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

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

Plaintiffs,

Civil Action No. 3:19-cv-708

v.

EXPERIAN INFORMATION SOLUTIONS, INC.,

Defendant.

PLAINTIFF'S MEMORANDUM IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiff Lisa Hill-Green, on behalf of herself and a class of similarly situated consumers, respectfully submits this Memorandum in Support of her Motion for Final Approval of Class Action Settlement.

OVERVIEW

After more than two years of litigation about Defendant Experian Information Solutions, Inc.'s ("Experian") Fraud Shield product—which purports to protect creditors from suspected fraudsters but often labels innocent consumers as the same—Plaintiff seeks final approval of a settlement that will provide substantial injunctive relief that resolves a major part of Experian's flawed furnishing of that Fraud Shield information ("Settlement").

This Federal Rule of Civil Procedure 23(b)(2) settlement will materially change the Fraud Shield product, most notably by eliminating its most inaccurate components. Foremost, Experian will no longer be allowed to use warehoused data pertaining to business notations of consumer addresses. It will have to refresh and obtain updated, current data each month. Experian also will

be required to suppress or remove from the Non-Residential Address data any address that Experian has reason to believe has not been updated or otherwise verified in the past six years.

Second, Experian will be ordered to cease reporting Fraud Shield "Indicator" codes that invariably characterize consumer addresses with some connection to a business as being "high-risk for fraud."

Third, Experian will be prohibited from reporting certain businesses as likely fraudulent. The Settlement removes several business-type codes from Fraud Shield's use. These major changes will prevent future inaccuracies of the kind that harmed the Settlement Class Members. Although this injunctive relief is hard to value in an actual dollar amount, it will benefit tens or even hundreds of thousands of consumers going forward. (Decl. of Dale Pittman ¶ 35, ECF No. 101-1.)

Standing alone, these changes would support a conventional settlement, so the Court's decision is even easier here. The Settlement Class Members are not giving up anything but the ability to bring this same claim for injunctive relief on the same violation. There is no release of damages (of any type) or the right to bring (or as here, continue) a Rule 23(b)(3) case for monetary relief. This relief is even more remarkable because—whether or not legally founded—most courts have declined to afford injunctive relief under the Fair Credit Reporting Act ("FCRA") outside of the settlement context.[1]

The Settlement satisfies the Fourth Circuit's criteria for settlement approval. In fact, the Court already has found that the Settlement is "fair, reasonable, and adequate." (ECF No. 88 ¶ 2.) Nothing has changed since that finding that would warrant withholding final approval of the

[1] *Berry v. Schulman*, 807 F.3d 600, 610 (4th Cir. 2015) (explaining that a CRA defendant "is free to agree to a settlement enforcing a contractual obligation that could not be imposed without its consent. Indeed, many FCRA class action disputes are resolved in part through consent decrees").

Settlement. Since preliminary approval, class notice has been completed with overwhelming class member support, including no objections.

Plaintiff therefore requests that the Court: (1) grant Final Approval of the Settlement; (2) affirm the prior certification of the Settlement Class for settlement purposes under Federal Rule of Civil Procedure 23; (3) order the injunctive relief as agreed; (4) confirm Plaintiff Lisa Hill-Green's appointment as Class Representative and Kelly Guzzo, PLC, Consumer Litigation Associates, P.C., and Berger Montague, P.C., as class counsel; and (5) award a service award to the Class Representative and award Class Counsel attorneys' fees and costs, as previously requested (ECF No. 100).

BACKGROUND OF THE LITIGATION AND CLAIMS TO BE SETTLED

Experian offers its Fraud Shield product as a premium add-on in its credit reports sold to creditors about consumers. Through its Fraud Shield product, Experian inaccurately reported consumers as suspect based on Experian's determination that their single-family homes were actually "non-residential" and "high risk."

Experian buys its Fraud Shield data from a third party, Data Axle. Data Axle provides business name and "SIC"[2] codes that its searches have connected to specific addresses. After receiving that data, Experian would furnish a Fraud Shield indicator to report that a consumer's address was used by a business. Before this Settlement, Experian did not have a procedure to ensure that such data was current. So, for example, if a consumer bought or rented a home that had been used by a stranger to operate a business 10 years earlier, Experian would include a Fraud Shield indicator in that consumer's file. Similarly, if a business lot was purchased by a consumer, only to be demolished and rebuilt as a residence, Experian would report a Fraud Shield indicator

[2] A SIC or "Standard Industrial Classification" code describes the primary business activity of a company.

in the consumer's file. Experian reported these Fraud Shield indicators without first updating data to confirm whether the address remained associated with a business.

Even more remarkably, Experian would code addresses as "non-residential" and "high-risk" even though the Data Axle data was never designed to screen for or predict fraud.[3] In fact, Experian obtains actual U.S. Postal Service information about whether a consumer's address is residential, but it does not use this information in its Fraud Shield reporting.

And Experian selected specific SIC codes—types of businesses purportedly connected to a consumer's address—as "high-risk" of fraud. Most were ridiculous.[4] Even now in this 2019-filed case and after extensive discovery, Experian has not produced any evidence—no documents, testimony, or anything else—that it had any empirical basis, study, or even deliberation about what businesses to label as indicative of fraudulent activity. It was arbitrary.

Plaintiff alleges that Experian's use of outdated address data and unsubstantiated reporting that the consumer used a fraudulent address—which caused those inaccurate classifications—violated the FCRA, 15 U.S.C. § 1681e(b), and its obsolescence provision, 15 U.S.C. § 1681c. The Settlement redresses Experian's inaccurate reporting and resolves an aspect of Plaintiff's § 1681e(b) claim in the form of injunctive relief. The Parties will continue to litigate Plaintiff's damages claim and request Rule 23(b)(3) certification. Below, Plaintiff summarizes the case history, which she detailed more fully in her preliminary approval motion.

[3] Data Axle is a marketing company that was built and largely focuses on lead generation and marketing. *See* Data Axle, https://www.data-axle.com/ (last visited April 5, 2022).

[4] In mediation and negotiations, Plaintiffs' counsel took to using one of these—"clowns"—as an example of the types of businesses Experian branded as likely fraudulent as it was illustrative of how arbitrary and often comical Experian's labeling decision turned out to be.

Plaintiff filed this class action on September 27, 2019—more than two and half years ago. (ECF No. 1.) In response to the Complaint, Experian unsuccessfully attempted to transfer the case to the Central District of California. (ECF No. 38.) While that motion was pending, Experian answered the Complaint (ECF No. 16), and Plaintiff sought venue-related discovery (ECF No. 31), which was mooted by the Court's decision denying the motion to transfer. The Parties served discovery, including several written discovery responses. The Parties simultaneously developed and implemented an ESI protocol, and Plaintiff reviewed Experian's large document production. The Parties then met and conferred several times on significant discovery issues, exchanging this Court's discovery chart to aid their discussion. Plaintiff also worked with a data expert to analyze the class member data produced by Experian. Plaintiff also took Experian's Rule 30(b)(6) deposition, and Experian deposed Plaintiff. Meanwhile, Plaintiff also obtained third-party discovery from Experian's vendor about address information used to populate the Fraud Shield indicators.

Equipped with a better understanding of their case following their significant discovery efforts, the Parties attended a two-day mediation session with retired federal Magistrate Judge Diane M. Welsh of JAMS Philadelphia on July 15 and 16, 2021. (ECF No. 75.) Hoping to build on progress already made, the Parties attended another full-day mediation with Judge Welsh on September 8, 2021. (ECF No. 79.) In between and after, the Parties themselves engaged in more settlement discussions. These cumulative efforts ultimately led to the Settlement, preliminarily approved by this Court on November 22, 2021. (ECF No. 88.) The Parties did not discuss attorneys' fees or a service award until after an agreement in principle was reached as to the injunctive relief and the limited release now subject of the Settlement.

Since preliminary approval, Class Counsel has worked diligently to carry out the Settlement. Class Counsel has coordinated with Kinsella Media, a nationally recognized class action administrator, to realize a publication notice campaign. Class Counsel communicated with many class members about the Settlement. And as with any other class action settlement, work will be required of Class Counsel after the Settlement is approved, including ongoing contact with class members who have questions about the settlement.

No class member has objected to the Settlement. Experian also served the required CAFA notice on state and federal officials, and none have raised concerns with the Settlement. Moreover, no class member has objected to the proposed fee or service award amount, information which Class Counsel included in the Class Notice.

CLASS ACTION SETTLEMENT

A. The Settlement Provides Significant and Meaningful Relief to Consumers.

The Settlement will resolve the claims of 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.

(ECF No. 87-1 § 2.23.)

The Settlement affords the Settlement Class injunctive relief. Within six months of the Effective Date of the Settlement, Experian will reconfigure its procedure for updating its Non-Residential Address database. Starting then, and each month after that, Experian will import an updated file from its vendor that overwrites all pre-existing data. Experian also will suppress or remove any addresses that Experian has reason to believe have not been updated or otherwise verified for at least six years. Further, Experian will: (1) stop publishing certain Fraud Shield indicators all together; (2) reduce the number of codes that would trigger other certain Fraud Shield

indicators; and (3) make more detailed the messaging and descriptions of additional Fraud Shield indicators. (*Id.* ¶ 4.1.) In exchange for this relief, the Settlement Class Members are releasing 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 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. In agreeing to the Settlement, Experian makes no factual or legal concessions about the proposed Rule 23(b)(3) class or that class's damages claim.

B. The Class Administrator Provided Notice to the Class.

The Court approved the Notice and the Notice Plan and ordered that Kinsella Media provide notice to the Settlement Class Members. (ECF No. 92.) In accordance with the Court's instructions, Kinsella Media employed a multi-layered notice program, which included print, digital, and social media advertising. (Wheatman Decl. ¶ 11, ECF No. 90-1.) Print advertising was achieved through publication in *TV Guide*, a bi-weekly publication with a circulation exceeding 1,000,000 copies per issue and a total readership close to 10,000,000. (*Id.* ¶¶ 17–20.) Digital advertising was achieved through banner advertisements posted to various websites by three of the world's largest online advertising companies: Conservant, Facebook, and Google. (*Id.* ¶¶ 21–23.) Online advertisements were posted for six weeks and are estimated to have made over 150,000,000 gross impressions. (*Id.*) Kinsella Media also used other, more targeted measures, including third-party targeting and Facebook advertising, as well as sponsored links on major search engines. (*Id.* ¶¶ 24–25.)

Kinsella Media also created a website to provide the Settlement Class Members with information about the settlement. *See Hill-Green v. Experian Information Solutions, Inc.*, "If Your Address Was High-Risk or Non-Residential on Experian Credit Reports, You Could Be Affected by a Class Action Settlement," https://www.fraudshieldsettlement.com/ (last visited Apr. 1, 2022). This Settlement Website allowed the Settlement Class Members to submit email inquiries about the Settlement and also contained important documents about the case and settlement, including the Complaint, the Settlement Agreement, the Preliminary Approval Order, the Class Notice, the Settlement Administrator's contact information, and all the dates for the settlement process. (*Id*.)

C. The Settlement Class Members Support the Settlement, and There Are No Governmental Objectors.

There are no objections to the Settlement, showing that the Settlement Class Members approve of the results achieved on their behalf by Plaintiff and Class Counsel. Support of the Settlement is unanimous. Experian's counsel also served the required Class Action Fairness Act notices on the state and federal attorneys general on November 29, 2021. (ECF No. 91.) None have objected to the Settlement.

D. The Settlement Class Members Will Release Claims for *Injunctive* Relief Against the Released Parties.

In return for the Settlement's benefits, Settlement Class Members will release all equitable claims for injunctive relief relating to allegations that Experian failed to employ reasonable procedures with respect to its Fraud Shield product. (ECF No. 87-1 § 2.17.) The release excludes all claims for statutory, actual, and punitive damages, attorneys' fees, and costs relating to the allegations. (*Id.*).

ARGUMENT

A. The Court Should Approve the Settlement Because it is Fair, Reasonable, and Adequate.

1. The standard for judicial approval of class action settlements.

"Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strains such litigation imposes upon already scarce judicial resources." *S.C. Nat. Bank v. Stone*, 749 F. Supp. 1419, 1423 (D.S.C. 1990) (quoting *Armstrong v. Board of Sch. Directors*, 616 F.2d 305, 313 (7th Cir. 1980)). Federal Rule of Civil Procedure 23 requires a court to approve a class-action settlement. *Brown v. Transurban USA, Inc.*, 318 F.R.D. 560, 571 (E.D. Va. 2016). "First, the Court considers the fairness of the settlement, and then turns to its adequacy." *In re Genworth Fin. Sec. Litig.*, 210 F. Supp. 3d 837, 839 (E.D. Va. 2016). Ultimately, the Court has discretion over approval of the proposed settlement. *Strang v. JHM Mortg. Sec. Ltd. P'ship*, 890 F. Supp. 499, 501 (E.D. Va. 1995) (citing *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991)).

2. The Notice to the Settlement Class Members was reasonable and satisfied due process.

Federal Rule of Civil Procedure 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) (emphasis added). Thus, in the context of a settlement class certified under Federal Rule of Civil Procedure 23(b)(2), as here, the "best notice practicable" standard does not apply. Fed. R. Civ. P. 23(c)(2)(B). The Settlement, nonetheless, provided for a robust notice program that exceeded what is required for due process. Indeed, it would have been appropriate even if this were a Rule 23(b)(3) settlement.

First, the Settlement Website provided significant information about the Settlement to the Settlement Class Members, including relevant court filings and a long-form detailed notice. Second, Kinsella Media implemented a multi-faceted publication notice program designed to reach as many consumers as possible, which used both print and online resources. Indeed, information on the settlement was published in *TV Guide* and was advertised online through Conversant, Google, and Facebook. The online advertising specifically targeted people likely to be Rule 23(b)(2) Settlement Class Members. Moreover, the Settlement Class Members had ample opportunity to object to the proposed settlement and could do so via written objection.

The proposed notice program also complied with both Rule 23(c)(2)(A) and (e)(1). The Settlement Website's long-form notice and the publication notice contained all required Rule 23 information and properly advised the Settlement Class Members of their rights. The estimated reach of the program satisfied the benchmark set forth by the Federal Judicial Center and allowed the Settlement Class Members to provide feedback on the settlement. As this Court is well aware, similar notice plans have been approved in Rule 23(b)(3) settlements under the higher "best notice practicable" standard. *See, e.g.*, *Clark v. Experian Information Solutions*, No. 3:16-cv-32 (E.D. Va.); *Brown v. Experian Information Solutions*, No. 3:16-cv-670 (E.D. Va.); *Clark v. Trans Union LLC*, No. 3:15-cv-391 (E.D. Va.); *Anderson v. Trans Union LLC*, No. 3:16-cv-558 (E.D. Va.); *Thomas v. Equifax Information Services, LLC*, No. 3:18-cv-684 (E.D. Va.); *Berry v. LexisNexis*, No. 3:11-cv-754 (E.D. Va.); *see also, e.g.*, *Edwards v. Nat'l Milk Producers Fed'n*, No. 11 -04766, 2017 WL 3623734, at *4 (N.D. Cal. June 26, 2017) ("notice plans estimated to reach a minimum of 70 percent are constitutional and comply with Rule 23" and approving notice plan that reached 75% of settlement class); *McCabe v. Six Continents Hotels, Inc.*, No. 12 -04818, 2015 WL 3990915, at *11 (N.D. Cal. June 30, 2015) (approving notice program with 70% reach with a

frequency of 1.6); *In re Bldg. Materials Corp. of Am. Asphalt Roofing Shingle Prod. Liab. Litig.*, No. 11-02000, 2014 WL 12621614, at **6–7 (D.S.C. Oct. 15, 2014) (approving publication notice plan by Kinsella that would reach 80% of settlement class).

The method used to notify the Settlement Class Members thus satisfied both Rule 23 and due process and constitutes reasonable and appropriate notice under the circumstances.

3. The Settlement is fair and reasonable under Rule 23(e) and Jiffy Lube.

Rule 23(e) of the Federal Rules of Civil Procedure obliges parties to seek approval from the district court before settling a class-action lawsuit. If the settlement proposal would bind all class members, a court may approve the settlement proposal only after it holds a hearing and finds that the settlement proposal is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2).

In determining whether a settlement is fair, reasonable, and adequate, the Court should consider whether:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> (i) the costs, risks, and delay of trial and appeal;
>
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
>
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
>
> (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). That said, "[t]he 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 re Jiffy Lube Sec. Litig.*, 927 F.2d at 158.

In the Fourth Circuit, the Rule 23(e)(2) analysis has been condensed into the two-step *Jiffy Lube* test, which examines the fairness and adequacy of the settlement. *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 254 (E.D. Va. 2009); *see also In re Jiffy Lube Sec. Litig.*, 927 F.2d at 158–59.

i. The Parties were fully informed before the Settlement by discovery and the case's posture. The first two *Jiffy Lube* fairness factors—the posture of the case at the time of settlement and the extent of discovery—allow the Court to determine that there was no possible collusion between the settling parties and that they were fully informed about the case when negotiating the settlement terms. *Brown*, 318 F.R.D. at 571–72. The Settlement was reached only after significant work was conducted in the case. Experian moved to transfer venue. (ECF No. 8.) The Parties fully briefed the motion to transfer, as well as Plaintiff's motion to seek discovery related to that venue issue. (ECF Nos. 9, 18, 22, 28, 36, 37.) The Settlement was then achieved only after significant discovery. Before and after their three mediations, the Parties engaged in significant discovery, including formal and informal written discovery, the development and implementation of an ESI protocol, and review of a large document production. The parties also met and conferred several times on significant discovery issues, using this Court's discovery chart to resolve several disagreements. Plaintiff also engaged a data expert to analyze the class member data produced by Experian, and the Parties took the other's deposition. Finally, Plaintiff obtained third-party discovery from Experian's vendor about address information used to populate the Fraud Shield indicators. As a result of these intense efforts, the Parties were able to adequately assess the strengths of their respective claims and defenses.

ii. The Parties engaged in extensive mediation efforts. "The third *Jiffy Lube* fairness factor seeks to 'ensure that counsel entered into settlement negotiations on behalf of their clients

after becoming fully informed of all pertinent factual and legal issues in the case.'" *In re Genworth Fin. Sec. Litig.*, 210 F. Supp. 3d at 840 (quoting *In re Mills Corp Sec. Litig.*, 265 F.R.D. at 255). "Courts look to the number of meetings between the parties to discuss settlement, the quality of those negotiations, and the duration of time over which negotiations took place." *Id.* (citing *In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 665 (E.D. Va. 2001)).

Here, the Parties attended a two-day mediation session with Judge Welsh of JAMS Philadelphia on July 15 and 16, 2021. (ECF No. 75.) The Parties then reengaged Judge Welsh for another full-day mediation on September 8, 2021. (ECF No. 79.) In between and after those arms'-length negotiations, the Parties themselves engaged in more settlement discussions. Cumulatively, the Parties' and Judge Welsh's efforts led to the Settlement. There is a presumption that a settlement is fair when a settlement, as here, results from genuine arm's-length negotiations. *See, e.g.*, *City P'ship Co. v. Atlantic Acquisition Ltd. P'Ship*, 100 F.3d 1041, 1043 (1st Cir. 1996). The Settlement achieves substantial relief for the Settlement Class Members, and when compared against possible litigation risks, the proposed settlement is fair and appropriate for approval. *See S.C. Nat'l Bank*, 139 F.R.D. at 339 (concluding fairness met where "discovery was largely completed as to all issues and parties," settlement discussions "were hard fought and always adversarial," and those negotiations "were conducted by able counsel" with substantial experience).

iii. Class Counsel is experienced in litigating consumer class actions. "The final *Jiffy Lube* 'fairness' factor looks to the experience of class counsel in this particular field of law." *In re Genworth Fin. Sec. Litig.*, 210 F. Supp. 3d at 841 (quoting *In re Mills*, 265 F.R.D. at 255). Class Counsel has extensive experience and a long record of success litigating complex class actions. (Bennett Decl. ¶¶ 12–19, ECF No. 87-2); *see also Gibbs v. TCV V, L.P.*, 3:19-cv-789, ECF No. 97

at 139:10-17 (E.D. Va. Mar. 25, 2021) (Fairness Hr'g Tr.) ("The representation by class counsel is certainly adequate. I don't want to belabor the issue at the expense of folks, one, getting tired of hearing me, but, two, also maybe feeling a little too good about themselves. But it is the case that the track record here and the success of litigating complex cases, and specifically in tribal payday lenders, is, I think, as high as it gets in this country."); *Galloway v. Williams*, No. 3:19-cv-470, 2020 WL 7482191, at *8 (E.D. Va. Dec. 18, 2020) (finding that class counsel, including the lawyers at Consumer Litigation Associates, P.C., Kelly Guzzo PLC, and Berger Montague, P.C. "have extensive backgrounds in complex and class action litigation and consumer protection litigation"); *Turner v. Zestfinance, Inc.*, No. 3:19-cv-293, ECF No. 95 at 13:1-4 (Prelim. Approval Hr'g Tr.) (E.D. Va. Feb. 24, 2020) ("[W]e have Ms. Kelly and Mr. Bennett here, who are well known to me as being experts in this field, but it looks like the other class counsel is like the all-star team of consumer litigation."); *Heath v. Trans Union*, No. 3:18-cv-720, ECF No. 61 at 9:8-9 (Prelim. Approval Hr'g Tr.) (E.D. Va. Aug. 6, 2019) (Kelly Guzzo's "reputation in this district, and I am sure in others, [is] sterling"); *Burke v. Seterus, Inc.*, No. 3:16-cv-785, ECF No. 41 at 9:19-22 (Fairness Hr'g Tr.) (E.D. Va. Mar. 12, 2018) ("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."); *Clark v. Trans Union, LLC*, No. 3:15-cv-391, 2017 WL 814252, at *13 (E.D. Va. Mar. 1, 2017) (collecting cases and stating, "This Court has repeatedly found that [proposed Class Counsel] is qualified to conduct such litigation. . . . This Court echoes the sentiments previously stated about [proposed Class Counsel] because they pertain here with equal vigor."); *Dreher v. Experian Info. Sols., Inc.*, No. 3:11-cv-00624-JAG, 2014 WL 2800766, at *2 (E.D. Va. June 19, 2014); *see also In re Think Finance*, No. 17-33964, ECF No. 1432 at 40:18-21 (Tr. of Proceedings) (Bankr. N.D. Tex.) (noting that the court "had two

or three sets of law students that sat through this, and each time I told them that when you come into this hearing you'll see some of the best lawyers in America, and I still feel like that today");

Class Counsel endorse the Settlement as fair and adequate. (Bennett Decl. ¶ 24, ECF No. 87-2.) Given Class Counsel's experience in this area, their endorsement should be afforded substantial consideration in a settlement's fairness. *See Jiffy Lube*, 927 F.2d at 159; *see also Strang*, 890 F. Supp. at 501–02 (concluding requirement met where "plaintiffs' counsel, with their wealth of experience and knowledge in the securities class action area, engaged in sufficiently extended and detailed settlement negotiations to secure a favorable settlement for the Class").

4. Under Jiffy Lube, the Settlement is adequate.

"The second *Jiffy Lube* factor, adequacy, requires the court to 'weigh the likelihood of the plaintiffs' recovery on the merits against the amount offered in the settlement.'" *In re Genworth Fin. Sec. Litig.*, 210 F. Supp. 3d at 841 (quoting *In re: NeuStar, Inc.*, No. 1:14-cv-885, 2015 WL 5674798, at *11 (E.D. Va. Sep. 23, 2015)). In assessing adequacy, the Court may consider: (1) the relative strength of the plaintiff's case on the merits; (2) any difficulties of proof or strong defenses the plaintiff would likely encounter if the case were to go to trial; (3) the expected duration and expense of additional litigation; (4) the solvency of the defendant and the probability of recovery on a litigated judgment; (5) the degree of opposition to the proposed settlement; (6) the posture of the case when settlement was proposed; (7) the extent of discovery that had been conducted; (8) the circumstances of the settlement negotiations; and (9) the experience of counsel in the substantive area and class action litigation. *See Jiffy Lube*, 927 F.2d at 159.

While Plaintiff presented strong claims, there was a risk in proceeding to trial in this case. Experian disputed Plaintiff's claims throughout the litigation and raised several defenses, including that the case was not eligible for class certification. While Plaintiff believed that she would inevitably overcome Experian's arguments, they were conceivably viable defenses. A loss

on certification would mean that the Settlement Class Members—and other consumers set to benefit from the injunctive relief agreed to—would receive nothing.

In addition, considering the risks associated with continued litigation, the likelihood of appeals, the certainty of delay, and the ultimate uncertainty of recovery through continued litigation, the proposed settlement is fair, adequate, and an excellent result for the Settlement Class. Aside from the possibility that either side could lose at trial or on appeal, the Parties expected that they would take more time and incur more costs in continuing this litigation. In fact, the Parties expect that more work must be done as to Plaintiff's claim for damages and for certification of a class under Rule 23(b)(3), including a contested class certification motion, party depositions, expert depositions, summary judgment motions, pretrial motions, and trial preparation. By achieving injunctive relief now, the Parties obtained a guaranteed result for the Settlement Class that will benefit the Settlement Class and other consumers immediately. The long delay threatened by continued litigation, interlocutory appeal, and terminal appeal would have delayed the Settlement Class Members' realization of the Settlement's benefits.

The Court also must take notice that there have been no objections from the class. "Such a lack of opposition . . . strongly supports a finding of adequacy, for '[t]he attitude of the members of the Class, as expressed directly or by failure to object, after notice to the settlement is a proper consideration for the trial court.'" *In re MicroStrategy*, 148 F. Supp. 2d at 668 (quoting *Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975)).

As the Court has explained, "'the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy.' The lack here of any objections to the settlement and the small number of class members choosing to opt-out of the class strongly compel a finding of adequacy." *Id.* (quoting *Sala v. Nat'l R.R. Passenger Corp.*, 721 F. Supp. 80,

83 (E.D. Pa. 1989)). Courts recognize that where the class supports a settlement, it should be approved.[5] Indeed, even a small majority of support creates a presumption in favor of approval. *See Reed v. Gen'l Motors Corp.*, 703 F.2d 170, 174 (5th Cir. 1983) (approving class action settlement where more than 40 percent of class objected or opted out); *Cotton v. Hinton*, 559 F.2d 1326, 1333 (5th Cir. 1977) (nearly 50 percent opted out or objected; settlement still approved).

If the Court approves the Settlement, then the Settlement Class Members will receive significant injunctive relief. The Settlement Class Members believing their cases to have specific individual value have not waived those claims. The Settlement is fair, reasonable, and adequate under each of the *Jiffy Lube* factors, and the Court should approve it.

5. The Settlement also is fair, reasonable, and adequate under Rule 23(e)(2).

Under recent amendments to Rule 23, courts consider four more factors, which almost completely overlap the *Jiffy Lube* factors. *In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., Sales Practices and Prods. Liab. Litig.*, 952 F.3d 471, 484 n.8 (4th Cir. 2020). Largely, the Rule 23(e)(2) factors have been addressed above. The Class Representative and her counsel have represented the Settlement Class adequately, as the Court recognized in its Preliminary Approval Order. (ECF No. 88 ¶ 3(d).) The Settlement was negotiated at arm's length. The Settlement's relief is adequate, especially considering the significant risks and potentially lengthy delay of continued litigation over the agreed upon injunctive relief. The Settlement Class Members are treated equitably under the Settlement because all are benefiting

[5] *See, e.g.*, *In re Beef Industry Antitrust Litig.*, 607 F.2d 167, 180 (5th Cir. 1979); *Laskey v. Int'l Union*, 638 F.2d 954 (6th Cir. 1981) (finding few objectors proves fairness of a settlement); *Shlensky v. Dorsey*, 574 F.2d 131 (3rd Cir. 1978) (same); *Bryan v. Pittsburgh Plate Glass Co. (PPG Indus., Inc.)*, 494 F.2d 799, 803 (3d Cir. 1974) (approving settlement where 20 percent opted out or objected); *Grant v. Bethlehem Steel Corp.*, 823 F.2d 20 (2d Cir. 1987) (approving settlement with thirty-six objecting); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 624 (N.D. Cal. 1979) (granting approval where sixteen percent objected).

from the same injunctive measures. Class Counsel's fee request is reasonable, and there is no other agreement required to be identified under Rule 23(e)(3).

CONCLUSION

The Settlement is an excellent resolution of the settled claims against Experian because it was reached at arms' length and eliminates the substantial cost and burden of litigating the claims at issue to their conclusion. It satisfies the strictures for final approval, and the Court should approve it.

Respectfully submitted,
LISA HILL-GREEN

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