

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

LISA HILL-GREEN, *on behalf of herself
and all others similarly situated,*

Plaintiff,

v.

EXPERIAN INFORMATION SOLUTIONS,
INC.,

Defendant.

Civil Action No. 3:19-cv-00708-MHL

**MEMORANDUM IN SUPPORT OF PLAINTIFF’S MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiff Lisa Hill-Green (“Plaintiff”) and Defendant Experian Information Solutions, Inc. (“Defendant” or “Experian”) (together, the “Parties”) have reached a class action settlement to partially resolve Plaintiff’s claims under the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681e(b), alleging that Defendant failed to employ reasonable procedures to assure maximum possible accuracy in regards to its Fraud Shield product. The Parties have agreed to an injunctive relief settlement and certification of a settlement class under Rule 23(b)(2). The Parties continue to negotiate—and if negotiations are not fruitful, will continue to litigate—Plaintiff’s claim for damages and for certification of a class under Rule 23(b)(3).

The proposed Settlement provides for a Fed. R. Civ. P. 23(b)(2) Settlement Class for significant injunctive relief. The Settlement was reached following extensive discovery, motions practice, and multiple mediations with retired federal Magistrate Judge Diane M. Welsh of JAMS Philadelphia. The Settlement reflects the Parties’ and the mediator’s creativity and cooperation in reaching agreement where possible and allowing litigation to continue in areas

where it was not. The Settlement is a fair and reasonable resolution of the injunctive aspects of this case and should be approved. For the reasons below, Plaintiff requests the Court preliminarily approve the Settlement, direct implementation of the proposed Notice Program, and schedule a Final Fairness Hearing.

BACKGROUND

I. Procedural History

On September 27, 2019, Plaintiff filed her Complaint against Experian. (ECF No. 1.) Plaintiff's Complaint alleged that Experian violated 15 U.S.C. § 1681e(b) by reporting Plaintiff's home address as "non-residential" and "high risk," when in fact Experian had verification that it was a single-family residence. (*Id.* ¶ 7.) Plaintiff also alleged that Experian violated 15 U.S.C. § 1681a(c) on a class basis by reporting adverse address information for longer than seven years, and it also violated 15 U.S.C. § 1681i as to Plaintiff individually for failing to properly reinvestigate her dispute. (*See generally id.*)

In particular, Plaintiff's claim under 15 U.S.C. § 1681e(b) alleges that Experian inaccurately reported Plaintiff's home address as belonging to a business, and that the business was "non-residential" and thus indicated a "high risk" of credit fraud. (Compl. ¶¶ 33-39.) On the same report, Experian reported Plaintiff's address as "single family," thus Plaintiff alleges that Experian had employed no procedures to ensure that all information on the report was accurate. (*Id.* ¶¶ 54, 55.) The indications of "non-residential" and "high risk" on Plaintiff's report came from Experian's Fraud Shield product. Experian described Fraud Shield as identifying "high-risk characteristics" and using "the power of predictive indicators and scoring to provide specific high-risk characteristic descriptions." (*Id.* ¶ 16.) Through Experian's File One Database, "which houses more than 215 million active consumer profiles," Fraud Shield "utilizes predictive

crosschecking.” (*Id.* ¶ 17.) Among other things, Fraud Shield screens and identifies “more than 30 high-risk address profiles.” (*Id.* ¶ 18.) Experian typically identifies an address as “high-risk” when its File One Database associates the address with a business or one of the “30 high-risk address profiles.” (*Id.* ¶ 20.) This process is automated, and Experian will issue a fraud alert or otherwise report a consumer as “high-risk” without checking to see if the consumer is in fact associated with the business, or if the business is currently associated with that address. (*Id.* ¶ 22.) Plaintiff also alleges that Experian has no systems or procedures for removing outdated inaccurate address information from its database, thus creditworthiness of every consumer who later lives in an address that at one time was linked to a business or a high-risk profile, is negatively affected. (*Id.* ¶¶ 26, 27.)

On November 7, 2019, Experian moved to transfer venue to the Central District of California (ECF No. 8), which Plaintiff successfully opposed, with the Court denying transfer on September 15, 2020 (ECF No. 38). While that motion was pending, Defendant answered the Complaint, denying Plaintiff’s allegations (ECF No. 16), and Plaintiff moved for venue-related discovery (ECF No. 17), which the Parties ultimately agreed was moot (ECF No. 31).

Following the Court’s ruling on transfer, the Parties began discovery. Both sides exchanged written discovery and made document productions. Plaintiff took Experian’s 30(b)(6) deposition, and Experian took Plaintiff’s deposition. Plaintiff also engaged in third-party discovery, to obtain and analyze data from one of Experian’s vendors.

On July 15 and 16, 2021, the Parties attended mediation with retired federal Magistrate Diane M. Welsh of JAMS Philadelphia. (ECF No. 75.) The mediation was productive, and the Parties attended a third full-day mediation on September 8, 2021. (ECF No. 79.) At the September mediation, the Parties reached a settlement in principle for injunctive relief for the

Rule 23(b)(2) class presented here (*id.*). The Parties reached that agreement while recognizing that they would not agree on the damages allegations and the proposed Rule 23(b)(3) class, and contemplate litigation of those claims moving forward parallel to this Settlement. Through later arm's-length negotiations through counsel, the Parties ultimately formalized the settlement in the Settlement Agreement (“Settlement” or “Settlement Agreement”)¹ that Plaintiff brings before the Court with this preliminary approval motion.

II. The Settlement Agreement

A. Overview of Terms

The Settlement Class is defined as: all consumers in the United States for whom Experian, within two years prior to the filing of the Complaint in this action and during its pendency, furnished a consumer report to a third party containing an inaccurate Fraud Shield indicator No. 10, 11, 16, or 17 indicating that the consumer's address was either a high-risk or non-residential address. (Ex. 1 ¶ 2.23.)

Experian has agreed to provide injunctive relief through the Settlement. Within six months of the Effective Date of the Settlement, Experian will reconfigure the update procedure for importing data into its Non-Residential Address database so that each month, Experian imports an updated file from its vendor that overwrites all pre-existing data. Experian will also suppress or remove from the Non-Residential Address data any address that Experian has reason to believe has not been updated or otherwise verified for at least six years. Further, Experian will stop publishing certain Fraud Shield indicators all together, will reduce the number of codes that would result in other certain Fraud Shield indicators, and will revise messaging and descriptions of additional Fraud Shield indicators to be more detailed. (*Id.* ¶ 4.1.) In exchange for this relief,

¹ The Settlement Agreement is attached as Exhibit 1.

Class Members release all equitable claims for injunctive relief relating to allegations that Experian failed to employ reasonable procedures with respect to its Fraud Shield product. (*Id.* ¶ 2.17.)

The release of claims specifically *excludes* all claims for statutory, actual, and punitive damages, attorneys' fees, and costs relating to the allegations. (*Id.*). The Parties contemplate litigating the proposed Rule 23(b)(3) class and the damages claim moving forward parallel to this Settlement. In agreeing to this Settlement, Defendant is not making any factual or legal concessions about the proposed Rule 23(b)(3) class and the damages claim.

B. Form of Notice

This is a Rule 23(b)(2) settlement, with notice only as suggested by Rule 23(c)(2)(“A”) (“(A) For (b)(1) or (b)(2) Classes. For any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class.”). Because of the nature of the relief provided in the Settlement and the number of Settlement Class members, the Parties have agreed that (1.) the Court should order and the Parties should send notice, even if not mandated, (2.) notice by publication is appropriate; and (3.) an online notice process would best balance the reach to the largest class member number with the costs of a Rule 23(b)(2) notice.

Plaintiffs have worked over the last two months to develop a notice plan consistent with the plan components that have worked in earlier Rule 23(b)(2) FCRA settlements, and to solicit proposals and feedback from multiple third-party settlement administrators. As of the date of this filing, the Parties have not yet agreed on the specific administrator they will jointly recommend to the Court. They propose to submit that recommendation by subsequent filing no later than November 22, 2021.

The Parties request that the Court allow delegation to and appointment of a third-party class action administrator to implement publication notice through both traditional media, as well as online, to ensure that as many Class Members as possible receive notice of the Settlement. The notice plan contemplates a nationwide publication campaign through paid online media, other online distribution, and content published in print. The program complies with Fed. R. Civ. P. 23 and due process. It is meant to ensure the Settlement Class Members are aware of the noteworthy injunctive relief obtained on their behalf. (There is of course no opt-out process under Rule 23(b)(2)).

i. Website Notice

A Settlement Website will be established promptly after preliminary approval, which will contain relevant pleadings and documents pertaining to the Settlement, including this motion, the forthcoming motion for attorneys' fees, and motion for final approval, as well as direct Class Members to Experian's consumer assistance telephone number and online portal. (Ex. 1 ¶ 7.2(b).) If consumers do not find resolution through that avenue, the Website will provide Class Counsel information for further assistance. (*Id.*)

ii. Paid Media

The Administrator has developed a plan for publication notice through a paid media campaign that uses a combination of print and online media to reach Class Members. The plan is estimated to achieve at least a national reach of the vast majority of the Class.

C. Objections

Settlement Class Members will not be able to opt out of the Settlement because it is a Rule 23(b)(2) settlement for injunctive relief only. Class Members can object if they believe they have a basis to do so. To object, Class Members will need to file their objections with the Court

or mail them to Parties' Counsel by the appropriate deadline—if objecting to attorneys' fees and costs, the deadline will be seven days after the filing of the motion for same, if objecting on other grounds, the deadline will be thirty days before the Final Fairness Hearing. (Ex. 1 ¶ 8.3.) Any objections must include: (i) the objector's name, address, and telephone number, (ii) a sentence stating that, to the best of their knowledge, they are a member of the Settlement Class, (iii) the factual basis and legal grounds for the objection, (iv) the identity of witnesses whom the objector may call to testify at the Final Fairness Hearing, (v) the name and address of any attorney who has drafted or helped draft the objection, and (vi) copies of exhibits the objector may seek to offer into evidence at the Final Fairness Hearing. (*Id.*)

D. Attorneys' Fees, Costs, and Service Award

The Settlement Agreement contemplates Class Counsel petitioning the Court for attorneys' fees and costs and a class representative service award in the total amount of \$2,250,000 to be paid by Experian. (Ex. 1 ¶ 5.1.) As will be offered when a petition for fees and costs is made, this amount was negotiated entirely after settlement on the injunctive relief was reached. This amount is meant to fully compensate Class Counsel, and no counsel can apply or ask for any further fees or costs beyond this total amount for the Rule 23(b)(2) Settlement. Attorneys' fees and costs were not addressed until the Parties had agreed as to the relief for the Settlement Class. The Settlement is in no way contingent on the proposed requested amount being approved by the Court.

Class Counsel will formally petition for these amounts in advance of the Final Fairness Hearing and before the objection date, and the motion papers will be posted to the Settlement Website promptly so that Settlement Class Members may review and will have seven days to object. (*Id.* ¶ 8.3.)

This fee, costs, and service award request encompasses the substantial value of the injunctive relief obtained for the Class. The changes in business practices negotiated is substantial. And there is no possible argument that the fee would compete with or take money away from the Class. “Here, class counsel’s fee was negotiated by the parties, and the Agreement allowed for a total attorneys’ fee award . . . to be paid entirely by” the Defendant. *Berry v. Schulman*, 807 F.3d 600, 617 (4th Cir. 2015).

ARGUMENT

There is a strong judicial policy in favor of settlement to conserve resources that would otherwise be devoted to protracted litigation. *See In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 663 (E.D. Va. 2001); *see also Ehrheart v. Verizon Wireless*, 609 F.3d 590, 595 (3d Cir. 2010) (there is an “especially strong” presumption in favor of voluntary settlements in “class actions . . . where substantial judicial resources can be conserved by avoiding formal litigation.”); *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); 2 Alba Conte & Herbert Newberg, *Newberg on Class Actions* § 11.41 (4th Ed. 2002) (“The compromise of complex litigation is encouraged by the courts and favored by public policy.”). This includes the “strong initial presumption” in class action cases “that the compromise is fair and reasonable.” *In re MicroStrategy*, 148 F. Supp. 2d at 663 (internal quotation marks omitted). Proposed settlements must still satisfy the requirements of Fed. R. Civ. P. 23. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 592 (1997).

Fed. R. Civ. P. 23 “states that ‘[a] class action may be maintained’ if two conditions are met: the suit must satisfy the criteria set forth in subdivision (a) (i.e., numerosity, commonality, typicality, and adequacy of representation), and it also must fit into one of the three categories

described in subdivision (b).” *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 599 U.S. 393, 398 (2010) (quoting Fed. R. Civ. P. 23). The proposed Settlement Class here meets the required elements as outlined below.

A. Rule 23(a) Requirements are Satisfied.

i. Numerosity

Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is impracticable.” There is no set minimum number of potential class members to fulfill this requirement. *See Holsey v. Armour & Co.*, 743 F.2d 199, 217 (4th Cir. 1984) (citing *Kelley v. Norfolk & W. Ry. Co.*, 584 F.2d 34 (4th Cir. 1978)). But where the class numbers 25 or more, joinder is usually impracticable. *Cypress v. Newport News Gen. & Nonsectarian Hosp. Ass’n*, 375 F.2d 648, 653 (4th Cir. 1967) (18 class members found to be sufficient). Here, there are likely millions of Settlement Class Members, easily meeting the numerosity requirement. Joinder of this many individuals is neither possible nor practical. *See Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 425 (4th Cir. 2003).

ii. Commonality

Rule 23(a)(2) requires that the court find that “there are questions of law or fact common to the class.” “Commonality is satisfied where there is one question of law or fact common to the class, and a class action will not be defeated solely because of some factual variances in individual grievances.” *Jeffreys v. Commc’ns Workers of Am., AFL-CIO*, 212 F.R.D. 320, 322 (E.D. Va. 2003). “And the common issue must be such that ‘determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.’” *Id.* The standard is a liberal one. *Id.*; *Mitchell-Tracey v. United Gen. Title Ins. Co.*, 237 F.R.D. 551,

557 (D. Md. 2006) (finding that factual differences among class members will not necessarily preclude certification “if the class members share the same legal theory.”).

Here, by definition, the Settlement Class Members share the same questions of law and fact. They are alleged to be victims of policies and procedures through which Experian, in violation of the FCRA, failed to maintain reasonable procedures to ensure accuracy in its reporting of consumer address information. The theories of liability as to all Settlement Class Members therefore arise from the same practices, that is, Experian’s practices of reporting address information as high-risk or non-residential on consumer reports, based on inaccurate or outdated information. These theories of liability present basic questions common to all Settlement Class Members.

iii. Typicality

In the typicality analysis, “[a] class representative must be part of the class and possess the same interest and suffer the same injury as the class members.” *Lienhart v. Dryvit Syst., Inc.*, 255 F.3d 138, 146 (4th Cir. 2001). “Nevertheless, the class representatives and the class members need not have identical factual and legal claims in all respects. The proposed class satisfies the typicality requirement if the class representatives assert claims that fairly encompass those of the entire class, even if not identical.” *Fisher v. Va. Elec. and Power Co.*, 217 F.R.D. 201, 212 (E.D. Va. 2003). “The typicality requirement mandates that Plaintiffs show (1) that their interests are squarely aligned with the interests of the class members and (2) that their claims arise from the same events and are premised on the same legal theories as the claims of the class members.” *Jeffreys*, 212 F.R.D. at 322. Commonality and typicality tend to merge because both of them “serve as guideposts for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff’s

claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 n.5 (2011).

Plaintiff’s claims arise from Experian’s failure to maintain reasonable procedures designed to ensure that its reporting was as accurate as possible. As discussed above, these are the same claims advanced on behalf of all Settlement Class Members. Plaintiff’s claims thus rest on the same legal and factual issues as those of the Settlement Class Members. So in seeking to prove her claims, Plaintiff will advance the claims of Settlement Class Members. This meets the typicality requirement. *See Deiter v. Microsoft Corp.*, 436 F.3d 461, 467 (4th Cir. 2001) (class representative’s interest must simultaneously advance the interests of the absent class members, but that does not mean that typicality “requires that the plaintiff’s claim and the claims of class members be perfectly identical”).

iv. Adequacy of Representation

“Finally, under Rule 23(a)(4), the class representatives must adequately represent the interests of the class members, and legal counsel must be competent to litigate for the interests of the class.” *Jeffreys*, 212 F.R.D. at 323. “Basic due process requires that the named plaintiffs possess undivided loyalties to absent class members.” *Fisher*, 217 F.R.D. at 212 (citing *Broussard v. Meineke Disc. Muffler Shops*, 155 F.3d 331, 338 (4th Cir. 1998)).

The adequacy of representation requirement is met here. Plaintiff understands and has accepted the obligations of a class representative, has adequately represented the interests of the putative class to date, and has retained experienced counsel who have handled many consumer-protection class actions. Plaintiff has no antagonistic or conflicting interests with the Settlement Class Members. Plaintiff and the Settlement Class Members all seek injunctive relief for

Experian's alleged unlawful actions. Plaintiff has also been active here, submitting to discovery, remaining involved and communicating regularly with Plaintiff's Counsel, was ready to sit for her deposition when the Settlement was reached, and otherwise fulfilling all the responsibilities of a class representative. (Declaration of Leonard A. Bennett, Exh. "B".) As a result, the Settlement Class is adequately represented here. Moreover, Plaintiff's Counsel have effectively handled many consumer-protection and complex class actions, typically as lead or co-lead counsel. There is no more experienced group of FCRA class action lawyers in the country. *See, e.g., Clark v. Trans Union, LLC*, No. 15-cv-00391, ECF No. 248 (E.D. Va. March 23, 2018) (preliminary approving public records settlement and appointing the same counsel present here as Class Counsel); *Clark v. Experian Info. Sols., Inc.*, No. 16-cv-32, ECF No. 131 (E.D. Va. Sept. 21, 2018) (same); *Thomas v. Equifax Info Services, LLC*, No. 18-cv-684, ECF No. 43 (E.D. Va. May 29, 2019) (same); *Clark v. Trans Union, LLC*, No. 15-cv-00391, 2017 WL 814252, at *13 (E.D. Va. Mar. 1, 2017) ("This Court echoes the sentiments previously stated about Clark's counsel because they pertain here with equal vigor.") (citing *Manuel v. Wells Fargo Bank, Nat'l Ass'n*, No. 14-238, 2016 WL 1070819, at *3 (E.D. Va. Mar. 15, 2016) ("[T]his Court would have difficulty overstating Class Counsel's experience in the area of FCRA class action litigation.")); Final Approval Hr'g Trans., *Campos-Carranza v. Credit Plus, Inc.*, Case No. 16-cv-120, at 5:3-7 (LMB/MSN) (E.D. Va. Feb. 17, 2017) ("I think this is an extremely, as I say, extremely fair, reasonable, and adequate settlement. Again, the claims – and I think being generous on the time limit for the claims was also appropriate. So I have no difficulty in signing this order."); *Thomas v. FTS USA, LLC*, 312 F.R.D. 407, 420 (E.D. Va. 2016) ("the Court finds that Thomas'[s] counsel is qualified, experienced, and able to conduct this litigation so as to fully and adequately represent both classes. Counsel is experienced in class action work, as well as

consumer protection issues, and has been approved by this Court and others as class counsel in numerous cases around the country.”); *Ceccone v. Equifax Info. Servs. LLC*, No. 13-1314, 2016 WL 5107202, at *6 (D.D.C. Aug. 29, 2016) (“Given these qualifications, and in light of Class Counsel’s conduct in court and throughout these proceeding, this Court concludes that Class Counsel is qualified to prosecute the interests of this class vigorously.”); *Dreher v. Experian Info. Sols., Inc.*, No. 11-00624, 2014 WL 2800766, at *2 (E.D. Va. June 19, 2014) (“Dreher’s counsel is well- experienced in the arena of FCRA class action litigation.”); Fairness Hr’g Tr., *Burke v. Seterus, Inc.*, No. 16-cv-785, at 9:19-22 (E.D. Va. 2017) (“Experience of counsel on both sides in this case is extraordinary. Ms. Kelly and Ms. Nash and their colleagues are here in this court all the time with these kinds of cases and do a good job on them.”); *James v. Experian Info. Solutions, Inc.*, No. 12-902 (E.D. Va. Oct. 29, 2014) (ruling on final approval in open court and finding “experience of counsel on both sides is at the top level of representation in cases of this sort and, indeed, perhaps beyond that”); *Soutter v. Equifax Info. Servs., LLC*, 2011 U.S. Dist. LEXIS 34267, at *28 (E.D. Va. Mar. 30, 2011) (“the Court finds that Soutter’s counsel is qualified, experienced, and able to conduct this litigation. Counsel is experienced in class action work, as well as consumer protection issues, and has been approved by this Court and others as Class Counsel in numerous cases.”). *See also* Exhibit “B.”.

B. The Rule 23(b) Requirements are Satisfied.

“In addition to satisfying Rule 23(a)’s prerequisites, parties seeking class certification must show that the action is maintainable under Rule 23(b)(1), (2), or (3).” *Amchem*, 521 U.S. at 614. The Settlement here provides for substantial injunctive relief, and therefore may appropriately be certified under Rule 23(b)(2), which requires a showing that a defendant “acted or refused to act on grounds generally applicable to the class, thereby making appropriate final

injunctive relief ... with respect to the class as a whole.” Fed. R. Civ. P. 23(b)(2). More simply stated, Rule 23(b)(2) certification is proper “if members of the proposed class would benefit from the injunctive relief.” *Cuming v. S.C. Lottery Comm’n*, No. 05-3608, 2008 WL 906705, at *6 (D.S.C. March 31, 2008) (citing *Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 331 (4th Cir. 2006)). In addition, injunctive relief must be the primary or sole relief before certification under Rule 23(b)(2) is appropriate. *Allison v. Citgo Petroleum Corp.*, 151 F.3d 402, 415 (5th Cir. 1998); *Thorn*, 445 F.3d at 329 (“Rule 23(b)(2) does not ‘cover cases where the primary claim is for damages but is only applicable where the relief sought is ... predominantly injunctive or declaratory.’”). The Settlement Class here satisfies these requirements.

i. Relief Benefits Class as a Whole.

Plaintiff alleged that Experian failed to maintain reasonable procedures designed to ensure that reporting was as accurate as possible. Instead, Experian reported certain addresses as “high-risk” or “non-residential,” relying on automated procedures that cross-checked against outdated and inaccurate information. The Settlement treats all Settlement Class Members alike in granting them the substantial benefits of the injunctive relief contemplated by the Settlement Agreement, so that Experian will reconfigure its update procedure for non-residential addresses, cease publishing certain Fraud Shield indicators and provide better messaging and descriptions for others. This injunctive relief serves the interests of Class Members for a number of reasons, including that Class Members will not receive Fraud Shield indicators on their reports based upon outdated information, and that certain Fraud Shield indicators will not appear at all. This means that Fraud Shield indicators will be less likely to derail credit applications, as Plaintiff alleged happened to her – a real and tangible benefit going forward.

This injunctive relief is on-point for Plaintiff's and the Settlement Class Members' claims at issue and applies to all Settlement Class Members as a whole. Such injunctive relief is a powerful, efficient, and effective way of protecting broad interests. That Plaintiff achieved this injunctive relief for the Settlement Class is particularly impressive, given that many courts have held that such relief is not available to private litigants under the FCRA.²

While Experian maintains that it has always acted in compliance with the law, the fact that the Settlement modifies Experian's conduct as to the Class as a whole makes it appropriate for certification under Rule 23(b)(2). *Wal-Mart*, 131 S. Ct. at 2557 ("The key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted – the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.") (internal quotation omitted). The injunctive relief provided for in the Settlement here will provide a direct benefit to the Settlement Class Members going forward as the Fraud Shield indicators and Experian's processes for applying and updating the same are being modified to address the allegations made here.

ii. There is no Monetary Relief Component.

The Settlement meets Rule 23(b)(2)'s second requirement—that the settlement not be in actuality a disguised Rule 23(b)(3) monetary relief settlement. Here, the Settlement does not pay or extract a release for monetary damages from Class Members. Class Members retain the right to seek monetary relief outside the Settlement. Thus, this prong of the Rule 23(b)(2) certification is met, as the predominating interests of the Settlement Class as a whole are addressed by the injunctive relief.

² See *Walker v. Trans-Union LLC*, No. 11-1110, 2013 WL 664405, at *2 (M.D.N.C. Feb. 22, 2013) (noting "most courts considering the issue conclude that FCRA does not provide for injunctive or declaratory relief" to non-governmental plaintiffs, and collecting cases).

C. The Settlement is Fundamentally Fair, Reasonable, and Adequate.

While pretrial settlement of class actions is favored, “Rule 23(e) provides that a class action shall not be dismissed without the approval of the court.” *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991) (citations omitted). “To this end, the role of the Court reviewing the proposed settlement of a class action under Fed. R. Civ. P. 23(e) is to assure that the procedures followed meet the requirements of the Rule and ... to examine the settlement for fairness and adequacy.” *In re MicroStrategy*, 148 F. Supp. 2d at 663 (internal quotation omitted).

“[T]he Fourth Circuit [has] adopted a bifurcated analysis, separating the inquiry into a settlement’s ‘fairness’ from the inquiry into a settlement’s ‘adequacy.’” *Id.* These inquiries ensure that “a proposed class has sufficient unity so that absent members can fairly be bound by decisions of class representatives.” *Amchem*, 521 U.S. at 621; *see also In re Jiffy Lube*, 927 F.2d at 158 (“The primary concern addressed by Rule 23(e) is the protection of class members whose rights may not have been given adequate consideration during the settlement negotiations.”). In this case, each set of factors warrants approving the Settlement.

i. The Settlement is Fair.

When evaluating the fairness of a settlement, the court is to use the following criteria: “(1) the posture of the case at the time settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the experience of counsel.” *In re Jiffy Lube*, 927 F.2d at 159. The fairness inquiry ensures that “the settlement was reached as a result of good-faith bargaining at arm’s length, without collusion.” *Id.* These factors point persuasively to the conclusion that the Settlement here is fair.

The Settlement was reached after significant work was conducted in the case. As discussed above, the Parties had engaged in formal discovery and thoroughly investigated the

facts and claims at issue. The Parties had also engaged in extensive, arm's-length negotiations including three days of mediation with retired judge Diane M. Welsh of JAMS. The Settlement was reached as a result of these mediations and later discussions through experienced counsel. The Settlement provides Settlement Class Members with important injunctive relief that directly addresses the claims at issue. The Settlement only releases equitable claims for injunctive relief related to the allegations in the Complaint. No claims for statutory, punitive, or actual damages are released—the Parties anticipate further litigation on those claims. Further, the Settlement's relief not only benefits the Settlement Class Members now, but will also provide relief and prevent future harm to a larger group of consumers by changing Experian's relevant practices going forward. Given the substantial relief obtained for the Settlement Class Members, and given the circumstances of how the Settlement was reached (after litigation, discovery, multiple mediations), the proposed Settlement is fair and appropriate for approval. *See S. Carolina Nat'l Bank v. Stone*, 139 F.R.D. 335, 339 (D.S.C. 1991) (concluding fairness standard met where “discovery was largely completed as to all issues and parties,” settlement discussions “were, at times, supervised by a magistrate judge and were hard fought and always adversarial,” and those negotiations “were conducted by able counsel” with substantial experience in the relevant area of law); *Brunson v. Louisiana- Pac. Corp.*, 818 F. Supp. 2d 922, 927 (D.S.C. 2011) (presumption of fairness when settlement is reached through arm's-length negotiations between experienced counsel after sufficient investigation and discovery).

ii. The Settlement is Adequate.

In assessing the adequacy of the Settlement, the Court should look to these factors: “(1) the relative strength of the plaintiffs' case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the

anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement.” *In re Jiffy Lube*, 927 F.2d at 159. While it is too early to address the last factor – the reaction of the Class Members – application of the other relevant factors confirms that the proposed Settlement is adequate and should be preliminarily approved.

a. The relative strength of the case & difficulty in proving liability

Experian has vigorously denied Plaintiff’s claims since the action began and has raised many defenses to Plaintiff’s class claims. Given the Parties’ arguments, the potential risks, and expenses associated with continued prosecution of the litigation, the probability of appeals, the certainty of delay, and the ultimate uncertainty of recovery through continued litigation, the proposed Settlement is adequate.

While Plaintiff will continue to litigate the damages claims, it is worth noting that to recover statutory class-wide damages, Plaintiff will face the hurdle of proving willfulness. As recently noted in another FCRA settlement in this Court, “[g]iven these difficulties with the willfulness claim, the benefit of the substantial relief provided by the settlement without the risk of litigation demonstrates the adequacy of the Settlement Agreement.” *Manuel v. Wells Fargo Bank, N.A.*, No. 14-238, 2016 WL 1070819, at *4 (E.D. Va. Mar. 15, 2016); *see also Chakejian v. Equifax Info. Servs., LLC*, 275 F.R.D. 201, 212 (E.D. Pa. 2011) (proving willfulness in FCRA case is a “a high hurdle to clear,” and weighs in favor of settlement approval). By settling now, and for substantial injunctive relief that would not even be available under the FCRA through litigation,³ the Settlement Class avoids these litigation risks and is guaranteed relief.

³ *See Walker v. Trans-Union LLC*, No. 11-1110, 2013 WL 664405, at *2 (M.D.N.C. Feb. 22, 2013) (noting “most courts considering the issue conclude that FCRA does not provide for injunctive or declaratory relief” and collecting cases).

b. The anticipated duration & expense of additional litigation

While discovery was advanced at the time of Settlement, there remain multiple future hurdles, such as dispositive motions, including class certification and summary judgment, expert discovery, appeals, and trial, to a damage verdict. By reaching an significant injunctive settlement now, but maintaining the ability to continue to seek damages in continued litigation, Plaintiffs have achieved the best of both worlds.

c. The solvency of Defendant and likelihood of recovery

Defendant here is solvent, and could pay a class judgment – and Plaintiff will continue to pursue that goal in further litigation. That said, given the substantial injunctive relief obtained and the analysis of the other factors favoring approval, this factor is neutral. *See, e.g., Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 480 (D. Md. 2014) (finding that while the defendant could afford to pay more, when other factors favored adequacy, the solvency factor “may be given less weight”); *In re Serzone Prod. Liab. Litig.*, 231 F.R.D. 221, 245 (S.D. W. Va. 2005) (holding similar, and citing *Henley v. FMC Corp.*, 207 F. Supp. 2d 489, 494 (S.D. W. Va. 2002)).

D. The Proposed Class Notice Program Satisfies Due Process.

The Parties will submit further support by November 22, 2021 once an agreed Settlement Administrator has been decided for recommendation to the Court. This will include exemplars of online notice advertisements and website content.

Fed. R. Civ. P. 23(e)(1) requires that the court “direct notice in a reasonable manner to all class members who would be bound by the proposal.” For a class certified under Rule 23(b)(2), the court “may direct appropriate notice to the class.” Fed. R. Civ. P. 23(c)(2)(A). In the context of a settlement class certified under Fed. R. Civ. P. 23(b)(2), the “best notice practicable” standard does not apply. Fed. R. Civ. P. 23(c)(2)(B). Even though that standard is not required,

the settlement here provides for a robust notice program that exceeds what is required for due process. This notice program is largely modeled after the notice programs approved by this Court in the public records settlements. *Clark v. Trans Union, LLC*, No. 15-cv-00391, ECF No. 248 (E.D. Va. March 23, 2018); *Clark v. Experian Info. Sols., Inc.*, No. 16-cv-32, ECF No. 131 (E.D. Va. Sept. 21, 2018); *Thomas v. Equifax Info Services, LLC*, No. 18-cv-684, ECF No. 43 (E.D. Va. May 29, 2019).

First, the Settlement contemplates a Settlement Website will provide information about the Settlement. The Settlement Website will make relevant court filings available to Settlement Class Members, and provide Experian's consumer assistance phone number and online portal information, as well as Class Counsel's contact information as an alternative. Information about the settlement will be advertised online.. The online advertising will be specifically targeted to people likely to be Settlement Class Members. This paid media program is designed to reach as many consumers as possible.

The Class Members can object to the proposed settlement. Any Class Member who intends to object to the fairness of this settlement must file a written objection with the Court or mail a copy to the Parties' Counsel. The Settlement Class Members will be notified that they may enter an appearance through an attorney at their own expense if they so desire. The proposed notice program is appropriate and complies with both Rule 23(c)(2)(A) and (e)(1). The publication notice contains all of the required Rule 23 information and properly advises the Class Members of their rights. The expected reach of the program will satisfy the benchmark set forth by the Federal Judicial Center (70% minimum) and will allow Class Members to provide feedback about the Settlement. The proposed method for notifying the Class Members thus

satisfies both Rule 23 and due process and constitutes reasonable and appropriate notice under the circumstances.

CONCLUSION

For all these reasons, Plaintiff asks the Court to grant the Motion and enter the Preliminary Approval Order: (1) preliminarily approving the proposed class Settlement; (2) scheduling a fairness hearing; (3) certifying the Settlement Class under Rule 23(b)(2) for purposes of the proposed class Settlement; (4) appointing Plaintiff as Class Representative and Plaintiff's Counsel as Class Counsel; and (5) directing the notice program contemplated to be implemented.

Respectfully submitted,
LISA HILL-GREEN,

By: /s/
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STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement is entered into by and between Ms. Lisa Hill-Green, individually as Plaintiff in *Hill-Green v. Experian Information Solutions, Inc.*, Case No. 3:19-cv-00708 (E.D. Va.) (“the Action”), and as putative representative of the Rule 23(b)(2) Settlement Class,¹ on the one hand, and Experian Information Solutions, Inc. (“Experian”), and each of its parents, predecessors, subsidiaries, affiliates, officers, directors, partners, employees, agents, servants, assignees, counsel, successors, and/or other transferees or representatives, on the other hand, subject to preliminary and final approval by the Court, by and through their respective counsel. Experian and Plaintiff, individually and as putative class representative, are referred to collectively herein as the “Parties.”

I. RECITALS

This Agreement is made for the following purpose and with reference to the following facts:

1.1 The Pending Action.

Whereas, on or about September 27, 2019, Plaintiff filed an action against Experian in the United States District Court for the Eastern District of Virginia, in which she asserted claims on behalf of a putative class of Virginia consumers relating to Experian’s Fraud Shield product, and specifically Experian’s procedures with respect to returning high-risk address indicators in connection with a consumer’s credit report. Plaintiff alleges that Experian’s procedures violate the Fair Credit Reporting Act (“FCRA”), and seeks an equitable remedy on behalf of a putative class.

¹ Section II below contains the definitions of capitalized terms utilized herein unless otherwise noted.

1.2 Experian's Denial Of Liability.

Experian vigorously denies all claims asserted against it in this action, denies all allegations of wrongdoing and liability, and has denied all material allegations of the operative complaint on file in this action. Experian expressly and specifically contends that its past and current procedures with respect to its Fraud Shield product are and were reasonable and compliant with all laws, including, without limitation, the FCRA. Moreover, Experian vigorously denies that a litigation class could be certified in this action. Experian nevertheless desires to settle all equitable claims for injunctive relief that are asserted, or which could have been asserted, in this action, on the terms and conditions set forth herein, solely for the purpose of avoiding the burden, expense, and uncertainty of continuing litigation and for the purpose of putting to rest certain controversies engendered by this action. Nothing in this Agreement or any other document shall be construed as an admission or evidence of any violation of any federal or state statute, rule, or regulation, or principle of common law or equity, or of any liability or wrongdoing whatsoever, or of the truth of any of the claims or facts asserted or to be asserted in this action, or of the infirmity of any defenses that Experian raised or could have raised against the operative complaints or any other pleading or document filed in this action or any other litigation related to this action. Further, Experian is not estopped from challenging any such claim asserted in this action or motion for class certification in further proceedings in this action or in any other action if the Settlement is not finally approved.

1.3 Settlement Through Mediation.

Plaintiff, Class Counsel, Experian, and Experian's Counsel engaged in extensive, good-faith, arms'-length negotiations under the supervision of the Hon. Diane Welsh, a private mediator, including multiple day-long sessions and follow-up electronic communications. The negotiations and mediation sessions resulted in an agreement on the principal terms of a settlement pursuant to Federal Rule of Civil Procedure 23(b)(2). It is the desire and intention of the Parties by entering into this Agreement to fully, completely, and finally settle and resolve all

existing equitable claims for injunctive relief that relate to or arise out of the facts and claims alleged in this action, but to preserve and not release any claims for any actual, statutory and/or punitive damages or other remedy other than injunctive relief.

Class Counsel has concluded that a settlement with Experian on the terms set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement Class based upon their investigation and discovery, and taking into account the sharply contested issues involved, the uncertainty and cost of further prosecution of this action, and the substantial benefits the injunctive relief provides the Settlement Class pursuant to this Agreement.

Class Counsel intends to continue to pursue claims for monetary damages on behalf of the Plaintiff and putative class as alleged in the Complaint.

NOW, THEREFORE, in consideration of the promises and agreements set forth herein, it is hereby STIPULATED AND AGREED, subject to the Court's approval as required by Federal Rule of Civil Procedure 23, that each and every Released Claim, as described in Section 2.17 below, shall be fully and finally settled and compromised and dismissed with prejudice, and shall be fully discharged and released, upon and subject to the following terms and conditions:

II. DEFINITIONS

2.1 "Agreement" means this Stipulation and Agreement of Settlement, including all exhibits hereto.

2.2 "CAFA Notice" means the notice requirements imposed by 28 U.S.C. § 1715(b).

2.3 "Class Counsel" means Kelly Guzzo PLC, Consumer Litigation Associates, and Berger Montague PC.

2.4 "Class Notice" means the method of notice to the Settlement Class set forth in Section 7.2 below.

2.5 "Consumer Report" means a consumer report (as defined in 15 U.S.C. § 1681a(d)) assembled or delivered by Experian in its capacity as a nationwide consumer reporting agency as set forth in 15 U.S.C. § 1681a(p).

2.6 “Court” means the United States District Court, Eastern District of Virginia, the Honorable M. Hannah Lauck presiding.

2.7 “Effective Date” means fifteen (15) business days after the Rule 23(b)(2) Judgment has become Final.

2.8 “Effective Date for Service Award and Attorneys’ Fees” means the earlier of (1) December 1, 2022, or (2) fifteen (15) business days after the Rule 23(b)(3) Judgment becomes Final, provided that the Rule 23(b)(3) Judgment is not entered as a result of a voluntary dismissal by Plaintiff, as opposed to a negotiated settlement between the Parties or an adjudication on the merits. Notwithstanding the foregoing, Experian shall not be required to pay the Service Award and/or the Attorneys’ Fees until after the Rule 23(b)(2) Judgment has become Final. In the event that the Rule 23(b)(2) Judgment does not become Final until after December 1, 2022, the Effective Date for Service Award and Attorneys’ Fees shall be fifteen (15) days after the Rule 23(b)(2) Judgment becomes Final.

2.9 “Experian’s Counsel” means Jones Day and Troutman Pepper.

2.10 “FCRA” means the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., and, for purposes of the releases set forth herein, any and all similar or analogous state laws, including, without limitation, the common law of defamation and invasion of privacy.

2.11 “Final” means the date the Rule 23(b)(2) and/or Rule 23(b)(3) Judgment becomes final for all purposes, except as set forth in Section 5.3 below, because either (a) no objection has been made to the Settlement and no party has sought to intervene, or (b) if any objection or motion to intervene was made, no appeal has been filed and thirty (30) days have lapsed since entry of the Rule 23(b)(2) and/or Rule 23(b)(3) Judgment, and if a timely appeal has been filed, the appeal is finally resolved, with no possibility of further appellate or other review, resulting in final judicial approval of the Settlement.

2.12 “Final Approval Order” means the order to be entered by the Court finally approving the Settlement and resolving all issues between the Parties as specifically identified in Section 9.1 below.

2.13 “Final Fairness Hearing” means the hearing at which the Court will consider and finally decide whether to approve the Settlement, enter Rule 23(b)(2) Judgment, and make such rulings contemplated by this Agreement.

2.14 “Notice Administrator(s)” means the Administrator(s) hired by the Parties and approved by the Court to administer the Notice required pursuant to Section VII. Between execution of this agreement and the filing of a motion for Preliminary Approval, the Parties may solicit bids for the Notice Administrator(s). Neither party’s consent to a Notice Administrator(s) shall be unreasonably withheld. If the parties cannot agree on the selection of the Notice Administrator(s), then the Court shall choose the Notice Administrator(s) from a proposal submitted by each party.

2.15 “Parties” means the Plaintiff and Experian.

2.16 “Preliminary Approval Order” means an order to be entered by the Court in the Action, as provided for in Section 8.1 below, substantially in the form attached hereto as Exhibit A.

2.17 “Released Claim” or “Released Claims” means any and all equitable claims for injunctive relief asserted on behalf of a purported class or otherwise asserted on an aggregate basis that were alleged or that could have been alleged in this action, the operative complaints in this action, or any other complaints, pleadings, or other papers filed or to be filed in this action, relating in any way to Experian’s alleged failure to employ reasonable procedures with respect to its Fraud Shield product. This Release excludes all claims for statutory, actual, and punitive damages, attorneys’ fees, and costs that an individual or class of consumers may assert or that are presently asserted in the Complaint in the Action.

2.18 “Released Parties” means Experian and each of its members, owners, shareholders, unitholders, predecessors, successors (including, without limitation, acquirers of all or substantially all of Experian’s assets, stock, units, or other ownership interests) and assigns; the past, present, and future, direct and indirect, parents (including, without limitation, holding companies), subsidiaries and affiliates of any of the above; and the past, present, and future principals, trustees, partners, insurers, officers, directors, employees, agents, advisors, attorneys, members, owners, shareholders, unitholders, predecessors, successors, assigns, representatives, heirs, executors, and administrators of any of the above.

2.19 “Rule 23(b)(2) Judgment” means a final judgment and order of dismissal of all equitable claims for injunctive relief with prejudice to be entered by the Court concurrently with the Final Approval Order.

2.20 “Rule 23(b)(3) Judgment” means a final judgment and order resolving all legal claims of whatever nature (including, without limitation, for actual damages, statutory damages, punitive damages, and/or restitution) made against Experian at any time in the Action.

2.21 “Service Award” means a payment in the amount of \$7,500 to Plaintiff for her efforts to represent the Settlement Class.

2.22 “Settlement” means this Agreement between the Plaintiff, on behalf of herself and as proposed representative of the proposed Settlement Class, on the one hand, and Experian, on the other hand, to settle, compromise, and release all of the Released Parties from all of the Released Claims, fully, finally, and forever.

2.23 “Settlement Class,” solely for purposes of this Settlement, means, includes, and refers to all consumers in the United States for whom Experian, within two years prior to the filing of the Complaint in this action and during its pendency, furnished a consumer report to a third party containing an inaccurate Fraud Shield Indicator No. 10, 11, 16, or 17 indicating that the consumer’s address was either a high-risk or non-residential address.

2.24 “Settlement Class Member” means, includes, and refers to any individual within the Settlement Class.

III. THE SETTLEMENT CLASS

3.1 Certification Of Settlement Class For Settlement Purposes Only. Experian disputes that the elements of Federal Rule of Civil Procedure 23 are satisfied for purposes of a litigation class, disputes that a litigation class would be manageable, and denies that any litigation class may be certified in this action. However, solely for purposes of avoiding the expense and inconvenience of further litigation, Experian does not oppose certification of the Settlement Class for settlement purposes only. No statements, representations, or agreements made by Experian in connection with the Settlement may be used to establish any of the elements of class certification, other than for settlement purposes. Preliminary certification of the Settlement Class shall not be deemed a concession that certification of a litigation class is appropriate, nor is Experian estopped from challenging class certification in further proceedings in this action or in any other action, if the Settlement is not finally approved.

IV. SETTLEMENT CONSIDERATION

4.1 Injunctive Relief. Experian agrees that the Rule 23(b)(2) Judgment shall include terms enjoining Experian as follows:

- (a) Within six months of the Effective Date, Experian will reconfigure the update procedure for importing data into the Non-Residential Address table in FileOne to employ a “full file refresh,” meaning that, each month, Experian will import an updated file from its vendor in a manner that overwrites all pre-existing data in that table.
- (b) Experian will suppress or remove from the Non-Residential Address table any address that its vendor is reporting to Experian that Experian has reason to believe the vendor has not updated or otherwise verified for at least six years;

- (c) Within six months of the Effective Date, Experian will “retire” (i.e., stop publishing) Fraud Shield indicator 21;
- (d) On the later of the Effective Date or December 31, 2024, Experian will “retire” (i.e., stop publishing) Fraud Shield indicators 4 and 26;
- (e) Experian will substantially reduce the table of high-risk SIC Codes that are relied upon by Fraud Shield indicators 10 and 16 to be consistent with those listed on Exhibit B;
- (f) With respect to Fraud Shield indicators 11 and 17, Experian will revise the message that is delivered to customers as follows:

FSI 11: “Inquiry address: reported as being associated with a business.”

FSI 17: “On-file address: reported as being associated with a business.”

- (g) With respect to Fraud Shield Indicators 11 and 17, Experian will revise their description in the Fraud Shield Reference Guide as follows:

FSI 11: “The inquiry address has been reported as being associated with a business.”

FSI 17: “One of the consumer’s on-file addresses has been reported as being associated with a business.”

4.2 Change in Law. The provisions of Section 4.1 shall terminate prospectively and Experian shall have no further obligation or liability thereunder in the event of any change in federal law that prohibits or renders infeasible anything required by this Agreement; and, in such event, Experian shall be entitled to disclose and/or report in accord with federal law. In the event of any change covered by this Section, the remaining terms of this Agreement shall remain in force and effect. If Experian makes any such changes based on this provision, it shall first and promptly provide notice to Class Counsel, who may bring any objection to the Court for decision.

V. SERVICE AWARD AND ATTORNEYS' FEES AND COSTS

5.1 Class Counsel will apply to the Court for payment of a Service Award and attorneys' fees and costs in the aggregate of \$2,250,000.00 to be paid by or on behalf of Experian. This amount is intended by Experian to compensate Class Counsel in full for their work obtaining injunctive relief on behalf of the Settlement Class, and neither Plaintiff nor Class Counsel shall be entitled to apply or ask for any further fees or costs for injunctive relief obtained on behalf of the Settlement Class from the Court or any other court beyond this amount. To the extent Plaintiff is represented by any other attorneys in this action, Class Counsel, and not Experian, shall be responsible to ensure that all fees due and owing to such other attorneys are paid.

5.2 Payment of Service Award and attorneys' fees and costs shall occur no later than the Effective Date for Service Award and Attorneys' Fees.

5.3 Experian will not oppose Class Counsel's petition for fees or costs, so long as the total amount requested does not exceed the amounts set forth in Section 5.1 above. In no event shall Experian have an obligation to pay a total aggregate amount for such service award, fees and costs in excess of \$2,250,000.00. Failure by the Court to approve service award, attorneys' fees or costs shall not be grounds for any person to withdraw from the Settlement, and shall not delay the Settlement becoming Final as set forth in Section 2.11 above, and shall not delay the Effective Date of the releases described in Section 6.1 below.

VI. RELEASE AND DISMISSAL

6.1 Release of Released Claims. As of the Effective Date of the Settlement, Plaintiff, each Settlement Class Member, and their respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, assigns, and all persons acting for or on their behalf, shall be deemed to have fully, finally, and forever released the Released Parties from all Released Claims described in Sections 2.17 and 2.18 above.

VII. NOTICE AND SETTLEMENT ADMINISTRATION

7.1 Separate and apart from any payments expressly stated and required in this Agreement, Experian shall bear and directly pay to the Notice Administrator costs of notice and administration, including all class notice prior to and after the Effective Date, in an amount not to exceed \$300,000.00. Any costs of notice or administration in excess of \$300,000.00 shall be paid by Class Counsel.

7.2 Notice Plan. The Parties shall propose a notice plan to be approved by the Court (contemporaneous with entry of the Preliminary Approval Order or soon thereafter), to contain the following components, to be consistent with the requirements of applicable law:

- (a) CAFA Notice. Experian shall provide legally sufficient notice to comply with CAFA.
- (b) Website Notice. The Notice Administrator shall, promptly after entry of the Preliminary Approval Order, establish a website containing key information and documents pertaining to the Settlement and the relief to be provided herein. The website will direct consumers to contact Class Counsel for additional assistance.
- (c) Publication, Traditional Media and New Media Notice. The Notice Administrator shall develop a reasonable program of notice, to be presented to the Court for approval. The Notice Administrator's plan may include publication notice, the use of traditional media, and/or the use of new media, which may potentially involve, without limitation, online media, paid search, social media campaigns, or other technologies, to be presented to the Court for approval. All disputes about the content or methodologies of the notice plan proposed by the Notice Administrator shall be resolved by the Court.

VIII. PRELIMINARY APPROVAL

8.1 Preliminary Approval Order. Plaintiff will seek the Court's approval of this Agreement by filing an appropriate Motion for Preliminary Approval and then entry of the Preliminary Approval Order in this action. The Parties shall cooperate in presenting such papers to the Court as may be necessary to effectuate the intent and purposes of this Agreement.

Among other things, the Preliminary Approval Order shall specifically include the following:

- (a) A determination that, for settlement purposes only, this action may be maintained as class actions on behalf of the Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(2);
- (b) A finding that the Class Notice as described in Section 7.2 above is the only notice to the Settlement Class that is required, and that such notice satisfies the requirements of Due Process, the Federal Rules of Civil Procedure, and any other applicable laws;
- (c) A preliminary finding that the Settlement is fair, reasonable, and adequate for the Settlement Class and within the range of possible approval;
- (d) A preliminary finding that Plaintiff fairly and adequately represent the interests of the Settlement Class;
- (e) A preliminary appointment of Class Counsel finding that Class Counsel are adequate to act as counsel for the Settlement Class;
- (f) A date for the Final Fairness Hearing, to determine whether there exists any reasonable basis why the Settlement should not be approved as being fair, reasonable, and adequate, and in the best interests of the Settlement Class, and why Rule 23(b)(2) Judgment should not be entered thereon;
- (g) Establishment of a procedure for Settlement Class Members to object to the proposed Settlement and setting a deadline after which no Settlement Class Member shall be allowed to object to the proposed Settlement; and

- (h) Entry of a preliminary injunction as to Plaintiff, the Settlement Class, and any person or entity allegedly acting on behalf of the Settlement Class, either directly, representatively, or in any other capacity, enjoining them from commencing or prosecuting against the Released Parties, any action or proceeding in any court or tribunal asserting any of the Released Claims; and

8.2 Denial Of Preliminary Approval Order. If the Court fails for any reason to enter the Preliminary Approval Order substantially in the form attached hereto as Exhibit A or to certify the Settlement Class for settlement purposes consistent with the provisions hereof, and if all Parties do not agree jointly to appeal such ruling, this Agreement shall terminate and be of no further force or effect without any further action by the Parties. In the event that the Court fails to enter the Preliminary Approval Order substantially in the form attached hereto as Exhibit A, the Parties shall return to the status quo ante as of September 23, 2021, as if no Agreement had been negotiated or entered into. Moreover, the Parties shall be deemed to have preserved all of their rights or defenses as of September 23, 2021, and shall not be deemed to have waived any substantive or procedural rights of any kind that they may have as to each other or any individual within the proposed Settlement Class. In such an event, nothing in this Agreement or filed in connection with seeking entry of the Preliminary Approval Order shall be construed as an admission or concession by Experian of the allegations raised in this action of any fault, wrongdoing, or liability of any kind, nor is Experian estopped from challenging those allegations in further proceedings in this action or in any other action.

8.3 Objections To Settlement.

- (a) Right To Object. Any Settlement Class Member may appear at the Final Fairness Hearing to argue that the proposed Settlement should not be approved and/or to oppose the application of Class Counsel for an award of attorneys' fees and costs.

- (b) Deadline. Any such objection must be filed with the Clerk of the United States District Court, Eastern District of Virginia, 701 East Broad Street, Richmond, Virginia 23219, not later than thirty (30) days before the Final Fairness Hearing. Notwithstanding this deadline, objections solely as to attorneys' fees or costs may be made no later than seven (7) days after the filing of a motion for the award of attorneys' fees or costs. Copies of all objections also must be served electronically via the Court's ECF system or mailed, postmarked no later than by the date due, to each of the following: Leonard A. Bennett, Consumer Litigation Associates, 763 J Clyde Morris Boulevard, Suite 1A, Newport News, Virginia 23601; and Daniel J. McLoon, Esq., Jones Day, 555 S Flower St., Los Angeles, CA 90071.
- (c) Content Of Objections. All objections must include: (i) the objector's name, address, and telephone number; (ii) a sentence stating that, to the best of his or her knowledge, he or she is a member of the Settlement Class; (iii) the factual basis and legal grounds for the objection to the Settlement; (iv) the identity of witnesses whom the objector may call to testify at the Final Fairness Hearing; (v) the name and address of any attorney who has drafted or helped draft the objection; and (vi) copies of exhibits the objector may seek to offer into evidence at the Final Fairness Hearing.

IX. FINAL APPROVAL OF SETTLEMENT AND OTHER CONDITIONS

9.1 Final Fairness Hearing. On a date to be set by the Court, Plaintiff will seek entry of the Final Approval Order granting final approval of the Settlement and entering Judgment as to any and all equitable claims asserted in this action. The Final Approval Order will:

- (a) Provide that this action, only for purposes of the Settlement, may be maintained as a class action on behalf of the Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(2);
- (b) Find that Plaintiff fairly and adequately represents the interests of the Settlement Class;
- (c) Find that Class Counsel adequately represents Plaintiff and the Settlement Class;
- (d) Find that the Class Notice satisfies the requirements of Due Process, the Federal Rules of Civil Procedure, and any other applicable laws;
- (e) Find that the Settlement is fair, reasonable, and adequate to the Settlement Class and that each Settlement Class Member shall be bound by the Settlement, including the releases contained in Section 6.1 above;
- (f) Find that the Settlement represents a fair resolution of all Released Claims asserted on behalf of the Settlement Class and fully and finally resolves and releases all such Released Claims;
- (g) Find that the procedures required in Section 4.1 comply with the FCRA;
- (h) Order Experian to implement the procedures required in Section 4.1;
- (i) Order that the Settlement should be, and is, approved;
- (j) Determine the amount of any attorneys' fees and costs awarded to Class Counsel, consistent with Section V, above;
- (k) Overrule any objections;
- (l) Dismiss, on the merits and with prejudice, all Released Claims in the Actions, and permanently enjoin each and every Settlement Class Member from bringing, joining, or continuing to prosecute against the Released Parties any Released Claims, and enter Judgment thereon;
- (m) Enjoin the prosecution of any and all Released Claims; and

- (n) Retain jurisdiction of all matters relating to the modification, interpretation, administration, implementation, effectuation, and enforcement of this Agreement and the Settlement.

X. TERMINATION OF AGREEMENT

10.1 Non-Approval Of Agreement. This Agreement is conditioned upon final approval without material modification by the Court. In the event that the Agreement is not so approved, the Parties shall return to the status quo ante as of September 23, 2021, as if no Agreement had been negotiated or entered into. Moreover, the Parties shall be deemed to have preserved all of their rights or defenses as of September 23, 2021, and shall not be deemed to have waived any substantive or procedural rights of any kind that they may have as to each other or any member of the proposed Settlement Class. In the event that the Agreement is approved without material modification by the Court, but is later reversed or vacated on appeal, each of the Parties shall have the right to withdraw from the Agreement and return to the status quo ante as of September 23, 2021, for all litigation purposes, as if no Agreement had been negotiated or entered into, and shall not be deemed to have waived any substantive or procedural rights of any kind that they may have as to each other or any member of the proposed Settlement Class.

XI. MISCELLANEOUS PROVISIONS

11.1 Further Assurances. Each of the Parties shall execute all documents and perform all acts necessary and proper to effectuate the terms of this Agreement.

11.2 Dispute Resolution. The Parties agree to meet and confer in good faith in regard to any dispute relating to the Settlement or to administration of the Settlement. Any dispute that cannot be resolved by the Parties shall be submitted to Diane Welsh for binding resolution, and if she is not available or able to accept the submission, then to Magistrate Judge Mark Colombell or his successor. The Parties shall bear their own attorneys' fees and costs, except the Mediator or Court shall have discretion to award attorneys' fees and costs if it determines that the losing party has acted in bad faith or in unreasonable opposition to the opposing party's position.

11.3 Publicity. The Parties and their Counsel agree not to issue press releases or communicate with the media regarding this Settlement until after the Settlement is Final (except as may be permitted pursuant to Section 7.2 above). Any press release by Class Counsel shall be approved by Experian, or if not so approved only after obtaining approval by the Court. Nothing in this Section shall be construed to preclude Class Counsel from communicating with Plaintiff or any Settlement Class Member. Further, nothing in this Section shall be construed to preclude Experian from disclosing information regarding this Settlement with: (a) its subscribers for business-related purposes; (b) as required by law, statute, rule, regulation, order, or any other requirement or determination of any court, governmental entity, or regulatory entity; or (c) as may be authorized by Class Counsel in writing. Nothing in this section shall prohibit the Notice Administrators from engaging with the media regarding the Settlement, consistent with this Agreement and subject to Class Counsel's, Experian's, and Experian's Counsel's approval, or if not so approved, the Court's approval.

11.4 Entire Agreement. This Agreement constitutes the entire agreement between and among the Parties with respect to the Settlement of any and all equitable claims for injunctive relief brought in this Action. With respect to such claims, this Agreement supersedes all prior negotiations and agreements, including, without limitation, all proposals made by the private mediator, all term sheets exchanged at or prior to the mediation, all prior drafts of this Agreement, and all correspondence relating to any of the above. The Parties, and each of them, represent and warrant that no other party or any agent or attorney of any of the Parties has made any promise, representation, or warranty whatsoever not contained in this Agreement to induce them to execute the same. The Parties, and each of them, represent and warrant that they have not executed this Agreement in reliance on any promise, representation, or warranty not contained in this Agreement.

11.5 Confidentiality. Any and all drafts of this Agreement and other settlement documents relating to the negotiations between the Parties, including without limitation any

memorandum of understanding signed, will remain confidential and will not be disclosed or duplicated except as necessary to obtain preliminary and/or final Court approval. This provision will not prohibit the Parties from submitting this Agreement to the Court in order to obtain preliminary and/or final approval of the Settlement or from submitting this Agreement to the Notice Administrator, or Experian's insurance carrier(s) for purposes of effecting the Settlement as contemplated in this Agreement. It is agreed that, within thirty (30) days after the Effective Date, the originals and all copies of all confidential or highly confidential documents and/or information subject to protective order in any of the Actions shall be destroyed, deleted, or returned to the designating Parties, with the exception of documents which pertain solely to the Plaintiff.

11.6 Successors And Assigns. The Agreement shall be binding upon, and inure to the benefit of, the heirs, successors, and assigns of the Parties.

11.7 Competency Of Parties. The Parties, and each of them, acknowledge, warrant, represent, and agree that in executing and delivering this Agreement, they do so freely, knowingly, and voluntarily, that they had an opportunity to and did discuss its terms and their implications with legal counsel, that they are fully aware of the contents and effect of the Agreement and that such execution and delivery is not the result of any fraud, duress, mistake, or undue influence whatsoever.

11.8 Authority. The person signing this Agreement on behalf of Experian warrants and represents that he or she is authorized to sign on its behalf. Plaintiff, as representative of the Settlement Class, has personally signed this Agreement.

11.9 Modification. No modification of or amendment to this Agreement shall be valid unless it is in writing and signed by all Parties hereto.

11.10 Construction. Each of the Parties has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any of the Parties. Before declaring any provision of this Agreement

invalid, the Court shall first attempt to construe the provision valid to the fullest extent possible consistent with applicable precedent so as to find all provisions of this Agreement valid and enforceable. After applying this rule of construction and still finding a provision invalid, the Court shall thereupon interpret the invalid provision to the fullest extent possible to otherwise enforce the invalid provision. The invalidity of any one provision shall not render this Agreement otherwise invalid and unenforceable unless the provision found to be invalid materially affects the terms of this Agreement after application of the rules of construction set forth in this paragraph.

11.11 No Waiver. The failure of any of the Parties to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, or any other provision, nor in any way to affect the validity of this Agreement or any part hereof, or the right of any of the Parties thereafter to enforce that provision or each and every other provision. No waiver of any breach of this Agreement shall constitute or be deemed a waiver of any other breach.

11.12 Notices/Communications. All requests, demands, claims, and other communications hereunder shall: (a) be in writing; (b) be delivered by U.S. Mail and facsimile; (c) be deemed to have been duly given on the date received; and (d) be addressed to the intended recipients as set forth below:

If to Plaintiff or the Settlement Class:

Kristi C. Kelly, Esq.
Kelly Guzzo, PLC
3925 Chain Bridge Rd., Suite 202
Fairfax, VA 22030
Fax: (703) 591-0167

If to Experian:

Daniel J McLoon
Jones Day

555 S Flower St.
Los Angeles, CA 90071

Each of the Parties may change the address to which requests, demands, claims, or other communications hereunder are to be delivered by giving the other Parties notice in the manner set forth herein.

11.13 Counterparts. This Agreement may be executed in one or more counterparts and, if so executed, the various counterparts shall be and constitute one instrument for all purposes and shall be binding on each of the Parties that executed it, provided, however, that none of the Parties shall be bound unless and until all Parties have executed this Agreement. For convenience, the several signature pages may be collected and annexed to one or more documents to form a complete counterpart. True and correct photocopies or electronic images (such as PDFs) of executed copies of this Agreement may be treated as originals.

Agreed and accepted:

Dated: 11/10, 2021

By: Lisa Hill-Green
Lisa Hill-Green

Dated: November 9 2021

EXPERIAN

By: Ann Sterling
Name: Ann Sterling
Title: Vice President and Associate
General Counsel

Approved as to form and content:

Dated: _____, 2021

CONSUMER LITIGATION ASSOCIATES

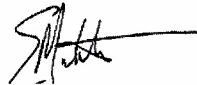


By _____

Leonard A. Bennett
Attorneys for Plaintiff and the Settlement Class

Dated: November 9, 2021

BERGER MONTAGUE PC

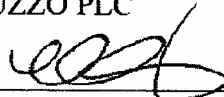


By

E. Michelle Drake
Attorneys for Plaintiff and the Settlement Class

Dated: 11/9, 2021

KELLY GUZZO PLC



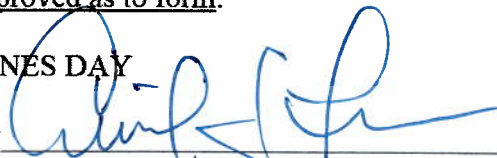
By

Kristi Kelly
Attorneys for Plaintiff and the Settlement Class

Approved as to form:

Dated: 11/09, 2021

JONES DAY



By

Daniel J. McLoon
Attorneys for Experian

Dated: 01/05/2022, 2021

Troutman Pepper



By

David Anthony
Attorneys for Experian

Exhibit A

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

LISA HILL-GREEN, *on behalf of herself
and all others similarly situated,*

Plaintiff,

v.

Civil Action No. 3:19-cv-00708-MHL

EXPERIAN INFORMATION
SOLUTIONS, INC.,

Defendant.

**[PROPOSED] ORDER PRELIMINARILY APPROVING
SETTLEMENT AND DIRECTING NOTICE TO CLASS**

The Settlement Agreement has been filed with the Court (ECF) and the definitions and terms set forth in the Settlement Agreement are incorporated herein by reference.

The Court, having reviewed the Settlement Agreement entered by the Parties, hereby Orders that:

1. The Court has considered the proposed settlement of the claim asserted under the Fair Credit Reporting Act (“FCRA”) by a class of consumers defined as follows (the “Settlement Class”):

All consumers in the United States for whom Experian, within two years prior to the filing of the Complaint in this action and during its pendency, furnished a consumer report to a third party containing an inaccurate Fraud Shield Indicator No. 10, 11, 16, or 17 indicating that the consumer’s address was either a high-risk or non-residential address.

The Settlement Class does not include Defendant’s officers, directors, and employees; Defendant’s attorneys; the Named Plaintiff’s attorneys; or any employee of the Federal Judiciary.

2. The Court has conducted a preliminary evaluation of the Settlement as set forth in the Agreement. The Settlement Agreement entered between the parties as of November 9, 2021

(ECF), appears, upon preliminary review, to be fair, reasonable, and adequate to the Settlement Class. Accordingly, for settlement purposes only, the proposed settlement is preliminarily approved, pending a Final Approval Hearing, as provided for herein.

3. The prerequisites to a class action under Fed. R. Civ. P. 23(a) have been preliminarily satisfied, for settlement purposes only, in that:

(a) The Settlement Class appears to consist of more than 100 members that are geographically dispersed such that joinder of all members is impracticable;

(b) the claims of the Named Plaintiff appear to be typical of those of the other members of the Settlement Class;

(c) there appear to be questions of fact and law that are common to all members of the Settlement Class; and

(d) the Named Plaintiff appears to be able to fairly and adequately protect the interests of the Settlement Class and has retained Class Counsel experienced in consumer class action litigation who appear to be able to adequately represent the Settlement Class.

4. For settlement purposes only, the Court finds that this action is preliminarily maintainable as a class action under Fed. R. Civ. P. 23(b)(2) because Experian's conduct is generally applicable to the Settlement Class, so that final injunctive relief as set forth in Section IV of the Settlement Agreement is appropriate respecting the Class as a whole.

5. If the Settlement Agreement is not finally approved, is not upheld on appeal, or is otherwise terminated for any reason before the Effective Date, then the Settlement Class shall be decertified; the Settlement Agreement and all negotiations, proceedings, and documents prepared, and statements made in connection therewith, shall be without prejudice to any Party and shall not be deemed or construed to be an admission or confession by any Party of any fact, matter, or

proposition of law; and all Parties shall stand in the same procedural position as if the Settlement Agreement had not been negotiated, made, or filed with the Court.

6. The Court appoints Lisa Hill-Green as the Class Representative. The Court also appoints Kristi Kelly, Andrew Guzzo, Casey Nash, and Patrick McNichol of Kelly Guzzo, PLC; Leonard Bennett, Craig Marchiando and Kevin Dillon of Consumer Litigation Associates, P.C.; and E. Michelle Drake and Joseph Hashmall of Berger Montague PC as counsel for the Settlement Class (“Class Counsel”).

7. The Court orders that a Notice Administrator be appointed. The Parties shall submit their nomination of the administrator and all necessary support thereof no later than November 22, 2021.

8. The Parties shall submit exemplars of the draft written notice and Settlement Website content with their submission made on or before November 22, 2021, which notice shall be considered and if satisfactory approved contemporaneously with the selection of the Notice Administrator.

9. Once approved and ordered, the Notice Administrator, shall implement the agreed-upon Notice Plan in accordance with Section VII of the Settlement Agreement. To the extent the Parties or Notice Administrator determine that ministerial changes to the Notices are necessary before disseminating either to the Settlement Class Members, they may make such changes without further application to the Court.

10. The Court will hold a Final Approval Hearing pursuant to Fed. R. Civ. P. 23(e) on [REDACTED], 2022 (*at least 150 days after entry of Preliminary Approval Order*) at the United States District Court, Eastern District of Virginia, at 701 E. Broad St., Richmond, VA 23219, at [REDACTED].m. for the following purposes:

(a) To determine whether the proposed settlement is fair, reasonable, and adequate and should be granted final approval by the Court;

(b) To determine whether a final judgment should be entered dismissing the claims of the Settlement Class with prejudice, as required by the Settlement Agreement;

(c) To consider the application of Class Counsel for an award of attorneys' fees, costs, and expenses, and for a service award to the class representative; and

(d) To rule upon other such matters as the Court may deem appropriate.

11. Subject to further consideration and approval upon the Parties' November 22, 2021 submission, the Court finds this manner of giving notice, including its use of published and internet, satisfies the requirements of Fed. R. Civ. P. 23 and due process, and shall constitute due and sufficient notice to all persons entitled thereto.

12. As this is a Settlement for injunctive relief under Fed. R. Civ. P. 23(b)(2), there shall be no ability for Settlement Class Members to request exclusion from the Settlement. All Settlement Class Members shall therefore be bound by all subsequent proceedings, orders, and judgments in this action.

13. Pending the final determination of whether the Settlement should be approved, Plaintiff, the Settlement Class, and any person or entity allegedly acting on behalf of the Settlement Class, are hereby enjoined, either directly, representatively, or in any other capacity, from commencing or prosecuting against the Released Parties any action or proceeding in any court or tribunal asserting any of the Released Claims. Such injunction will remain in force until the Court enters the Final Approval Order or until such time as the Parties notify the Court that the Settlement has been terminated. This injunction is necessary to protect and effectuate the Agreement, this Preliminary Approval Order, and the Court's flexibility and authority to

effectuate the Agreement and Settlement and to enter judgment when appropriate, and is ordered in aid of this Court's jurisdiction to protect its judgments.

14. Any Settlement Class Member who wishes to be heard orally at the Final Approval Hearing, and/or who wishes for any objection to be considered, must file a written notice of objection to be filed with the Court no later than thirty (30) days prior to the Final Approval Hearing. Notwithstanding this deadline, objections solely as to attorneys' fees or costs may be made no later than seven (7) days after the filing of a motion for the award of attorneys' fees or costs.

15. Copies of all objections also must be served electronically via the Court's ECF system or mailed, postmarked no later than by the date due, to each of the following: Leonard A. Bennett, Consumer Litigation Associates, 763 J Clyde Morris Boulevard, Suite 1A, Newport News, Virginia 23601; and Daniel J. McLoon, Esq., Jones Day, 555 S Flower St., Los Angeles, CA 90071. The objection must include the following: (1) the objector's name, address, and telephone number; (2) a sentence stating that, to the best of his or her knowledge, he or she is a member of the Settlement Class; (3) the factual basis and legal grounds for the objection to the Settlement; (4) the identity of witnesses whom the objector may call to testify at the Final Fairness Hearing; (5) the name and address of any attorney who has drafted or helped draft the objection; and (6) copies of exhibits the objector may seek to offer into evidence at the Final Fairness Hearing. Any Settlement Class Member who fails to timely file and serve a written objection pursuant to the terms of this paragraph shall not be permitted to object to the approval of the settlement or the Settlement Agreement and shall be foreclosed from seeking any review of the settlement or the terms of the Settlement Agreement by appeal or other means.

16. No later than ten (10) business days prior to the Final Approval Hearing, Class Counsel shall prepare and file with the Court, and serve on Defendant's counsel, a list of all persons who have timely objected to the settlement and all documents relating to the objections.

17. All briefs, memoranda, petitions and affidavits to be filed in support of an individual award to the Class Representative and in support in support of Class Counsel's application for fees, costs and expenses, shall be filed not later than forty-five (45) days before the Final Approval Hearing. Any other briefs, memoranda, petitions and affidavits that Class Counsel intends to file in support of final approval shall be filed not later than twenty-one (21) days before the Final Approval Hearing.

18. Not later than forty-five (45) days before the Final Approval Hearing, the Notice Administrator will cause a declaration to be filed with the Court that the Notice described above was given as required herein.

19. Neither this Preliminary Approval Order, nor the Settlement Agreement, shall be construed or used as an admission or concession by or against the Defendant or any of the Released Parties of any fault, omission, liability, or wrongdoing, or the validity of any of the Settlement Released Claims. This Preliminary Approval Order is not a finding of the validity or invalidity of any claims in this lawsuit or a determination of any wrongdoing by the Defendant or any of the Released Parties. The preliminary approval of the Settlement Agreement does not constitute any opinion, position, or determination of this Court, one way or the other, as to the merits of the claims and defenses of Plaintiff, the Settlement Class Members, or the Defendant.

20. The Court retains exclusive jurisdiction over this action to consider all further matters arising out of or connected with the Settlement Agreement.

BY THE COURT:

HONORABLE M. HANNAH LAUCK
UNITED STATES DISTRICT JUDGE

Date:
Richmond, Virginia

EXHIBIT B

SIC	RISK_LEVEL	SIC_DS
42150100	H	COURIER SERVICES
42150200	H	PARCEL DELIVERY
42150300	H	SHIPPING MASTERS
42150400	H	PARCEL POST ASSEMBLY SERVICE
42150600	H	MEDICAL COURIER SVC
43110100	H	POST OFFICES
60990700	H	TRAVELERS' CHECKS-ISSUED
44910400	H	PORTS
45130100	H	AIR COURIER SERVICES
45130200	H	EXPEDITERS
45130300	H	PARCELS FOR FOREIGN COUNTRIES
48220200	H	TELEGRAPH SERVICE
48220500	H	TELEGRAM SERVICE
60210300	H	AUTOMATED TELLER MACHINES
60210400	H	LETTERS OF CREDIT
60990100	H	CURRENCY EXCHANGES
60990200	H	MONEY ORDER SERVICE
60990300	H	CHECK CASHING SERVICE
60990400	H	MONEY BROKERS
60990500	H	FOREIGN EXCHANGE BROKERS & DEALE
60990600	H	ESCROW SERVICE
60990800	H	SAFE DEPOSIT BOX-RENTAL
60990900	H	CLEARING HOUSES
60991000	H	MONEY TRANSFER SERVICE
60991100	H	REGISTERED AGENTS
60991200	H	PAYROLL DISTRIBUTION SERVICE
60991400	H	MONEY ORDER SYSTEMS
60991500	H	BANKING SYSTEMS & SERVICE-ELECTR
60991700	H	BUREAUX DE CHANGE
60999900	H	FUNCTIONS RELATED TO DEPOSIT BAN
72992400	H	CREDIT & DEBT COUNSELING SERVICE
72995800	H	CREDIT RESTORATION
72996600	H	CONSUMER ADVISORY COUNSELING
72998400	H	BILL PAYING SERVICE
73220100	H	COLLECTION AGENCIES
73220200	H	COLLECTION SYSTEMS
73220300	H	TRACING BUREAUS
73220500	H	CHECK COLLECTION SERVICE
73230100	H	CREDIT REPORTING AGENCIES
73230200	H	SKIP TRACING
73230300	H	CREDIT INVESTIGATORS
73310400	H	MAILING LISTS
73310500	H	ADVERTISING-DIRECT MAIL

EXHIBIT B

73310800	H	LETTER SHOP SERVICE
73310900	H	DIRECT MAIL SERVICES
73891200	H	CALL CENTERS
73892600	H	CHECK CASHING PROTECTION SYSTEMS
73894600	H	VOICE MAIL MESSAGING SERVICE
73895800	H	LIQUIDATORS
73897000	H	MESSENGER SERVICE
73897100	H	MAIL BOX-RENTALS
80590600	H	HOMES & INSTITUTIONS
80630200	H	SANITARIUMS
80630300	H	PSYCHIATRIC TREATMENT FACILITIES
80639800	H	PSYCHIATRIC HOSPITALS
80930500	H	MENTAL HEALTH CLINICS
83225600	H	PROBATION SERVICES
83311000	H	DEVELOPMENTALLY DISABLED INFO/SV
83610400	H	HOMES-CHILDREN
83611200	H	HOMES-BOYS
83611700	H	JUVENILE DETENTION CENTERS
83611800	H	CHILDRENS NURSING & REHABILITATI
83611900	H	YOUTH HOMES
83612200	H	ORPHANAGES
83612400	H	HOMES-GIRLS
83612600	H	HALFWAY HOUSE
87449900	H	JAILS, PRIVATELY OPERATED
92230100	H	FEDERAL GOVT-CORRECTIONAL INSTIT
92230200	H	STATE GOVT-CORRECTIONAL INSTITUT
92230300	H	COUNTY GOVT-CORRECTIONAL INSTITU
92230400	H	CITY GOVT-CORRECTIONAL INSTITUTI

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

LISA HILL-GREEN, individually and on
behalf of others similarly situated,

Plaintiff,

v.

Civil Action No. 3:19-cv-00708-MHL

EXPERIAN INFORMATION SOLUTIONS, INC.,

Defendant.

**DECLARATION OF LEONARD A. BENNETT
IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

I, Leonard A. Bennett, hereby declare the following:

1. My name is Leonard A. Bennett. I am over 21 years of age, of sound mind, capable of executing this Declaration, and have personal knowledge of the facts stated herein, and they are all true and correct.

Consumer Litigation Associates, P.C.

2. I am one of the attorneys working on behalf of the Plaintiff and the Class in the above-styled litigation, and I am an attorney and principal of the law firm of Consumer Litigation Associates, P.C., a seven-attorney law firm with offices in Hampton Roads, Richmond, Harrisonburg and Alexandria, Virginia. My primary office is at 763 J. Clyde Morris Boulevard, Suite 1-A, Newport News, Virginia 23601. I submit this Declaration in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

3. Since 1994, I have been and presently am a member in good standing of the Bar of the highest court of the Commonwealth of Virginia, where I regularly practice law. Additionally, since 1995, I have been a member in good standing of the Bar of the highest court of the State of North Carolina.

4. I have also been admitted to practice before and am presently admitted to numerous other federal courts. I have also been admitted to or by *pro hac vice* in United States District Courts including Alabama, Arizona, California, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Nevada, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Washington, West Virginia, Wisconsin, Wyoming, and the District of Columbia.

5. I was selected as the 2017 Consumer Lawyer of the Year by the National Association of Consumer Advocates.

6. Since 1996, my practice has been limited to consumer protection litigation. While my experience representing consumers has come within several areas, with nearly all of my litigation experience in Federal court.

7. Since 2001, I have been asked to and did speak at numerous CLE programs, seminars and events in the area of Consumer Protection litigation.¹

¹ National Consumer Law Center, Consumer Rights Conference, Denver, Colorado (November 2018); Military U.S. Navy Legal Assistance, Consumer Awareness, Buying, Financing and Owning an Automobile (July 2018); Practicing Law Institute (PLI), 23rd Annual Consumer Financial Services Institute, April 2018; National Consumer Law Center, Consumer Rights Conference, Washington, D.C., Speaker (November 2017); National Consumer Law Center, Consumer Rights Conference, Anaheim, California, Speaker for Multiple Sessions (October 2016); Fair Debt Collection Practices Act/Fair Credit Reporting Act, Norfolk and Portsmouth, VA Bar Association (October 29, 2015); National Consumer Law Center, Consumer Rights Conference, Washington, D.C., Speaker for Multiple Sessions (November 2013); National Consumer Law Center, Fair Debt Collection Practices Act Conference, Fair Credit Reporting Act Claims Against Debt Buyers, March 2013; National Association of Consumer Advocates, Webinar CLE: FCRA Dispute Process, December 2012; Rossdale CLE, Fair Credit Reporting Act (August 2012); Virginia Trial Lawyers Association, Advocacy Seminar - October, 2011; National Association of Consumer Advocates, Fair

8. I testified before the United States House Financial Services Committee on multiple occasions. In 2014, I spoke before the Consumer Financial Protection Bureau Consumer Advisory Board. I have also served on a Federal Trade Commission Round Table and Governor Kaine's Virginia Protecting Consumer Privacy Working Group all within this field. I was recently on the Board of Directors of the National Association of Consumer Advocates and am on the Partners Council of the National Consumer Law Center, on the Board of Directors for Public Justice and the Virginia Poverty Law Center. I have been named as a multi-year Super Lawyer, a Law Dragon Top 500 Plaintiffs' Attorney, to Best Lawyers in America and a Virginia Leader in the Law. In November 2017, I was recognized as the Consumer Attorney of the Year by the National Association of Consumer Advocates. In 2019 and 2020, my firm earned the Elite Trial Lawyers

Credit Reporting Act National Conference - Memphis, TN, May 2011; Stafford Publications CLE, National Webinar, "FCRA and FACTA Class Actions: Leveraging New Developments in Certification, Damages and Preemption" (April 2011); National Consumer Law Center, National Consumer Rights Conference, Boston, Speaker for Multiple Sessions, November, 2010; Virginia State Bar, Telephone and Webinar Course, Virginia, 2009; "What's Going On Here? Surging Consumer Litigation - Including Class Actions in State and Federal Court"; National Association of Consumer Advocates, Fair Credit Reporting Act National Conference, Chicago, IL, May 2009; National Consumer Law Center, National Consumer Rights Conference, Philadelphia, Speaker for Multiple Sessions, November 2009; National Consumer Law Center, National Consumer Rights Conference, Portland, OR, Speaker for Multiple Sessions, November 2008; Washington State Bar, Consumer Law CLE, Speaker, September 2008; Washington State Bar, Consumer Law CLE, Speaker, July 2007; House Financial Services Committee, June 2007; National Consumer Law Center, National Consumer Rights Conference, Washington, D.C., Speaker for Multiple Sessions, November 2007; National Association of Consumer Advocates, Fair Credit Reporting Act National Conference; Denver, Colorado, May 2007, Multiple Panels; U.S. Army JAG School, Charlottesville, Virginia, Consumer Law Course Instructor, May 2007; Georgia State Bar, Consumer Law CLE, Speaker, March 2007; Contributing Author, Fair Credit Reporting Act, Sixth Edition, National Consumer Law Center, 2006; National Consumer Law Center, National Consumer Rights Conference, Miami, FL, Speaker for Multiple Sessions, November 2006; Texas State Bar, Consumer Law CLE, Speaker, October 2006 Federal Claims in Auto fraud Litigation; Santa Clara University Law School, Course, March 2006; Fair Credit Reporting Act; Widener University Law School, Course, March 2006 Fair Credit Reporting Act; United States Navy, Navy Legal Services, Norfolk, Virginia, April 2006 Auto Fraud; Missouri State Bar CLE, Oklahoma City, Oklahoma; Identity Theft; National Consumer Law Center, National Consumer Rights Conference, Boston, Mass, Multiple panels; National Association of Consumer Advocates, Fair Credit Reporting Act National Conference, New Orleans, Louisiana (May 2005), Multiple Panels; United States Navy, Naval Justice School (JAG Training), Newport, Rhode Island, Consumer Law; American Bar Association, Telephone Seminar; Changing Faces of Consumer Law, National Consumer Law Center, National Consumer Rights Conference, Boston, Mass; Fair Credit Reporting Act Experts Panel; and ABCs of the Fair Credit Reporting Act; National Association of Consumer Advocates, Fair Credit Reporting Act National Conference, Chicago, Illinois; Multiple Panels; Oklahoma State Bar CLE, Oklahoma City, Oklahoma, Identity Theft; Virginia State Bar, Telephone Seminar, Identity Theft; United States Navy, Naval Justice School (JAG Training), Newport, Rhode Island, Consumer Law; United States Navy, Navy Legal Services, Norfolk, Virginia, Auto Fraud; Virginia State Bar, Richmond and Fairfax, Virginia, Consumer Protection Law; Michigan State Bar, Consumer Law Section, Ann Arbor, Michigan, *Keynote Speaker*.

Award for top firm in Financial Products class action litigation and in 2019 the Frankie Muse Freeman Organizational Pro Bono Award from the Virginia State Bar.

9. I was one of the contributing authors of the leading and comprehensive treatises published by National Consumer Law Center and used by judges and advocates nationally.

Consumer Litigation Associates, P.C.'s Experience

10. I have substantial experience in complex litigation, including class action cases, prosecuted in Federal court.

11. I have litigated dozens of class action cases based on consumer protection claims in the past decade. In each of the class cases, when asked to do so by either contested or uncontested motion, the court found me to be adequate class counsel. In each of these, I served in a lead or executive committee counsel role. In 2011, Judge Schell, in the United States District Court for the Eastern District of Texas, determined me to be adequate Rule 23 counsel. *Minor v. Real Page, Inc.*, 4:09-cv-00439 (E.D. Tex.). Just a few of comparable cases include, by example only: *Pitt v. K-Mart Corp*, 3:11-cv-697 (E.D. Va.); *Ryals v. HireRight Sols., Inc.*, 3:09-cv-625 (E.D. Va.); *White v. Experian Info. Sols. Inc.*, 8:05-cv-01070 (C.D. Cal.); *Teagle v. LexisNexis Screening Sols., Inc.*, 1:11-cv-1280 (N.D. Ga.); *Roe v. Intellicorp*, 1:12-cv-02288 (N.D. Ohio); *White v. CRST*, 1:11-cv-2615 (N.D. Ohio); *Williams v. LexisNexis Risk Mgmt.*, 3:06-cv-241 (E.D. Va.); *Goode v. LexisNexis*, 11-cv-2950 (E.D. Pa.); *Beverly v. Wal-Mart Stores, Inc.*, 3:07-cv-469 (E.D. Va.); *Berry v. LexisNexis Risk & Info. Analytical Group*, 3:11-cv-754 (E.D. Va.); *Stinson v. Advance Auto Parts, Inc.*, (W.D. Va.); *Black v. Winn-Dixie Stores, Inc.*, 3:09-cv-502 (M.D. Fla.); *Cappetta v. GC Servs. LP*, 3:08-cv-288-JRS (E.D. Va.); *Henderson v. Verifications, Inc.*, 3:11-cv-514 (E.D. Va.); *Harris v. US Physical Therapy, Inc.*, 2:10-cv-1508 (D. Nev.); *Domonoske v. Bank of Am., N.A.*, 5:08-cv-66 (W.D. Va.); *Smith v. Telecris Biotherapeutics*,

Inc., 1:09-cv-153 (M.D.N.C.); *Daily v. NCO Fin.*, 3:09-cv-31 (E.D. Va.); *Lengrand v. Wellpoint*, 3:11-cv-333 (E.D. Va.); *Burke v. Shapiro, Brown & Alt, LLP*, No. 3:14-cv-838 (DJN) (E.D. Va.); *Ridenour v. Multi-Color Corp.*, No. 2:15-cv-41-MSD-DEM (E.D. Va.); *Manuel v. Wells Fargo Nat'l Ass'n*, No. 3:14-cv-238 (E.D. Va.); *Thomas v. FTS USA, LLC*, No. 3:13-cv-825-REP (E.D. Va.); *Milbourne v. JRK Residential Am., Inc.*, No. 3:12-cv-861-REP (E.D. Va.); *Hall v. Vitran Express, Inc.*, No. 1:09-cv-00800 (N.D. Ohio); *Anderson v. Signix, Inc.*, No. 3:08-CV-570 (E.D. Va.); *Reardon v. Closetmaid*, No. 2:08-cv-1730 (W.D. Pa.); *Bell v. U.S. Express, Inc.*, 1:11-CV-181 (E.D. Tenn.); *Goode v. First Advantage LNS Screening Sols., Inc.*, 2:11-cv-2950 (E.D. Pa.); *Ellis v. Swift Transp. Co. of Az.*, 3:13-cv-473 (E.D. Va.); *Edwards v. Horizon Staffing, Inc.*, No. 1:13-cv-3002 (N.D. Ga.); *Shami v. Middle E. Broadcasting, Inc.*, 1:13-cv-467 (E.D. Va.); *Marcum v. Dolgencorp*, 3:12-cv-108 (E.D. Va.); *Wyatt v. SunTrust Bank*, 3:13-cv-662 (E.D. Va.); *Henderson v. HRPlus*, No. 3:14-cv-82 (E.D. Va.); *Henderson v. Backgroundchecks.com*, 3:13-cv-29 (E.D. Va.); *Henderson v. Axiom Risk Sols.*, 3:12-cv-589 (E.D. Va.); *Ryals v. Strategic Screening Sols., Inc.*, 3:14-cv-00643-REP (E.D. Va.); *Thomas v. First Advantage Screening Solutions, Inc.*, 1:13-cv-04161-CC-LTW (N.D. Ga.); *Smith v. Harbor Freight Tools USA, Inc.*, No. 2:13-cv-06262-JFW-VBK (C.D. Cal.); *Smith v. Rescare*, 3:13-cv-5211 (S.D. W. Va.); *Oliver v. FirstPoint, Inc.*, No. 1:14-cv-517 (M.D.N.C.); *Blocker v. Marshalls of MA, Inc.*, No. 1:14-cv-01940-ABJ; *Brown v. Lowe's Cos., Inc.*, 5:13-cv-79 (W.D.N.C.); *Reese v. Stern & Eisenberg Mid-Atlantic*, 3:16-cv-496-REP (E.D. Va.); *Hayes v. Delbert Servs. Corp.*, No. 3:14-cv-258-JAG (E.D. Va.); *Soutter v. Equifax Info. Servs., LLC*, 3:10-cv-107 (E.D. Va.); *Fariasantos v. Rosenberg & Assocs., LLC*, 3:13-cv-543 (E.D. Va.); *James v. Experian Info. Sols., Inc.*, 3:12-cv-902 (E.D. Va.); *Goodrow v. Friedman & MacFadyen, P.A.*, 3:11-cv-20 (E.D. Va.); *Witt v. CoreLogic SafeRent*,

LLC, 3:15-cv-386 (E.D. Va.); *Henderson v. CoreLogic Nat'l Background Data, LLC*, 3:12-cv-97 (E.D. Va.); *Smith v. Sterling Infosystems, Inc.*, 1:16-cv-714 (N.D. Ohio).

12. I have extensive experience litigating class actions in the Eastern District of Virginia. As this Court is well-aware, practicing in this district requires an intimate knowledge of the rules and procedures unique to the district. The ABA's Committee on Commercial and Business Litigation advises that the "'Rocket Docket' is a potential trap for the uninitiated" and recommends that "visiting litigants and lawyers alike would be well advised to retain experienced lead or local counsel to help them safely navigate the Rocket Docket." *A Winning Motions Practice in the Rocket Docket*, Vol. 10, No. 4 (Summer 2009). Having practiced in this division and district for over 20 years, and having appeared in over 900 cases in this district, I am well versed in the rules and procedures unique to this district. In addition to the sheer volume of cases I have handled, I have also appeared in numerous complex class action cases brought in this district. *See, e.g. Witt v. CoreLogic SafeRent, LLC*, 3:15-cv-386 (E.D. Va.); *Henderson v. CoreLogic Nat'l Background Data, LLC*, 3:12-cv-97 (E.D. Va.); *Hayes v. Delbert Servs. Corp.*, No. 3:14-cv-258-JAG (E.D. Va.); *Soutter v. Equifax Info. Servs., LLC*, 3:10-cv-107 (E.D. Va.); *Ridenour v. Multi-Color Corp.*, No. 2:15-cv-41-MSD-DEM (E.D. Va.).

13. Craig C. Marchiando, a senior attorney at my Firm, also practices exclusively in the field of consumer protection litigation. He is among the most experienced attorneys in the nation in this highly-specialized field of Fair Credit Reporting Act class action litigation. Mr. Marchiando graduated from South Texas College of Law *cum laude* in 2004, served a one-year appellate clerkship before moving to private practice, and was named a Texas Super Lawyers Rising Star in class action and mass tort litigation in 2013 and 2014. He is licensed to practice in California, Texas, and Virginia.

14. Mr. Marchiando joined Consumer Litigation Associates in 2015. Since joining

CLA, Mr. Marchiando has focused his practice on federal consumer protection law and class actions, representing consumers in cases against banks, mortgage companies, consumer reporting agencies, and debt collectors. He is a member of the National Association of Consumer Advocates and a member in good standing of the bars of multiple federal district and appellate courts. He has represented consumers in more than 75 federal cases, including more than twenty class actions.

15. Kevin Dillon is a now seasoned associate in my law firm. He had a long history of public service before and then during law school and joined with CLA in order to continue that calling. He has worked directly with our client here and has helped keep the litigation process in this case in CLA organized and on task. He is certainly adequate class counsel.

16. The primary paralegals that worked for our firm in this case are experienced in the field of consumer protection and the legal field generally. Donna Winters and Vicki Crissman have been legal assistants and then paralegals for more than thirty years each. Both have been with me practically since I began my practice and have deep understanding of class action litigation.

17. I have also had the opportunity over multiple years to work with and see firsthand the legal skill, professionalism and ethical grounding of each of our co-counsel.

18. The lawyers from the law firm Kelly Guzzo are as strong and committed to their clients as any firm I have either worked with or opposed. Kristi Kelly is nationally recognized as a leading class action attorney and has been invited to and has spoken at numerous national conferences, including those held by the leading consumer public interest organizations, including the National Consumer Law Center, of which she is also a member of the Partners' Council. Ms. Kelly's law partner, Andrew Guzzo, has become as effective as any consumer advocate in our practices. He plays a leveling role – particularly with my own temperament – and has helped develop many of the cutting edge legal strategies and claims we have successfully brought. Ms. Kelly's law firm associates, in this case including Pat McNichols and Casey Nash, are both amongst

the most effective federal litigators in this District. Each has extensive federal civil experience and subject matter expertise under the FCRA. All are more than adequate as Class Counsel under Rule 23(a).

19. The Court has also previously found E. Michelle Drake, and should now so find Joseph C. Hashmall, both of the national law firm, Berger Montague PC as adequate class counsel. Both counsel have worked on these Experian “Fraud Shield” cases since the beginning. Both have been critical. Ms. Drake may be the top class action attorney in the nation. She has co-lead settlement negotiations and litigation strategy alongside myself and Ms. Kelly. She shares most of the same awards, Board seats and accolades as I list for myself above, plus double degrees from Harvard University. Mr. Hashmall has led the work in these cases to analyze the documents, testimony and data in order that we could develop both our litigation and then negotiation plan. Both are more than adequate as class counsel and in this case have helped cause the present settlement.

20. The Settlement in this case was reached only after the following events, each of which independently supports the conclusion that the posture of the action and the discovery conducted is such that the proposed settlement is fair:

- Substantive and contested briefing on Defendant’s motion to reassign case and motion to transfer venue;
- Production and review of discovery;
- Work with data produced, both before and after mediation, using an expert retained by Plaintiff’s counsel; and
- Three all-day mediations with Retired United States Magistrate Judge Diane Welch with JAMS, who facilitated arms-length negotiations.

21. My firm participated in and helped lead the negotiation of this settlement. We approached settlement negotiations as we always do, focusing on achieving the best benefit possible for our clients and the Class.

22. In this case, all Parties face the prospect of continued litigation through the completion of a trial, jury deliberations, followed by appeals.

23. I am pleased with the outcome we were able to obtain for the Class in this case.

24. Taken as a whole, there is little doubt that the decision to settle was as informed as it possibly could have been. This action has been substantively litigated by the Parties and sufficient discovery has been obtained by both Plaintiff and Defendant to assess the strength of their respective claims and defenses. Class Counsel endorses the Settlement as fair and adequate under the circumstances.

25. Plaintiff has agreed to serve as Class Representative in this lawsuit after Class Counsel explained to him the responsibilities required of an individual serving in this role. Plaintiff understands his role as class representative and was responsive to counsel during the prosecution of the case. We have previously represented Ms. Hill-Green and she has, then and through this case, been an exemplary representative, immediately responding to our requests for information and assistance, asking questions and insisting on obtaining her own understanding of the stages of the case, and now the settlement.

26. The Class Representatives have had the opportunity to review and comment on the proposed Settlement and agree that it is in the best interest of the Class. They ask that the Court approve it.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

DATED: November 9, 2021, Newport News, Virginia

A handwritten signature in blue ink, appearing to be 'S. A. Smith', written over a horizontal line.

Leonard A. Bennett, Esq.