IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

OCIE BANKS, ROBERT WILK, and JETTIE BIGGS, individually and on behalf of all others similarly situated,	)	No. 12 CV 3730
Plaintiffs,	)	
v.	)	Magistrate Judge Finnegan
GCA SERVICES GROUP, INC,	)	
Defendant.	)	

PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR UNCONTESTED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND AWARD OF ATTORNEYS' FEES

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiffs Ocie Banks, Robert Wilk, and Jettie Biggs submit this memorandum in support of their uncontested motion for final approval of the parties' proposed class-action settlement, which is attached as Exhibit 1.

I. BACKGROUND

Criminal background check reports, driving record reports, and drug test reports that employers obtain from third-party consumer reporting agencies are considered "consumer reports" under the Fair Credit Reporting Act ("FCRA"). 15 U.S.C. § 1681a(d); *Dalton v. Capital Associated Indus., Inc.*, 257 F.3d 409, 414 (4th Cir. 2001) (stating that a company that regularly provides criminal background check investigation services for employers is a consumer reporting agency); *Hodge v. Texaco, Inc.*, 975 F.2d 1093, 1096 (5th Cir. 1992) (holding that drug test reports from consumer reporting agencies are consumer reports); *Klonsky v. RLI Ins. Co.*, No. 2:11 CV 250, 2012 WL 1144031, *3 (D. Vt. April 4, 2012) (holding that driving record reports

are consumer reports).[1] Under the FCRA, before an employer takes "adverse action" against an employee or job applicant based in whole or in part on a consumer report, it must provide the employee or job applicant a copy of his or her consumer report and a summary of his or her FCRA rights, as published by the Federal Trade Commission ("FTC"). *Id.* § 1681b(b)(3).

This case arises out of GCA's use of criminal background check reports, driving record reports, drug test reports, and other consumer reports between May 15, 2010 and March 1, 2012 (the "Class Period") for employment purposes. Plaintiffs allege, on behalf of themselves and a nationwide class of persons similarly situated, that GCA violated the Fair Credit Reporting Act ("FCRA") throughout the Class Period by taking adverse action against employees and employment applicants based on consumer reports without first providing them a copy of their report and a summary of their FCRA rights. *See* 15 U.S.C. § 1681b(b)(3).

A. Procedural Background

On May 15, 2012, Plaintiffs Ocie Banks, Robert Wilk, and Jettie Biggs filed this action on behalf of a nationwide class of people who GCA rejected for employment based on a consumer report without first receiving a copy of their report and a summary of their FCRA rights. Near the outset of discovery, the parties mutually agreed to place this case in a mediation posture. On July 25, 2012, the parties appeared for an initial status hearing, informed the Court that they were attempting to resolve the matter, and asked the Court to defer entry of a Rule 16 scheduling order.

As discussed more fully in Plaintiffs' memorandum in support of their motion for preliminary approval (Dkt. #25), in advance of mediation, the parties exchanged discovery necessary to allow Plaintiffs to evaluate fully the strength of the class claims. Plaintiffs served

[1] Defendant notes that the Seventh Circuit has not ruled upon the issue of whether a drug test is a "consumer report" in the context of the FCRA.

discovery on Defendant and requested the identity of all GCA applicants and employees who were denied employment based on a consumer report. They also requested Defendant's policy documents related to the use of criminal background check reports, driving record reports, and drug test reports in the hiring process. Finally, Plaintiffs requested all contracts that Defendant entered into with any consumer reporting agencies.

In response, Defendant produced a large (22,000 row) Excel spreadsheet that it obtained from its exclusive background check vendor, Liberty Screening Services, Inc. ("Liberty"). The spreadsheet, which the parties refer to as the "GCA All Alerts Spreadsheet," discloses a great deal of information about GCA's use of consumer reports to screen job applicants between May 15, 2010 and March 1, 2012. It discloses, among other things, the date and location that an individual applied for employment with GCA; the type of consumer report that GCA procured about each applicant (i.e., criminal record check, driving record check, drug test, etc.); whether GCA adjudicated the applicant as being "Not Eligible For Hire"; and whether the applicant was mailed a copy of his or her consumer report.

GCA also produced its internal policies concerning the use of consumer reports and its contracts with Liberty as well as approximately five-thousand pages of documents pertaining to putative class members and their background checks. Once Plaintiffs obtained this information, they took the Rule 30(b)(6) deposition of GCA to explore the company's policies for using consumer reports in hiring decisions.

Finally, Plaintiffs obtained from Liberty an affidavit confirming that the GCA All Alerts spreadsheet is a comprehensive list of "all GCA job applicants (except one) who satisfy both of the following criteria: (1) the job applicant was the subject of a consumer report created by Liberty and provided to GCA between May 17, 2010 and June 24, 2012 and (2) the job

applicant's consumer report was designated by Liberty as having an "Alert" status when Liberty first provided the report to GCA." *See* Ex. 2 (Liberty Affidavit).

Once the parties obtained sufficient discovery to evaluate the merits of Plaintiffs' claims, they exchanged mediation briefs and attended a full-day mediation session with Judge Morton Denlow (ret.). The parties were unable to resolve the case at mediation, but, with the assistance of Judge Denlow, they continued to engage in settlement negotiations over the next several weeks and eventually reached an agreement to settle the case on a class-wide basis.

On July 2, 2013, the Court preliminarily approved the parties' settlement agreement and ordered notice be mailed to the class. On June 13, 2013, GCA provided the Settlement Administrator with the social security numbers of all 5,881 Class Members,[2] and the Settlement Administrator skip traced those social security numbers to obtain Class Members' addresses. Ex. 3 (Tittle Decl. ¶¶5-6). On July 12, 2013, the Settlement Administrator mailed the approved notice to 5,707 Class Members for whom the skip trace provided address information. Ex. 3 (Tittle Decl. ¶7).

B. The Terms Of The Parties' Agreement.

The parties' Settlement Agreement creates a $975,000 Qualified Settlement Fund ("QSF") to compensate Class Members for their FCRA claims, to pay Plaintiffs' attorneys' fees and litigation expenses, to provide modest incentive awards to the Named Plaintiffs, and to pay for the costs of settlement administration. Under the parties' proposal, the Settlement Class will be divided into three groups, each eligible for different recoveries.

The first two groups are subsets of the Not Eligible Class, which is defined in the Settlement Agreement as follows:

[2] Approximately twenty-five class members were included in both the Not Eligible Class and the Adverse Action Class.

> All individuals who satisfy all of the following criteria: (1) GCA designated the individual as "Not Eligible" for hire based on a consumer report in an e-mail communication sent to a hiring manager between May 15, 2010 and March 1, 2012, (2) GCA never mailed the individual a copy his or her consumer report between May 15, 2010 and March 1, 2012, and (3) the individual never worked for GCA after being designated "Not Eligible" for hire. Also included in the Not Eligible Class are individuals who GCA fired between May 15, 2010 and March 1, 2012 and whose termination code was "Failed Background Check" and who were not mailed a copy of his or her consumer report prior to termination. Not Eligible Class Members are named in Exhibit C to this Agreement.

See Ex. 1. There are 3,235 total members in the Not Eligible Class. GCA denied employment to 2,824 members of the Not Eligible Class based on a consumer report other than a drug test report. GCA denied the other 411 individuals in the Not Eligible Class based on drug test report.

The Settlement Agreement proposes that the 2,824 Not Eligible Class Members who were not denied employment based on the results of a drug test report will equally divide $634,000. The Settlement Agreement further proposes that the 411 individuals in the Not Eligible Class who were denied employment based on a drug test report ("Not Eligible Class – Drug Test Subgroup Members") will equally divide $20,000.

Finally, the Settlement Agreement proposes that the 2,671 Adverse Action Letter Class Members will equally divide $100,000. The Adverse Action Letter Class is defined as follows:

> All individuals to whom GCA mailed the form letter attached hereto as Exhibit A (or a substantially similar letter) between May 15, 2010 and March 1, 2012 and who were not working for GCA thirty days after the letter was mailed. Adverse Action Letter Class Members are named in Exhibit B to this Agreement.

The Settlement Agreement proposes that no Class Member will receive a settlement payment unless he or she returns a claim form, and no individual award will exceed $1,000.[3]

The following chart details the claim form return rate for each subgroup described above,

[3] As discussed more fully below, the Fair Credit Reporting Act allows plaintiffs to recover statutory damages of between $100 and $1,000 per willful violation, plus punitive damages where appropriate. 15 U.S.C. § 1681n.

along with the proposed payment to each subgroup member.

TABLE A

Subgroup Name	Number of Class Members	Number of Class Members Who Returned Claim Forms	Pool of Money Available to This Subgroup	Proposed Payment to Each Subgroup Member
Not Eligible (No Drug Test)	2,824	538	$634,000	$1,000.00
Not Eligible (Drug Test)	411	71	$20,000	$281.69
Adverse Action	2,671	455	$100,000	$219.78

If the Settlement is approved, the Court will order the Settlement Administrator to distribute $658,000 to the Class Members in accordance with Table A; distribute $175,000.00 to Class Counsel to reimburse them for their costs and as a reasonable attorneys' fee; distribute $2,000 each to Mr. Banks, Mr. Wilk, and Mr. Biggs as an incentive award; and distribute $45,000 to Simpluris, Inc. for the work that it performed as Settlement Administrator. Six months after the settlement checks are issued, the Settlement Administrator will distribute any unclaimed funds to the designated Cy Pres recipient, Chicago Food Depository.[4]

II. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE.

A. Legal Standard

The standard against which a proposed class settlement should be evaluated is whether the settlement taken as a whole is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996). The determination whether to grant approval of a class action settlement is within the sound discretion of the Court. *See id.* at 1196-97 (applying abuse of discretion standard to review of district court's approval of class action settlement).

[4] Given the claim-filing rate in the Not Eligible Group, the Cy Pres award will be at least $91,000.

Federal courts "naturally favor the settlement of class action litigation." *Id.* at 1196. *See also Uhl v. Thoroughbred Tech. & Telecomm., Inc.*, 309 F.3d 978, 986 (7th Cir. 2002) ("Federal courts favor settlement, so the district court's inquiry into the settlement structure is limited to whether the settlement is lawful, fair, reasonable and adequate."). "[C]ourts look upon the settlement of lawsuits with favor because it promotes the interests of litigants by saving them the expense and uncertainties of trial, as well as the interests of the judicial system by making it unnecessary to devote public resources to disputes that the parties themselves can resolve with a mutually agreeable outcome." *Hispanics United v. Village of Addison*, 988 F. Supp. 1130, 1149 (N.D. Ill. 1997) (internal citations omitted).

Courts within the Seventh Circuit evaluate five factors when determining whether a class action settlement meets the standard of being fair, reasonable, and adequate. The relevant factors include: (1) the strength of plaintiff's case compared to the amount of defendant's settlement offer, (2) an assessment of the likely complexity, length, and expense of the litigation, (3) an evaluation of the amount of opposition to settlement among affected parties, (4) the opinion of competent counsel, and (5) the stage of the proceedings and the amount of discovery completed at the time of settlement. *See Isby*, 75 F.3d at 1198-99. All of the above factors weigh in favor of final approval of the settlement in this case.

B. Application of the Seventh Circuit's Factors Strongly Supports Final Approval of the Settlement Agreement.

1. Plaintiffs' case on the merits, balanced against the Defendant's settlement offer.

The Seventh Circuit has stated that the single "most important consideration" bearing on the fairness, reasonableness, and adequacy of a class settlement is "the relative strength of plaintiffs' case on the merits as compared to what the defendants offer by way of settlement."

Isby, 75 F.3d at 1199. Here, the monetary relief provided by Defendant is sufficient to compensate Class Members' claims, given the risks in proceeding forward.

FCRA sets up a two-tiered system for allocating damages to plaintiffs who are aggrieved by FCRA violations, and that system turns on whether the defendant's violation was willful or negligent. 15 U.S.C. § 1681n & o. If the plaintiff proves that the defendant's violation was willful, then the plaintiff is entitled to the greater of either his actual damages or statutory damages of between $100 and $1,000 per violation as well as punitive damages. *Id*. § 1681n; *Safeco v. Burr*, 551 U.S. 47, 69 (2007) (holding that that a FCRA violation is willful if the plaintiff proves that "the company ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless"). If the plaintiff proves that the defendant's FCRA violation was negligent, then he is entitled to recover his actual damages. *Id.* § 1681o. Under either theory, a prevailing plaintiff is entitled to recover attorneys' fees and costs.

Class Members allege that GCA took adverse action against them based in whole or in part on consumer reports without first providing Class Members a copy of their consumer report and the FTC's Summary of FCRA Rights. *See* 15 U.S.C. § 1681b(b)(3). Class Members argue that GCA's alleged FCRA violations were willful because the statute's requirements are clear and straightforward, because GCA certified to a consumer reporting agency that it would provide adversely affected employees and employment applicants a copy of their consumer reports and the FTC's Summary of FCRA Rights, and because the company's rate of compliance with 15 U.S.C. § 1681b(b)(3) was exceedingly low.

GCA has denied any FCRA violations and further countered that many of the alleged FCRA violations were not willful under the threshold set forth by the United States Supreme

Court in *Safeco v. Burr*, 551 U.S. 47 (2007). GCA has pointed out that all Adverse Action Letter Class Members received a copy of their consumer report and a summary of their FCRA rights, and many of them were hired by GCA after receiving the letter. Thus, according to GCA, even assuming that Adverse Action Letter Class Members suffered adverse action before receiving a copy of their consumer report, the FCRA violation that they experienced was highly technical (i.e., they received their consumer report, at most, a few days later than they should have), and was not willful. GCA also has argued that there is little case law discussing whether drug test reports produced by consumer reporting agencies are "consumer reports" under the FCRA and that Class Members who were denied employment based on a drug test report had an opportunity to dispute by telephone the result of the report with a medical professional. Finally, with respect to both classes, GCA argued that class certification was unlikely because, among other reasons, a jury would have to make different willfulness determinations with respect to different groups of Class Members and individualized inquiries would predominate over common questions. *See, e.g., Soutter v. Equifax Information Services, LLC*, 2012 WL 5992207 (4th Cir., Dec. 3, 2012) (rejecting class certification because, among other things, of the individualized inquiries necessary to determine if conduct was "willful" under the FCRA).

If the Court approves the Settlement Agreement, then each of the Class Members will be compensated as set forth in Table A, above. Given the risks that the Plaintiffs faced if they chose to go forward, the proposed Settlement Agreement's monetary relief is reasonable, particularly considering the early stage of the case. There is not an insignificant possibility that Plaintiffs could lose a motion for class certification or fail to convince a jury that GCA acted willfully. In addition, even assuming class certification and a finding of liability, a jury could decide to award damages at the lower end of the statutory damages framework.

2. The likely complexity, length, and expense of further litigation and the public interest.

This litigation is reasonably complex involving a nationwide class of nearly 6,000 individuals across almost every state in the country. Unless the Settlement Agreement is approved, the duration of the litigation could span years and would include briefing on class certification, depositions, trial, and appeals. Moreover, GCA has demonstrated a commitment to defend this case through and beyond trial, if necessary, and it is represented by well-respected and capable counsel. A recovery for the class as the result of a favorable judgment, if obtained, would occur only after hard fought and costly discovery, a trial, post-trial motions, and lengthy appeals. There is no question that this settlement produces a recovery at far less expense, much sooner and, most significantly, with more certainty than if the parties were to litigate the matter to its conclusion.

The settlement also advances the interests of judicial economy and avoids the substantial time and expense that would be necessary to litigate this case and is, therefore, in the public interest. *See American Civil Liberties Union of Ill. v. U.S. Gen. Serv. Admin*., 235 F. Supp. 2d 816, 819-820 (N.D. Ill. 2002) (citing *EEOC v. Hiram Walker & Sons*, 768 F.2d 884, 888-89 (7th Cir. 1985)) ("the settlement furthers the public interest by avoiding costly, unnecessary and uncertain litigation in favor of a mutually beneficial resolution of class-action lawsuits").

3. The amount of opposition to the settlement and the reactions of members of the class to the settlement.

The settlement enjoys the support of the Class Members. No Class Members objected or opted out, and more than 19% of the Class Members for whom address information was available returned claim forms. Ex. 3 (Tittle Decl. ¶¶9, 11-12). It is extremely unusual *not* to encounter some objections or requests for exclusion to proposed class action settlements. *See*,

e.g., *Uhl*, 309 F.3d at 987-88 (holding that district court did not abuse its discretion when it approved settlement on behalf of a class from which 250 of the 58,000 class members opted out); *Hiram Walker & Sons*, 768 F.2d at 892 (stating that "without more, a large number of objectors will not result in the reversal of a district court's approval of a consent decree").

4. The opinion of competent counsel.

Class Counsel are experienced and accomplished class action litigators. *See* Ex. 4 (Wilmes Decl. ¶3). In the considered opinion of lead counsel, the settlement achieves a more than favorable result for the Class Members under the circumstances. *See id* at ¶4. Class Counsel's recommendation, while not conclusive, should be given a presumption of reasonableness and is entitled to significant weight. *See Hispanics United*, 988 F. Supp. at 1170 (internal citations omitted).

5. The stage of the proceedings and the amount of discovery completed.

As discussed above, this case settled at a relatively early stage, but only after the parties exchanged extensive information about GCA's criminal record policies and after the parties reviewed applicant data for thousands of job applicants. Additionally, Plaintiffs deposed GCA's corporate witness about the company's policies and procedures for conducting background investigations, and it obtained a corporate affidavit from GCA's background vendor confirming that the GCA All Alerts Spreadsheet is a comprehensive list of all GCA job applicants whose background check resulted in an "Alert" code during relevant time periods. As a result of the exchange of informal and formal discovery and good-faith negotiations, counsel are aware of the strengths and weaknesses of their claims and are therefore well-prepared to reliably gauge the reasonableness of the settlement.

III. THE NOTICE PROVIDED TO THE CLASS SATISFIES RULE 23(e) AND DUE PROCESS.

The manner and form of notice provided to the Settlement Class is fully compliant with the requirements of Rule 23(e)(1) and Due Process. On June 13, 2013, GCA provided the Settlement Administrator the name and social security number for all 5,881 Class Members. Ex. 3 (Tittle Decl. ¶5). The Settlement Administrator then performed a skip trace through Experian to locate the Class Members' most recent address. *Id*. ¶6. Addresses were obtained for 5,707 Class Members using this method, and on July 12, 2013, the Settlement Administrator mailed the Notice of Proposed Class Action Settlement (the "Class Notice") to those Class Members via first-class mail. *Id*. ¶7.

Of the 5,707 Class Notices that were mailed, 1,527 were returned as undeliverable. *Id.* at ¶8. Those 1,527 Class Members were skip traced though Accurint (a second skip tracing service), and based on the results of the trace, 670 Class Notices were re-mailed to new addresses. *Id.*

Rule 23(e) and the Due Process Clause require that notice be "reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the settlement proposed and to afford them an opportunity to present their objections." 4 Newberg on Class Actions § 11:53 (4th ed. 2010). That standard has been more than satisfied here.

IV. THE REQUIREMENTS OF RULE 23(a) and 23(b)(3) HAVE BEEN SATISFIED.

Settlement classes "afford[] considerable economies to both the litigants and the judiciary and [are] also fully consistent with the flexibility integral to Rule 23," *In re General Motors Corp. Pick- Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 794 (3d Cir. 1995), and have become "a stock device" for resolving major multi-plaintiff litigation. *Amchem Products, Inc. v.*

Windsor, 521 U.S. 591, 618 (1997). The proposed Settlement Class in this case fully satisfies the criteria set forth in Rules 23(a) and 23(b)(3).

A. The Requirements of Rule 23(a) Are Satisfied.

In this case, the proposed class satisfies each of the four "class-qualifying criteria," *Amchem*, 521 U.S. at 621, specified in Rule 23(a), as follows:

Numerosity: There are 5,881 individuals included in the proposed Settlement Class.

Commonality: The common issues of law and fact in this case include, among others: whether Class Members terminated or not hired based on GCA's criminal background screening procedures received a copy of their consumer report and the FTC's Summary of FCRA rights before they suffered adverse action; and if GCA violated FCRA, whether its violations were willful.

Typicality: The claims of the Named Plaintiffs and the claims of absent Class Members all "arise from the same practice or course of conduct . . . and . . . are based on the same legal theory," *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992); *De La Fuente v. Stokley-Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983), namely whether GCA's policies and procedures with respect to the use of consumer reports complied with the requirements outlined in FCRA.

Adequacy of Named Plaintiffs and Class Counsel: There are no disabling conflicts between the Named Plaintiffs and the Class, there are no issues of allocation between present and "future" claimants, and Class Counsel are experienced and accomplished in class litigation.

B. The Requirements of Rule 23(b)(3) Are Satisfied.

Rule 23(b)(3) requires both "predominance" and "superiority." Both are satisfied here. The class shares a single claim, namely that GCA took adverse action against them based in whole or in part on consumer reports without first providing them a copy of their consumer

report and a copy of the FTC's Summary of FCRA Rights. The individual prosecutions of claims by 5,881 Class Members would not be feasible given the relatively small size of Class Members' statutory damages. *See Mace v. Van Ru Credit Corp*., 109 F.3d 338, 344 (7th 1997) ("The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action . . . .").[5]

V. THE AGREED UPON ATTORNEYS' FEES ARE REASONABLE AND WITHIN THE RANGE OF POSSIBLE APPROVAL.

Under the Settlement Agreement, and subject to the Court's approval, Class Counsel will be paid $175,000 from the Settlement Fund to reimburse their costs and litigation expenses and as attorneys' fees. Ex. 1 (Part II.D.4). Pursuant to the Settlement Agreement, and for settlement purposes only, GCA does not contest Class Counsel's entitlement to these fees and costs, nor does GCA challenge the reasonableness of the amounts.

When reviewing the reasonableness of a fee award in a common fund case, the Seventh Circuit has repeatedly and consistently held that the court should determine what the class would have agreed to pay Class Counsel had there been a negotiation at the outset of the litigation. *See Silverman v. Motorola Solutions, Inc.*, 12-2339, 2013 WL 4082893 (7th Cir. Aug. 14, 2013) ("[A]ttorneys' fees in class actions should approximate the market rate that prevails between willing buyers and willing sellers of legal services."); *Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 635-36 (7th Cir. 2011); *Taubenfeld v. Aon Corp.*, 415 F.3d 597, 599 (7th Cir. 2005); *In re Synthroid Marketing Litigation*, 264 F.3d 712, 718 (7th Cir. 2001) ("When deciding on appropriate fee levels in common-fund cases, courts must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of

[5] Because the parties are requesting class certification for settlement purposes only, the Court "need not inquire whether the case, if tried, would present intractable management problems." *Amchem*, 521 U.S. 591, 620.

compensation in the market at the time."). "Although is it impossible to know *ex post* exactly what terms would have resulted from arm's-length bargaining *ex ante,* courts must do their best to recreate the market by considering factors such as actual fee contracts that were privately negotiated for similar litigation, information from other cases, and data from class-counsel auctions." *Taubenfeld*, 415 F.3d at 599.

Plaintiff's request, which is 17.5% of the common fund created by the negotiated settlement, is actually well below the market rate of Plaintiff's attorneys' services. In a number of similar FCRA class actions, judges in this district have awarded Class Counsel attorneys' fees and costs which were more than 17.5% of the common fund, implicitly recognizing that such fee awards are a fair approximate the attorneys' fees for services if negotiated with the class at the outset of litigation. *See* Ex. 4 (Wilmes Aff. ¶3). Additionally, empirical studies confirm that the mean award by courts across the country in class action settlements of $1.4 million or less is 30% of the common fund – well above the amount sought in this case. *See* Theodore Eisenberg & Geoffrey P. Miller, *Attorneys Fees in Class Action Settlements, An Empirical Study*, 1 J. Empirical Legal Studies 27, table 7 (2004).

VI. THE PROPOSED INCENTIVE AWARDS ARE REASONABLE AND WITHIN THE RANGE OF POSSIBLE APPROVAL.

Under the Settlement Agreement, subject to Court approval, Plaintiffs Banks, Wilk, and Banks each will receive a modest $2,000 incentive award. Plaintiffs provided valuable assistance to Class Counsel. They responded to numerous inquiries from Class Counsel regarding the circumstances of their application for employment with GCA, responded to written discovery propounded by GCA, attended the all-day mediation supervised by Judge Denlow, and stepped forward despite the risk of being held liable for GCA's costs under Rule 54(d). The proposed incentive awards are reasonable, particularly when compared to awards approved in other class

action settlements. *In re U.S. Bancorp. Litig*., 291 F.3d 1035, 1038 (8th Cir. 2002) (approving total incentive payments that did not exceed .35% of the total settlement); *In re Mego Fin. Corp. Sec. Litig*., 213 F.3d 454, 463 (9th Cir. 2000) (approving incentive awards of $5,000 to each of the two class representatives in a 5,400 person class in a settlement of $1.725 million); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (approving incentive payment that did not exceed .17% of total settlement).

VII. CONCLUSION

For all the reasons stated above, Plaintiffs request that the Court, enter an Order substantially similar to the one attached hereto as Ex. 5:

1. Granting final approval to the class-wide Settlement Agreement negotiated by the parties as fair, reasonable, and adequate;

2. Approving payment to Class Counsel of $175,000.00 in attorneys' fees, costs, and litigation expenses as fair and reasonable;

3. Approving $2,000 incentive awards to Ocie Banks, Robert Wilk, and Jettie Biggs;

4. Approving payment of $45,000 to Simpluris, Inc. for work performed as Settlement Administrator;

5. Ordering the Settlement Administrator to distribute checks to each Class Member who returned a valid and timely claim form, as contemplated by the Settlement Agreement;

6. Dismissing this case with prejudice as to all Class Members.

DATED: October 8, 2013

Respectfully submitted,

/s/Christopher J. Wilmes
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