Assoc. Indus.*, 257 F.3d 409, 417 (4th Cir. 2001). A FCRA plaintiff can recover statutory damages only where the defendant has acted willfully. 15 U.S.C. § 1681n(a)(1), o(a)(1). Had this litigation continued, Defendant would have contested the question of willfulness. Again, while Plaintiff is confident in his position, the difficulties he and the Settlement Class would have faced regarding willfulness weighs in favor of settlement. *See Chakejian v. Equifax Info. Servs., LLC*, 275 F.R.D. 201, 212 (E.D. Pa. 2011) (proving willfulness in FCRA case was "a high hurdle to clear," which weighed in favor of settlement approval); *Reibstein v. Rite Aid Corp.*, 761 F. Supp. 2d 241, 253 (E.D. Pa. 2011) (willfulness presented "considerable – albeit not insurmountable – risks" weighed in favor of settlement approval).

B. Certification of the Settlement Class is Appropriate

The Settlement provides for Plaintiff to seek certification of the Settlement Class, for settlement purposes only. (SA ¶ 4.1.) Even a class certified for settlement purposes must satisfy

the requirements for class certification under Federal Rule of Civil Procedure 23, though the court "need not inquire whether the case, if tried, would present intractable management problems," as the "proposal is that there be no trial." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

In order to be certified, a class must satisfy the four requirements of Rule 23(a): (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. *In re Prudential*, 148 F.3d at 308-9. If those criteria are met, the Court must also find that the class satisfies the applicable criteria under Rule 23(b), here, (b)(3): (1) predominance, and (2) superiority. *Id.*

The Settlement Class meets all required criteria, and should be certified for purposes of the Settlement.

1. The Prerequisites of Rule 23(a) are Met

i. Numerosity

Rule 23(a)(1) requires a proposed class be "so numerous that joinder of all members is impracticable." The Rule does not set a specific threshold, but the Third Circuit has noted that "numbers in excess of forty, particularly those exceeding one hundred or one thousand have sustained the requirement." *Weiss v. York Hosp.*, 745 F.2d 786, 799 (3d Cir. 1984) (quotations omitted); *see also Eisenberg v. Gannon*, 766 F.2d 770, 785-6 (3d Cir. 1985) (finding close to one hundred to be sufficiently numerous). Here, there are approximately 4,615 Settlement Class Members, easily satisfying numerosity.

ii. Commonality

To meet the commonality requirement of Rule 23(a)(2), there must be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). This bar is "not a high one." *Rodriguez v. Nat'l City Bank*, 726 F.3d 372, 382 (3d Cir. 2013). "A finding of commonality does not require that all class members share identical claims, and indeed 'factual differences among the claims of

the putative class members do not defeat certification.'" *In re Prudential*, 148 F.3d at 310 (quoting *Baby Neal v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994)). All that is required is that "the named plaintiffs share at least one question of fact or law with the grievances of the prospective class." *Rodriguez*, 726 F.3d at 382. Thus, "[t]he commonality element is generally satisfied when a plaintiff alleges that defendants have engaged in a standardized course of conduct that affects all class members." *In re Checking Account Overdraft Litig.*, 275 F.R.D. 666, 673 (S.D. Fla. 2011) (internal brackets and quotation marks omitted).

Commonality has been found in similar cases against consumer reporting agencies, alleging the reporting of outdated adverse information in violation of 15 U.S.C. § 1681c. *See, e.g., Hawkins v. S2Verify*, No. 15-03502, 2016 WL 3999458, *3 (N.D. Cal. July 26, 2016); *Massey v. On-Site Manager, Inc.*, 285 F.R.D. 239, 244 (E.D.N.Y. 2012); *King v. General Info. Servs.*, No. 10-cv-6850 (E.D. Pa. Nov. 4, 2014); *Haley v. TalentWise, Inc.*, No. 13-cv-1915 (W.D. Wash. June 16, 2015).

Here, there are common issues of law and fact with respect to the Settlement Class, which would be determinative of the claims at issue, and that are based on Defendant's common procedures. The common determinative question here is whether Defendant's process and policy of reporting outdated non-conviction information was improper. Further, Defendant's alleged willfulness would also be a common legal question. *Massey*, 285 F.R.D. at 245 ("the central issues of whether defendant issued reports containing obsolete information about members of the class and whether it did so willfully can be proved on a generalized basis through records and testimony from defendant").

Accordingly, the commonality requirement is satisfied.

iii. Typicality

The typicality requirement "tend[s] to merge" with the commonality requirement. *Gen. Tel. Co. of the S.W. v. Falcon*¸ 457 U.S. 147, 157 n. 13 (1982); *In re Community Bank of Northern Virginia*, 418 F.3d 277, 303 (3d Cir. 2005) (quoting *Baby Neal*, 43 F.3d at 56). In evaluating whether the typicality requirement has been met, the Court must "assess whether the class representatives themselves present those common issues of law and fact that justify class treatment." *Eisenberg*, 766 F.2d at 786. This does not mean that the class representatives and putative class members must share "identical" claims. *Id*. Rather, it simply requires that the "claims be common, and not in conflict." *Hassine v. Jeffes*, 846 F.2d 169, 177 (3d Cir. 1988); *accord, In re Schering Plough Corp. ERISA Litig*., 589 F.3d 585, 598 (3d Cir. 2009) ("[T]he named plaintiffs' claims must merely be 'typical, in common-sense terms, of the class, thus suggesting that the incentives of the plaintiffs are aligned with those of the class.'"). Thus, "cases challenging the same unlawful conduct which affects both the named plaintiffs and the putative class usually satisfy the typicality requirement irrespective of the varying fact patterns underlying the individual claims." *Baby Neal*, 43 F.3d at 58.

In this case, Plaintiff has the same claims as the members of the Settlement Class, and the claims are based on the same legal theory. As alleged, Plaintiff, like every other member of the Settlement Class had a report produced on him by Defendant which included information regarding non-convictions older than seven years from the date of the report. Typicality is satisfied.

iv. Adequacy

Fed. R. Civ. P. 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." This adequacy requirement has two components: (1) the

experience and performance of class counsel; and (2) the interests and incentives of the representative plaintiffs. *Dewey v. Volkswagen Aktiengesellschaft*, 681 F.3d 170, 181 (3d Cir. 2012).

Plaintiff has been actively engaged in litigation. He has provided counsel with relevant documents, responded to written discovery, sat for his deposition, stayed abreast of developments and settlement negotiations, and evaluated the Settlement's terms. (Hashmall Decl. ¶ 6.) Plaintiff understands what it means to be a class representative and has put the interests of the Settlement Class first in making all decisions related to litigation and settlement. (*Id*.) Further, Plaintiff does not have any conflicts of interest that would compromise his representation of the Settlement Class. (*Id*.)

Proposed Class Counsel are highly qualified. Berger Montague PC ("Berger") is experienced in complex class action litigation and consumer litigation in general. (Hashmall Decl., Ex. 3.) Berger was founded in 1970, and has been concentrated on representing plaintiffs in complex class actions ever since. (*Id*.) The firm has been recognized by courts for its skill and experience in handling major complex litigation. (*Id*.) Lead counsel from Berger, E. Michelle Drake, has worked extensively on FCRA class actions, and Joseph C. Hashmall, also from Berger, has concentrated his practice on FCRA litigation as well. (*Id*. ¶¶ 9-15.)

2. The Prerequisites of Rule 23(b)(3) Are Met.

The Settlement Class also meets the predominance and superiority requirements of Fed. R. Civ. P. 23(b)(3). In evaluating this prong, the Court may consider class members' interests in prosecuting their claims individually, the extent and nature of litigation thus far, and the desirability of concentrating the litigation in the particular forum. Fed. R. Civ. P. 23(b)(3)(A)-(C). In the context of a classwide settlement, the court need not consider whether the case, if tried,

would present difficult management problems. *Amchem*, 521 U.S. at 620. The relevant requirements are easily met here.

i. Predominance

"Rule 23(b)(3) … does not require a plaintiff seeking class certification to prove that each element of [the] claim is susceptible to classwide proof." *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 133 S. Ct. 1184, 1196 (2013) (emphasis in original) (internal brackets and quotation marks omitted). Rather, the Rule simply requires what it says, i.e., that common questions "predominate over any questions affecting only individual [class] members." *Id*. (emphasis in original) (citing Fed. R. Civ. P. 23(b)(3)).

This predominance requirement is "readily met" in consumer cases such as this. *Amchem*, 521 U.S. at 624. The predominance inquiry assesses whether a class action "would achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated." *Sullivan v. DB Investments, Inc*., 667 F.3d 273, 297 (3d Cir. 2011) (quoting Fed. R. Civ. P. 23(b)(3) advisory committee note to 1966 amendment). "In order to predominate, the common issues must constitute a significant part of the individual cases." *Chiang v. Veneman*, 385 F.3d 256, 273 (3d Cir. 2004). However, "the common issues need not be dispositive of the entire litigation." *Stewart v. Assoc. Cons. Discount Co*., 183 F.R.D. 189, 197 (E.D. Pa. 1998). Thus, although the predominance analysis is more rigorous than the commonality requirement of Rule 23(a), the focus of the predominance inquiry is also on the conduct of the defendant. *Sullivan*, 667 F.3d at 297-99; *see also In re Linerboard Antitrust Litig*., 305 F.3d 145, 163 (3d Cir. 2002) ("the inquiry necessarily focuses on defendants' conduct, that is, what defendants did rather than what plaintiffs did.").

Here, there are class-wide issues that predominate over any individual concerns. Common issues predominate for class members in that Defendant allegedly reported a non-conviction on their consumer report that was older than seven years from the date of the report. Moreover, because Defendant is a single entity, which followed the same procedures with respect to every member of the respective Settlement Class, the answer to the question of whether its alleged violations were willful can be determined on a classwide basis. *See Chakejian*, 256 F.R.D. at 500 ("Thus, the inquiry is to [defendant's] state of mind in implementing its policies and procedures, not on the customer's particular interaction with the CRA . . . ."). Further, if the case were litigated, the amount of damages could also be determined on a classwide basis. Because Plaintiff sought statutory damages, no individual analysis of damages would be required. *See Murray v. GMAC Mortg. Cor.*, 434 F.3d 948, 952-3 (7th Cir. 2006). Thus, the predominance requirement is met.

ii. Superiority

To be certified, a class action must be "superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Again, in the settlement context, the Court need not address manageability. *Amchem*, 521 U.S. at 620. The superiority requirement is satisfied here. As the Supreme Court has recognized, "[t]he policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights." *Amgen*, 133 S. Ct. at 1202 (quoting *Amchem*, 521 U.S. at 617). For example, the Third Circuit found that in a putative class action involving claims averaging $100 per plaintiff, "most of the plaintiffs would have no realistic day in Court if a class action were not available." *Weiss v. Regal Collections*, 385 F.3d 337, 345 (3d Cir. 2004).

In a matter such as this, where the claims of all class members are identical and are based on the same common core of facts, but involve a modest amount of damages, it is clear that adjudicating this matter as a class action will achieve economies of time, effort, and expense, and promote uniformity of results. *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 540 (6th Cir. 2012) ("[i]t is often the case that class action litigation grows out of systemic failures of administration, policy application, or records management that result in small monetary losses to large numbers of people. To allow that same systemic failure to defeat class certification would undermine the very purpose of class action remedies."); *see also Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 677 (D. Md. 2013) (finding class action superior and certification for settlement purposes justified "particularly in light of the relatively modest amount of statutory damages available under the FCRA").

Plaintiff's Counsel are unaware of any other currently-pending lawsuits against Defendant relating to the reporting of outdated non-conviction information. (Hashmall Decl. ¶ 7.) Further, in the event that a consumer does have significant monetary damages warranting an individual suit, they may opt-out and pursue litigation on their own. *Murray*, 434 F.3d at 953 ("When a few class members' injuries prove to be substantial, they may opt out and litigate independently."). Class adjudication is the superior method for resolving the claims in this case.

C. The Proposed Notice Plan is Appropriate

Attached to the Settlement Agreement, the Parties have submitted their proposed notices, including the Postcard Notice, and the Long Form Notice. (SA at Exs. D, F.) The notices include all of the information required by Fed. R. Civ. P. 23(c)(2)(B). (*Id.*) Moreover, regarding format, numerous courts have approved mailing notice to class members via a postcard. *See, e.g., Gascho v. Global Fitness Holdings, LLC*, 2014 WL 1350509, at *6-7, 29 (S.D. Ohio Apr. 4, 2014) (finally

approving settlement with postcard notice sent to majority of class); *In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. 136, 144, 151-52 (D.N.J. 2013) (finally approving settlement with postcard notice); *In re Flonase Antitrust Litig.*, 291 F.R.D. 93, 99 (E.D. Pa. 2013) (same); *Malta v. Fed. Home Mortg. Corp.*, 2013 WL 444619, at *11 (S.D. Cal. Feb. 5, 2013) (preliminarily approving settlement with postcard-type notice); *Milliron v. T-Mobile USA, Inc.*, 2009 WL 3345762, at *4 (D.N.J. Sept. 10, 2009), *aff'd*, 423 F. App'x 131 (3d Cir. 2011) (preliminarily approving settlement with postcard notice for non-current customers and bill stuffers for current customers); *In re Mut. Funds Inv. Litig.*, 2011 WL 1102999, at *1-2 (D. Md. Mar. 23, 2011) (finding postcard notices satisfy Rule 23); *Perez v. Asuiron Corp.*, 501 F. Supp. 2d 1360, 1375-77 (S.D. Fla. 2007) (finally approving settlement with postcard notice). The Postcard Notice here informs Settlement Class Members of the terms of the Settlement and their rights and deadlines in which to exercise them and directs them to the Settlement Website which contains further information, documents, and the Long Form Notice. (SA, Ex. D.) The notice plan is "'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.'" *Int'l Union, United Auto., Aero. & Agr. Impl. Workers of Am. v. Gen. Motors Corp.*, 497 F.3d 615, 629 (6th Cir. 2007) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)); *see* Fed. R. Civ. P. 23(e)(1). The notices and plan for distribution of the same should be approved.

III. CONCLUSION

Based on the foregoing, the Court should grant Plaintiff's Motion, enter the proposed Preliminary Approval Order, and set a final approval hearing for not sooner than 96 days after the preliminary approval order is entered, or September 18, 2023. (*See* Hashmall Decl., Ex. 2.)

Dated: June 5, 2023

/s/Joseph C. Hashmall
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Counsel for Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

Benjamin McKey, individually and as a representative of the Class,

Plaintiff,

v.

TenantReports.com, LLC,

Defendant.

Case No. 2:22-cv-01908-GJP

DECLARATION OF JOSEPH C. HASHMALL

I, Joseph C. Hashmall, hereby declare as follows:

1. I am one of Plaintiff's Counsel in the above-captioned matter.

2. I submit this Declaration in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

3. Attached hereto as **Exhibit 1** is a true and correct copy of the Parties' Settlement Agreement.

4. During the course of discovery, the Parties both exchanged written requests and responses, and produced documents. Plaintiff took the deposition of Defendant's 30(b)(6) representative, and Plaintiff himself was deposed. Additionally, the Parties engaged in substantial third party discovery with Defendant's data vendor. Plaintiff also worked to depose a key former employee of Defendant's, including filing a motion with the Court regarding service. Defendant also produced data samples, as did the third party vendor, and Plaintiff retained an expert to review and analyze the same, ultimately providing a formal written report in March 2023.

5. Using data obtained in discovery, Plaintiff's expert was able to identify class members by parsing the text of Defendant's reports, comparing the date of events listed on the

reports with the date of the report itself to identify items older than seven years, and using a list of terms associated with non-convictions (such as "dismissed" or "acquitted") to identify non-convictions older than seven years.

6. Plaintiff has been actively engaged in litigation. He has provided counsel with relevant documents, responded to written discovery, sat for his deposition, stayed abreast of developments and settlement negotiations, and evaluated the Settlement's terms. Plaintiff understands what it means to be a class representative and has put the interests of the Settlement Class first in making all decisions related to litigation and settlement. Further, Plaintiff does not have any conflicts of interest that would compromise his representation of the Settlement Class.

7. I am unaware of any other currently pending lawsuits against Defendant relating to the reporting of outdated non-conviction information.

8. Attached hereto as **Exhibit 2** is a Timeline of Events for the Settlement.

9. Berger Montague specializes in class action litigation and is one of the preeminent class action law firms in the United States. The firm currently consists of over 70 attorneys who primarily represent plaintiffs in complex civil litigation, and class action litigation, in federal and state courts. Berger Montague has played lead roles in major class action cases for over 50 years, and has obtained settlement and recoveries totaling well over $30 billion for its clients and the classes they have represented. A copy of the firm's resume is attached hereto as **Exhibit 3**.

10. I am Senior Counsel with the Firm's Consumer Protection practice group. In that practice group, I primarily focus on consumer class actions concerning financial and credit reporting practices. I am a graduate of Grinnell College and Cornell University School of Law. During law school, I served as the Executive Editor of the Cornell Legal Information Institute's Supreme Court Bulletin and as an Editor for the Cornell International Law Journal. I has also

worked as law clerk for President Judge Bonnie B. Leadbetter of the Pennsylvania Commonwealth Court and for the Honorable David J. Ten Eyck of the Minnesota District Court.

11. Lead Counsel from my firm, E. Michelle Drake, is an Executive Shareholder at Berger Montague PC. She has been practicing law since 2001 and is a graduate of Harvard College, Oxford University, and Harvard Law School. In 2016, Ms. Drake joined Berger Montague as a Shareholder, prior to which she was a partner at Nichols Kaster, PLLP, and ran that firm's consumer protection group.

12. Ms. Drake serves as co-chair of the firm's Consumer Protection & Mass Tort Department, and as chair of the Background Checks and Credit Reporting Department. Her practice focuses on protecting consumers' rights when they are injured by improper credit reporting, and other illegal business practices. She currently serves as lead or co-lead counsel in dozens of class action consumer protection cases in federal and state courts across the country, including numerous cases brought pursuant to the Fair Credit Reporting Act.

13. Additionally, Ms. Drake serves on the Board of the Southern Center for Human Rights, is a member of the Partner's Council of the National Consumer Law Center, and is a former Co-Chair of the Consumer Litigation Section for the Minnesota State Bar Association, and a former Board Member of the National Association of Consumer Advocates. Ms. Drake has previously served as a member of the Ethics Committee for the National Association of Consumer Advocates, and as Treasurer and At-Large Council Member for the Consumer Litigation Section of the Minnesota State Bar Association.

14. Ms. Drake and I have served as lead, or co-lead, class counsel in numerous notable consumer protection matters, including, but not limited to, the following:

In re GEICO Customer Data Breach Litig., No. 21-cv-2210 (E.D.N.Y.) Appointed as Interim Co-Lead Counsel on behalf of putative class in data disclosure action.

Gambles v. Sterling Infosystems, Inc., No. 15-cv-9746 (S.D.N.Y.) FCRA class action, alleging violations by consumer reporting agency, resulting in a gross settlement of $15 million, one of the largest FCRA settlements to date.

In re: TransUnion Rental Screening Sols., Inc. FCRA Litig., No. 1:20-md-02933-JPB (N.D. Ga.). Appointed as Interim Lead Counsel for the classes in multi-district litigation consolidated class action, regarding violations of the Fair Credit Reporting Act.

Lee v. The Hertz Corp., No. CGC-15-547520 (Cal. Super. Ct., San Fran. Cnty.). FCRA class action, alleging violations by employer, resulting in $1.619 million settlement.

Rubio-Delgado v. Aerotek, Inc., No. 16-cv-1066 (S.D. Ohio). FCRA class action, alleging violations by employer, resulting in a $15 million settlement.

Knights v. Publix Super Markets, Inc., No. 14-cv-720 (M.D. Tenn.). FCRA class action, alleging violations by employer, resulting in a $6.75 million settlement.

Hillson v. Kelly Services, Inc., No. 15-cv-10803 (E.D. Mich.). FCRA class action, alleging violations by employer, resulting in a $6.749 million settlement.

Ernst v. DISH Network, LLC & Sterling Infosystems, Inc., No. 12-cv-8794 (S.D.N.Y.). FCRA class action, alleging violations by employer and consumer reporting agency, resulting in a $4.75 million settlement with consumer reporting agency, and a $1.75 million settlement with employer.

Howell v. Checkr, Inc., No. 17-cv-4305 (N.D. Cal.). FCRA class action, alleging violations by consumer reporting agency, resulting in a $4.46 million settlement.

Brown v. Delhaize America, LLC, No. 14-cv-195 (M.D.N.C.). FCRA class action, alleging violations by employer, resulting in $2.99 million settlement.

Nesbitt v. Postmates, Inc., No. CGC-15-547146 (Cal. Super. Ct., San Fran. Cnty.). FCRA class action, alleging violations by employer, resulting in a $2.5 million settlement.

Singleton v. Domino's Pizza, LLC, No. 11-cv-1823 (D. Md.). FCRA class action, alleging violations by employer, resulting in a $2.5 million settlement.

Heaton v. Social Finance, Inc., No. 14-cv-5191 (N.D. Cal.). FCRA class action, alleging violations by lender, resulting in a $2.5 million settlement.

Terrell v. Costco Wholesale Corp., No. 10-2-33915-9 (Wash. Super. Ct., King Cnty.). FCRA class action, alleging violations by employer, resulting in a $2.49 million settlement.

Halvorson v. TalentBin, Inc., No. 15-cv-5166 (N.D. Cal.). FCRA class action, alleging violations by online data aggregator, resulting in a $1.15 million settlement.

Legrand v. IntelliCorp Records, Inc., No. 15-cv-2091 (N.D. Ohio). FCRA class action, alleging violations by consumer reporting agency, resulting in a $1.1 million settlement.

15. Ms. Drake's and our team's litigation efforts and experience have received judicial acknowledgement and praise throughout the years. Examples of such recognition include:

From Judge Paul A. Engelmayer, United States District Court, Southern District of New York:

I know the diligence of counsel and dedication of counsel to the class…Thank you, Ms. Drake. As always I appreciate the—your extraordinary dedication to your – to the class and the very obvious backwards and forwards familiarity you have with the case and level of preparation and articulateness today. It's a pleasure always to have you before me…Class counsel [] generated this case on their own initiative and at their own risk. Counsel's enterprise and ingenuity merits significant compensation…Counsel here are justifiably proud of the important result that they achieved.

Sept. 22, 2020, Final Approval Hearing, *Gambles v. Sterling Info., Inc.*, No. 15-cv-9746.

From Judge Harold E. Kahn, Dep't 302, Superior Court of Cal., San Fran. Cnty.:

You're very articulate on this issue. … Obviously, you're very thoughtful and you have given it a great deal of thought. … And I appreciate your ability to respond to my questions off the cuff. … It shows that you have given these issues a lot of thought ... I have to say that your thoughtfulness this morning has somewhat diminished my concerns [regarding high multiplier on attorney fees]… You're demonstrating credibility by a mile as you go….You are extraordinarily impressive. And I thank you for being here, and for your candid, noninvasive [sic] response to every question I have. I was extremely skeptical at the outset this morning. You have allayed all of my concerns and have persuaded me that this is an important issue, and that you have done a great service to the class. And for that reason, I am going to approve your settlement in all respects… And I congratulate you on your excellent work.

Nov. 7, 2017, Final Approval Hearing, *Nesbitt v. Postmates, Inc.*, No. CGC-15-547146.

From Judge Laurie J. Michelson, United States District Court, E.D. Mich.:

> Counsel's quality of work in this case was high. The Court has been impressed with counsel's in-court arguments. And counsel has provided the Court with quality briefing as well.

Aug. 11, 2017, Opinion & Order on Mtn. for Atty. Fees, and Mtn. for Final Approval, *Hillson v. Kelly Services, Inc.*, No. 15-cv-10803.

From Magistrate Judge Terence P. Kemp, United States District Court, S.D. Ohio:

> The parties in this case are represented by counsel with substantial experience in class action litigation, and FCRA cases in particular. … Class Counsel are experienced and knowledgeable in FCRA litigation, are skilled, and are in good standing.

June 30, 2017, Report & Recomm'n. on Final Approval, *Rubio-Delgado v. Aerotek, Inc.*, No. 16-cv-1066.

From Judge Paul A. Magnuson, United States District Court, D. Minn.:

> [T]he class representatives and their counsel more than adequately protected the class's interests. … [T]he comprehensive nature of the settlement in turn, reflects the adequacy, indeed the superiority, of the representation the class received from its named Plaintiffs and from class counsel.

May 17, 2017, Mem. & Order on Mtn. to Certify Class, *In re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 14-2522.

From Judge Paul A. Engelmayer, United States District Court, S.D.N.Y.:

> The high quality of [plaintiffs' counsel]'s representation strongly supports approval of the requested fees. The Court has previously commended counsel for their excellent lawyering. …The point is worth reiterating here. [Plaintiffs' counsel] was energetic, effective, and creative throughout this long litigation. The Court found [Plaintiffs' counsel]'s briefs and arguments first-rate. And the documents and deposition transcripts which the Court reviewed in the course of resolving motions revealed the firm's far-sighted and strategic approach to discovery. … Further, unlike in many class actions, plaintiffs' counsel did not build their case by piggybacking on regulatory investigation or settlement. … The lawyers [] can genuinely claim to have been the authors of their clients' success.

Sept. 22, 2015, Final Approval Order, *Hart v. RCI Hospitality Holdings, Inc.*, No. 09-cv-3043.

From Magistrate Judge Laurel Beeler, United States District Court, N.D. Cal.:

Counsel have worked vigorously to identify and investigate the claims in this case, and, as this litigation has revealed, understand the applicable law and have represented their clients vigorously and effectively.

June 13, 2014, Order Granting Mtn. for Class Cert., *Ellsworth v. U.S. Bank, N.A.*, No. 12-cv-2506.

From Judge Richard H. Kyle, United States District Court, D. Minn.:

Well, I think you did a great job on this. I mean, I really do. … it seems to me you folks have gotten it done the right way.

Jan. 6, 2014, Prelim. Approval Hearing, *Bible v. General Revenue Corp.*, No. 12-cv-1236.

From Judge Deborah Chasanow, United States District Court, D. Md.:

[plaintiffs' counsel] are qualified, experienced, and competent, as evidenced by their background in litigating class-action cases involving FCRA violations. … As noted above, Plaintiffs' attorneys are experienced and skilled consumer class action litigators who achieved a favorable result for the Settlement Classes.

Oct. 2, 2013, Final Approval Order, *Singleton v. Domino's Pizza, LLC*, No. 11-cv1823.

From Judge Lorna G. Schofield, United States District Court, S.D.N.Y.:

[Plaintiffs' Counsel] has demonstrated it is able fairly and adequately to represent the interests of the putative class.

July 23, 2013, Order Appointing Interim Lead Counsel, *Ernst v. DISH Network, LLC*, No. 12-cv-8794.

From Judge Susan M. Robiner, Minnesota District Court, Henn. Cnty.:

Plaintiffs' counsel are adequate legal representatives for the class. They have done work identifying and investigating potential claims, have handled class actions in the past, know the applicable law, and have the resources necessary to represent the class. The class will be fairly and adequately represented.

Oct. 16, 2012, Order Granting Mtn. for Class Cert., *Spar v. Cedar Towing & Auction, Inc.*, No. 27-CV-411-24993.

The foregoing statement is made under penalty of perjury, and is true and correct to the best of my knowledge and belief.

Date: June 5, 2023

/s/Joseph C. Hashmall
Joseph C. Hashmall