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

DERRICK MILBOURNE
and SAMANTHA CHURCHER, *et al.*,

Plaintiff,

v. **Case No.: 3:12cv861**

JRK RESIDENTIAL AMERICA, LLC,

Defendant.

PLAINTIFFS' MEMORANDUM IN SUPPORT OF CONSENT MOTION FOR ORDER OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT, DISMISSAL OF CLAIMS WITH PREJUDICE, AND AWARDING ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE SERVICE AWARDS

Plaintiffs Derrick Milbourne and Samantha Churcher, individually and on behalf of all other similarly situated individuals, with the consent of Defendant JRK Residential America LLC, have moved for Final Approval of the Class Action Settlement, for the reasons discussed in this Memorandum in support of their Motion. Plaintiffs seek an Order of Final Approval, dismissal of claims with prejudice, and awards of attorneys' fees, costs, and Class Representative Service Awards. The Classes have received notice, one Class Member objected to the Settlement but has withdrawn her objection,[1] and only two have excluded themselves. In short, nothing has changed since Court's grant of preliminary approval, confirming that the Settlement is fair, reasonable, and adequate and therefore warrants final approval.

[1] Plaintiffs' Counsel spoke to objector Bridgette R. James Rainey to discuss her objection. She stated that her intention is to remain a part of the Class and participate in the Settlement, so she therefore withdraws her objection.

I. INTRODUCTION

This case presents a nationwide class action filed under the Fair Credit Reporting Act, 15 U.S.C. § 1681b(b)(2) and (3). ("FCRA"). Plaintiffs' Amended Class Complaint names Derrick A. Milbourne and Samantha Churcher as Plaintiffs, and JRK Residential America, LLC, as Defendant. Plaintiffs assert class claims against Defendant based on its procurement and use of employment-purposed consumer reports in its hiring processes.

After nearly four years of litigation, arms'-length settlement discussions, formal discovery, the briefing of and decisions on multiple dispositive motions, the briefing and certification of two classes under Rule 23, trial preparation, and the presentation of Plaintiffs' evidence at trial, the Parties entered into a Stipulation of Settlement (the "Settlement Agreement") with the assistance of Magistrate Judge Novak. The Court held a preliminary approval hearing on September 1, 2016, and granted preliminary approval of the Settlement on September 16. (Doc. 317.) The Settlement Administrator notified the more than 1,100 consumers making up the two Classes in a Court-approved mailing. (Ex. 1, Declaration of Steve Platt ("Platt Decl.") ¶¶ 6, 9.) Pursuant to Federal Rule of Civil Procedure 23, the Parties are now seeking final approval of the proposed class action settlement. Specifically, the Parties request that the Court finally certify the proposed Classes and the proposed Class Settlement,[2] award attorneys' fees, costs, and Class Representative Service Awards, and dismiss the claims with prejudice.

Having carefully overseen preliminary approval of the Settlement, the Court's role now is to determine whether the Settlement comports with Rule 23(e)(1)(C), which permits a court to approve a settlement "only after a hearing and on finding that it is fair, reasonable, and adequate."

[2] All capitalized terms used herein have the meanings set forth in this memorandum or in the Agreement.

The Fourth Circuit has established what has become known as the *Jiffy Lube* standard to guide courts in this fairness analysis. *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158–59 (4th Cir. 1991). There are two parts to the Rule 23(e) consideration: (1) reasonableness and adequacy of the settlement—whether the Class recovery is adequate versus what the Classes give up;[3] and (2) fairness—the process question as to how the settlement came about.[4]

First, the Settlement remains an excellent result for the Classes. The Settlement sends automatic cash payments to every Settlement Class Member without them having to do anything. No claim process is required, and none of the fund reverts to the Defendant. In exchange, Class Members provide only a narrow release. And this result was obtained with questions remaining as to Defendant's willfulness, a necessary proof for the recovery of any damages. There are now no objections to the Settlement, and two Class Members have opted out. Thus the Settlement is "reasonable and adequate." FED. R. CIV. P. 23(e)(1)(C).

Second, the Settlement occurred after significant litigation. The posture at settlement is itself evidence of the arm's-length and non-collusive nature of the negotiations. The Settlement was reached after more than four years of contentious litigation—after significant discovery, the briefing of several dispositive motions, the Court's certification of two Classes, and a nearly complete trial on the merits. The Parties participated in multiple settlement conferences facilitated by Magistrate Judge Novak, leaving no question that negotiations were conducted in an arm's-

[3] The "adequacy" aspect considers: "(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." *Jiffy Lube*, 927 F.2d at 158–59.

[4] These "fairness" considerations include: "(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 the area of securities class action litigation." *Jiffy Lube*, 927 F.2d at 158–59.

length manner. There was absolutely no coercion and Class Counsel was more than equipped to litigate aggressively and effectively on behalf of the Class. Thus the Settlement is "fair, reasonable, and adequate." FED. R. CIV. P. 23(e)(2).

II. THE COURT'S GRANT OF PRELIMINARY APPROVAL.

The case background, nature of Plaintiffs' claims, Settlement structure, and class certification analysis are detailed in Plaintiffs' Memorandum in Support of their Motion for Preliminary Approval. (Doc. 306.)

A. Plaintiffs' Claims And Defendant's Willfulness.

The claims subject to the Settlement were pleaded in Plaintiff's First Amended Class Action Complaint (Doc. 147), which alleges that Defendant violated the FCRA by: (1) obtaining consumer reports in the employment context without making a proper disclosure to consumers of its intent to do so; and (2) failing to provide consumers notice before it took an adverse-employment action against them based on information contained in consumer reports. 15 U.S.C. §§ 1681b(b)(2), (b)(3). Defendant denies all of Plaintiffs' claims and further denies any wrongdoing, any liability to Class Members, and that class treatment is appropriate outside the settlement context.

Liability under the FCRA is not strict and only arises upon a finding of negligence or willful failure to comply. 15 U.S.C. §§ 1681n & 1681o. Further, unless there is a finding of a willful noncompliance, Plaintiffs (and thus the Classes) must establish actual damages. Statutory and punitive damages are *only* available where there is a finding of a willful violation. *See id.* As such, either the Classes must proceed on a uniform "actual damages" claim, or they must pursue statutory and punitive damages under the more challenging "willfulness" standard of Section 1681n. Plaintiffs here seek the latter, and have settled their and the Classes' claims on that basis.

In *Safeco Insurance Co. of America v. Burr*, 551 U.S. 47, 69 (2007), the Supreme Court considered the standard for whether a defendant "willfully" violates the FCRA, including whether willfulness also includes "recklessness." *Id.* at 52. While it held that the former encompassed the latter, the Court also concluded that this willfulness standard is not met "unless the action is not only a violation [of the FCRA] under a reasonable reading of the statute's terms, but shows that the company ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless." *Id.* at 69. To overcome this hurdle, it is the plaintiff's burden to prove that a defendant's attempts to comply with the FCRA were "objectively unreasonable." *Id.*

Because of perceived difficulties for Plaintiffs to show willfulness, Defendant denies liability under the FCRA.[5] However, to the extent that any violations of the FCRA were found, Defendant further denies that any such violations were the result of willful misconduct.

B. The Lengthy Litigation of the Dispute.

This case has been as thoroughly and completely litigated as any class case Class Counsel can recall, save perhaps the similar *Thomas v. FTS* case. On November 30, 2012, Derrick Milbourne filed this action and amended his Complaint on October 26, 2015, adding Plaintiffs Timothy Robins[6] and Samantha Churcher. (Docs. 1, 147.) Discovery took place, and the Court certified two Classes of consumers over Defendant's opposition. (Doc. 55.) Defendant twice moved for summary judgment (Docs. 47, 148), which the Court denied except as to 559 individuals who signed a different disclosure form than did Plaintiffs. (Docs. 65, 201.)

Unusual, even for a class action that goes to trial, the Parties prepared this case for trial *twice*. Preparation for the first trial, set for July 13–14, 2015 (Doc. 81), saw the Parties submit witness lists, discovery designations, jury instructions, voir dire, and motions in limine. (Ex. 2,

[5] Likewise, Defendant denies that the case was capable of Rule 23 certification.
[6] Mr. Robins was later dismissed as a Named Plaintiff.

Declaration of Leonard Bennett ("Bennett Decl.") ¶ 20.) The Court continued that trial date, reopening discovery after Defendant produced the different disclosure form referenced in the preceding paragraph. (Doc. 132.) Discovery and motions practice continued and was protracted, with Plaintiffs' Counsel even sending a group of lawyers and staff from its Newport News office to Defendant's headquarters in Los Angeles to review documents. (Ex. 2, Bennett Decl. ¶ 20.) Defendant moved to compel arbitration of Plaintiffs' claims and for summary judgment a second time, which the Court largely denied. (Docs. 196, 200, 202.) In addition, the Court permitted briefing of a motion to dismiss by Defendant based on the Supreme Court's *Spokeo, Inc. v. Robins* decision, which issued in May of 2016. (Docs. 211, 213, 217, 220.) The Court denied that motion, and the Parties submitted a second round of witness lists, discovery designations, jury instructions, voir dire, and motions in limine in preparation for trial on August 15, 2016. (Ex. 2, Bennett Decl. ¶ 21.) After one day of trial, the Parties reached the Settlement with the assistance of Judge Novak. (*Id*.) On August 16, 2016, the Parties notified the Court that they had reached a settlement of the class claims and presented the basic terms of the settlement in open court. (*Id*.)

III. THE SETTLEMENT OF THE CLASS CLAIM AND SUB-CLASS CLAIMS.

A. The Settlement Classes.

1. The 1681b Impermissible Use Class.

Under the Settlement Agreement, the Parties agreed to resolve the claims of the Class of persons defined and certified by the Court as follows (the "Impermissible Use Class"):

> All natural persons residing in the United States (including all territories and other political subdivisions of the United States), (a) who applied for an employment position with Defendants or any of their subsidiaries (b) as part of this application process were the subject of a consumer report obtained by Defendants, (c) on or after November 30, 2010, and before March 15, 2016, (d) where the Defendants used a form to make its disclosures pursuant to 15 U.S.C. § 1681b(b)(2) that contained a release and/or waiver of the signing consumer's claims and/or rights, and (e) Defendant did not provide the applicant with any other disclosure form prior to obtaining the applicant's consumer report.

The Impermissible Use Class is comprised of 1,106 individual members. Class size is a material term of the settlement. (Doc. 317 ¶ 2.)

2. The 1681b Adverse Action Class.

Also under the Settlement Agreement, the Parties agreed to resolve the claims of the Class of persons defined as follows (the "Adverse Action Class"):

> All natural persons residing in the United States (including all territories and other political subdivisions of the United States), (a) who applied for an employment position with Defendants or any of their subsidiaries (b) as as part of this application process were the subject of a consumer report background check obtained by Defendant on or after two years preceding the filing of the Complaint; (c) where the Defendant's records show that the applicant was denied employment because of the background check; and (d) to whom Defendant did not provide a copy of the consumer report and other disclosures stated at 15 U.S.C. § 1681b(b)(3)(A)(ii) at least five business days before the date the employment decision is first noted in Defendant's records.

The Adverse Action Class is comprised of 32 individual members. Class size is a material term of the Settlement. (Doc. 317 ¶ 2.)

B. The Consideration Provided To The Classes.

This case was fiercely litigated, with Plaintiffs facing substantial merits defenses to willfulness. Nevertheless, Plaintiffs were able to negotiate a settlement structure paying real money to Class Members without imposing an arduous or difficult claims process. Checks will arrive automatically, without Class Members having to do anything.

Defendant will pay $305,000 into a Settlement Fund for the benefit of the Classes, and it therefore provides a substantial monetary net benefit of $100 to each Impermissible Use Class Member and $150 to each Adverse Action Class Member. In addition to the lack of any claims process at all, Class Members will receive these payments without having to prove any harm whatsoever, or make the more-difficult showing of willfulness. And these payments will be the full amount Class Members will receive after the deduction of proposed Service Awards of $5,000 for each Class Representative (totaling $10,000), and $177,700 in attorneys' fees and costs. Class

Member payments will be unreduced by administration costs because the Defendant also agreed to separately pay up to $10,000 in class administration costs. The Settlement Fund will be disbursed as follows:

GROSS CLASS FUND –	**$305,000**
Impermissible Use Class Benefit (1,107 x $100) –	$110,700
Adverse Action Class Benefit (44 x $150) –	$6,600
Service Awards –	$10,000
Attorneys' Fees –	$105,700
Costs –	$72,000

Separately, the Parties have resolved the previously deferred question of the appropriate amount of recoverable fees and costs appropriate as a result of the earlier discovery dispute between the Parties. Defendant has agreed to pay and Plaintiffs' counsel has agreed to accept a stipulated amount of $70,000, which is paid by Defendant without reduction of any payment to settle the class claims.[7]

C. The Notice Process Is Complete As The Court Has Instructed And Under The Governing Law.

In its Preliminary Approval decision and subsequent rulings, the Court approved and ordered sent two mail notice packets for Class Members. To facilitate this process, the Parties engaged the nationally known settlement administrator American Legal Claims Services ("ALCS"). (Doc. 317 ¶ 6.) ALC was tasked not only with printing, processing, and mailing the notices, but also with updating addresses on Class Members whose notices were returned undeliverable. (Ex. 1, Platt Decl. ¶¶ 3–9.) ALCS is experienced in administering large class

[7] This payment, which the Court ordered, reimburses Class Counsel for the expenses and attorneys' fees for its travel to Defendant's Los Angeles headquarters to review documents. (Ex. 2, Bennett Decl. ¶ 20.)

settlements, especially complex class settlements. Class Counsel supervised and had input into all actions taken by the Administrator to date.

Class Notice in this context is a fairly well-established process. An experienced administrator like ALCS is critical to the success of the mailed-notice program from the beginning when the class list is provided by the Defendants. In this case, the Administrator received the Class lists from Defendant, which were then processed through the National Change of Address Database if any Class Member addresses proved stale. (*Id.* ¶¶ 4–5.) ALCS mailed the Court-approved Settlement Class Notices via first class U.S. Mail to 1,107 Impermissible Use Class Members and 44 Adverse Action Class members. (*Id*. ¶¶ 3–9.)

After the initial mailing, the Postal Service returned 189 Impermissible Use Class notices as undeliverable and without forwarding addresses, and ALC used a third-party service to attempt to update the addresses for those Class Members. (*Id.* ¶ 5.) After this update, ALCS obtained new addresses for and re-mailed 186 of those Class Members' notices. (*Id*.) Following the two mailings and attempts to obtain valid addresses from the most commonly used sources, three Impermissible Use Class Members' notices remain undeliverable. (*Id*.) All told, ALCS estimates that it successfully mailed notice to 1,104 Impermissible Use Class Members, a reach of 99.7 percent. (*Id.* ¶ 6.)

As for the Adverse Action Class, ten notices were returned as undeliverable from ALCS's initial mailing of 44. (*Id*. ¶ 8.) ALCS used a skip-trace service to obtain updated addresses, and remailed those ten notices. (*Id.*) The second mailing resulted in no returned notices, confirming that the mail notice reached all 44 Adverse Action Class Members. (*Id.* ¶¶ 8–9.)

ALCS set up and maintained an Internet website dedicated to the Settlement, and posted on that site key documents, dates, an list of frequently asked questions, and contact information

for Class Counsel and ALCS. (*Id.* ¶ 10.) The website also allowed Class Members to update their addresses online. (*Id.*)

ALCS also established and maintained a toll-free number dedicated to this case, to receive calls from Class Members with questions about the Settlement. (*Id.* ¶ 11.) ALCS received 78 calls on that line. (*Id.* ¶ 9.) Separately, Class Counsel's contact information and telephone number were included in the notice materials, and Class Counsel received and handled dozens of direct, live calls from Class Members. (Ex. 2, Bennett Decl. ¶ 23.)

The mailed notice process was certainly the best available given the circumstances of this case, including the length of time the case was litigated and the fact that the Administrator assisted in developing the address list using a commercially available database. (*Id*.) While it is almost always difficult to obtain current addresses and identification information on Class Members, especially when a consumer may be facing difficulty finding employment, the Parties and Administrator were able to minimize that problem. A 99.8% successful-mail-delivery rate is remarkable—as high a rate as any case in which Class Counsel has been involved, and much better than the typical 20% undeliverable rate ordinary obtained (and approved by the Court).[8]

D. Class Members Overwhelmingly Support The Settlement, And There Are No Governmental Objectors.

Class Member reaction to the Settlement confirms that it is adequate. There are no objections, and two Class Members have validly opted-out of the Settlement. (Ex. 1, Platt Decl. ¶ 12; Ex. 2, Bennett Decl. ¶ 24.) While Counsel is of course cognizant that opinions from Class

[8] In fact, the 80% target to which Counsel ordinary aspires and the Court typically considers is already well above the "reasonable notice" thresholds used in other venues. *See Alberton v. Commn'w Land Title Ins. Co.*, No. 06-3755, 2008 WL 1849774, at *3 (E.D. Pa. Apr. 25, 2008) (finding as sufficient direct notice projected to reach 70% of class plus publication in newspapers and Internet); *Grunewald v. Kasperbauer*, 235 F.R.D. 599, 609 (E.D. Pa. 2006) (approving of direct mail to 55% of class and publication in three newspapers and Internet).

Members matter and none are to be lightly dismissed, here there is no Class Member opposition to the Settlement.

Likewise, Defendant has confirmed that it served the required Class Action Fairness Act notices on the state and federal attorneys general on September 21, 2016. Defendant received no substantive comments, questions, or objections in response.

It has been Class Counsel's experience that nearly every case, regardless of size, will draw some sort of objection or complaint from class members. There are none in this case. Presumably, even the large industry of professional objectors did not conclude that there was a valid basis to challenge the Settlement.

E. The Release Of Claims.

In return for the substantial cash payment Class Members will receive, they will release all claims against Defendants, as follows:

> Upon the Effective Date, each member of the Settlement Classes who has not validly opted out of the proposed Settlement, and each of their respective spouses, executors, representatives, heirs, successors, bankruptcy trustees, guardians, wards, joint tenants, tenants in common, tenants in the entirety, co-borrowers, agents, successors, assignees and assigns, and all those others who also claim through them or who assert claims on their behalf shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against the Released Defendants. The Parties hereby acknowledge that the Released Defendants are expressly intended beneficiaries of this Release.
>
> Also, upon the Effective Date, the Named Plaintiff and each member of the Impermissible Use Class and Adverse Action Class who have not opted out of the proposed settlement shall be permanently enjoined and barred from filing, commencing, prosecuting, intervening (as class members or otherwise) or receiving any benefits from any lawsuit or arbitration proceeding arising from any of the Released Claims.

(Doc. 306-1 ¶ 3.)

No unrelated third parties are included in the release. This means that any FCRA claims that are typically tied to quantifiable, actual damages—like those for inaccuracy of reporting or

failure to conduct a reasonable investigation of a dispute—survive because they must be asserted against credit reporting agencies, not employers like Defendant.

IV. THE COURT SHOULD FINALLY APPROVE THE SETTLEMENT.

A. Nothing Has Changed Since Preliminary Approval, Giving The Court No Cause For To Overturn That Decision.

1. The standards for approval of class action settlements.

Settlement by compromise is part of a strong judicial policy within this Circuit favoring resolution of litigation prior to trial. *See, e.g.*, *S.C. Nat'l Bank v. Stone*, 749 F. Supp. 1419, 1423 (D.S.C. 1990) (noting "[t]he voluntary resolution of litigation through settlement is strongly favored by the courts") (citing *Williams v. First Nat'l Bank*, 216 U.S. 582 (1910)). Settlement spares the litigants the uncertainty, delay, and expense of a trial and appeal while simultaneously reducing the burden on judicial resources. As the court in *South Carolina National Bank* observed:

> In the class action context in particular, there is an overriding public interest in favor of settlement. 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.

749 F. Supp. at 1423 (quoting *Armstrong v. Bd. of Sch. Dirs.*, 616 F.2d 305, 313 (7th Cir. 1980)).

To safeguard the interests of the absent class members, all class settlements and the corresponding later dismissal of the case require court approval. FED. R. CIV. P. 23(e)(1)(A). Rule 23(e) imposes two basic requirements before approval of a class settlement and dismissal. First, the Court must determine that notice was directed "in a reasonable manner to all class members." FED R. CIV. P. 23(e)(1)(B). Second, the Court must determine that the settlement "is fair, reasonable, and adequate." FED R. CIV. P. 23(e)(1)(C).

Federal jurisprudence strongly favors resolution of class actions through settlement. *San Francisco NAACP v. San Francisco Unified Sch. Dist.*, 59 F. Supp. 2d 1021, 1029 (N.D. Cal. 1999); *see* 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."). Rule 23 requires Court review of the resolution of a class action such as this one. Specifically, the Rule provides that "[t]he claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval." FED. R. CIV. P. 23(e). Court approval is required to ensure that the parties gave adequate consideration to the rights of absent class members during settlement negotiations. *Henley v. FMC Corp.*, 207 F. Supp. 2d 489, 492 (S.D. W. Va. 2002) (citing *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991)).

Despite the policy favoring settlement, in a class action, a court may approve a settlement only after a hearing and upon a finding that it is "fair, reasonable, and adequate." FED. R. CIV. P. 23(e)(2). Approval of a class action settlement is committed to the "sound discretion of the district courts to appraise the reasonableness of particular class-action settlements on a case-by- case basis, in light of the relevant circumstances." *In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 663 (E.D. Va. 2001). However, "there is a strong initial presumption that the compromise is fair and reasonable." *Id.* (quoting *S.C. Nat'l Bank*, 139 F.R.D. at 339).

In determining whether a given settlement is reasonable, the court should avoid transforming the hearing on the settlement into a trial on the merits regarding the strengths and weaknesses of each side of the case. *Flinn v. F.M.C. Corp.*, 528 F.2d 1169, 1172–73 (4th Cir. 1975). Ultimately, the approval of a proposed settlement agreement is in the sound discretion of the Court. *Strang v. JHM Mortgage Sec. Ltd. P'ship*, 890 F. Supp. 499, 501 (E.D. Va. 1995) (citing *Jiffy Lube*, 927 F.2d at 158).

2. The notice to Class Members met the requirements of due process.

In a settlement class maintained under Rule 23(b)(3), the class notice must meet the requirements of both Federal Rules of Civil Procedure 23(c)(2) and 23(e). Rule 23(e) specifies that class actions may not be settled without court approval and notice to class members. FED. R. CIV.

P. 23(e).[9] Rule 23(c)(2) requires that notice to the class be "the best practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." FED. R. CIV. P. 23(c). The Rule also requires that the notice inform potential class members that (1) they have an opportunity to opt out; (2) the judgment will bind all class members who do not opt out; (3) and any member who does not opt out may appear through counsel. *Id.* The Court must consider the mode of dissemination and the content of the notice to assess whether such notice was sufficient. *See* Federal Judicial Center, MANUAL FOR COMPLEX LITIGATION § 21.312 (4th 2004).

The class list was compiled by Defendant and with the assistance of the Administrator and Class Counsel, reasonable measures were taken to locate updated addresses for the Class Members. As this Court has held, "[w]hat amounts to reasonable efforts under the circumstances is for the Court to determine after examining the available information and possible identification methods . . . 'In every case, reasonableness is a function of [the] anticipated results, costs, and amount involved.'" *Fisher v. Va. Elec. & Power Co*., 217 F.R.D. 201, 227 (E.D. Va. 2003) (citations omitted). The Supreme Court has concluded that direct notice satisfies due process, *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812–13 (1985), and as addressed above, other courts—including this Court and others within the Fourth Circuit—have approved mailed- notice programs that reached a much smaller percentage of class members than this class notice reached. *See In re Serzone*, 231 F.R.D. 221, 236 (S.D. W. Va. 2005) (approving notice program where direct mail portion was estimated to have reached 80% of class members); *Martin v. United Auto Credit Corp.*, No. 3:05cv00143 (E.D. Va. Aug. 29, 2006) (granting final approval where class notice had

[9] In instances like this one, where the Court has previously certified classes under Rule 23(b)(3), the Court may refuse to approve a settlement that does not provide class members with a second opportunity to exclude themselves. FED. R. CIV. P. 23(e)(5). The Settlement Notices in this case informed Class Members of their ability to exclude themselves from the Settlement. (Ex. 2, Bennett Decl. ¶ 23.)

approximately 85% delivery). In fact, every case in which present Class Counsel has sought and obtained approval have presented an equal or lower rate of deliverables than in this case.

The Parties' efforts to provide Class Members with notice of the Settlement makes it clear that such notice was the best available notice under the circumstances given: (a) the available information; (b) the possible identification methods; (c) the number of Class Members; and (d) the amount of the Settlement. The Parties have complied fully with the Court's Preliminary Approval Order, and have taken reasonable steps to ensure that the Class Members were notified—in the best and most direct manner possible—of the Settlement's terms and significant benefits.

3. An analysis of the *Jiffy Lube* factors confirms that the Settlement is fair and reasonable.

The next phase of the Court's determination of compliance with Rule 23(e)(2) typically requires a two-part analysis, referred to in this Circuit as the *Jiffy Lube* factors. The Court must determine whether the settlement is "fair and reasonable," and then whether the settlement is "adequate." The approval of a proposed settlement agreement is in the sound discretion of the Court. *In re Jiffy Lube Sec. Litig*., 927 F.2d at 158.

The first step in the *Jiffy Lube* analysis is an analysis of the fairness of the settlement. The fairness factors are critical to the protection of the class members from unscrupulous class counsel and relate to whether there has been arm's-length bargaining. *See In re Mid-Atlantic Toyota Antitrust Litig*., 564 F. Supp. 1379, 1383 (D. Md. 1983); *S.C. Nat'l Bank*, 139 F.R.D. at 339. The Court must consider four factors: (i) the posture of the case at the time of settlement; (ii) the extent of discovery that has been conducted; (iii) the circumstances surrounding the negotiations; and (iv) the experience of counsel. *Jiffy Lube*, 927 F.2d at 158–59; *see also In re Microstrategy, Inc.*, 148 F. Supp. 2d at 663–64; *Strang v. JHM Mortg. Sec. Ltd. P'ship*, 890 F. Supp. 499, 501 (E.D. Va. 1995). A proposed class action settlement is considered presumptively fair where there is no evidence of collusion and the parties, through capable counsel, have engaged in arm's-length

negotiations. *See S.C. Nat'l Bank*, 139 F.R.D. at 339. As described below, the settlement reached in this case is clearly fair and each of the *Jiffy Lube* factors are satisfied.

The determination of the appropriate time at which to settle a case is one that is entrusted to experienced class counsel. It can be difficult to detour from a litigation track focused on an upcoming trial (and meeting the various burdens of proof) to a mindset that considers that every case—no matter how conceivably strong it may seem—will always have an element of risk. Settlement is the only outcome that allows both sides to be assured of a certain ending to the litigation, alleviating both the risk and cost inherent in further litigation to both sides, as well as the additional burden on the Court's already-strapped resources. This case was no exception, and in fair consideration of the strengths and weaknesses as the case was presented to the jury, Plaintiffs' Counsel felt that settlement was appropriate at this juncture because of the result for both of the Classes weighed against the risk that the Classes would lose altogether . *See Cardiology Assocs., P.C. v. Nat'l Intergroup, Inc*., No. 85CV4038, 1987 WL 7030, at *2 (S.D.N.Y. Feb. 13, 1987) (concluding that because continued prosecution of the action would have been expensive and time-consuming, and would have involved substantial risks, "it [was] not unreasonable for the plaintiff class to take a 'bird in the hand'"); *Alvarado Partners, L.P. v. Mehta*, 723 F. Supp. 540, 547 (D. Colo. 1989) (noting that "[i]t has been held prudent to take 'a bird in the hand instead of a prospective flock in the bush'" in weighing the value of an immediate recovery against "the mere possibility of future relief after protracted and expensive litigation") (quoting *W. Va. v. Chas. Pfizer & Co.*, 314 F. Supp. 710, 740 (S.D.N.Y. 1970)); *In re Microstrategy*, 148 F. Supp. 2d at 667.

The proposed 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:

- Significant and thorough discovery on both class and merits issues;
- Substantive and contested briefing, including on motions for summary judgment by both sides;
- Full briefing of class certification;
- Standing briefing as a result of *Spokeo*, one of the first opportunities of any set of counsel to brief the issue; and
- Preparation for two trials, and the presentation of Plaintiffs' case to the jury at the second one.

(Ex. 2, Bennett Decl. ¶ 25.) 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 appropriately litigated by the Parties and sufficient discovery has been obtained by both Plaintiffs and Defendant to assess the strength of their respective claims and defenses. (*Id.* ¶ 26.)

Further, the Parties have conducted arms'-length, contentious, and complicated negotiations with Judge Novak and with Counsel for the Parties. Courts have presumed settlements reached in that context to be fair. *See*, *e.g.*, *City P'ship Co. v. Atl. Acquisition Ltd. P'ship*, 100 F.3d 1041, 1043 (1st Cir. 1996). Consequently, the circumstances surrounding the Parties' settlement negotiations support a finding that the settlement is fair.

Class Counsel in this case are all highly-skilled and experienced consumer protection attorneys who have successfully litigated individual and class cases on behalf of consumers, and they endorse the settlement as fair and adequate under the circumstances. (Ex. 2, Bennett Decl. ¶¶ 2–19, 26.) Courts recognize that the opinion of experienced and informed counsel in favor of settlement should be afforded substantial consideration in determining whether a class settlement is fair and adequate. *See*, *e.g.*, *In re MicroStrategy*, 148 F. Supp. 2d at 665.

Moreover, there are advantages not only to the Parties, but also to the Court when opposing counsel are already experts on the legal and factual issues in a case and in a field of practice. *See S.C. Nat'l Bank*, 139 F.R.D. at 339 (concluding fairness met where settlement discussions "were

hard fought and always adversarial," and those negotiations "were conducted by able counsel" with substantial experience in the area of the subject law). Experienced counsel negotiated the Settlement, making it their first priority bringing the best benefit possible to their clients and, therefore, to the Class. (Ex. 2, Bennett Decl. ¶ 27.) This Court and many others have found the undersigned and other Consumer Litigation Associates attorneys qualified and adequate to represent a consumer class.[10]

Counsel's collective experience and expertise, together with discovery and trial presentation sufficient to aid Counsel and the Court in evaluating Plaintiffs' claims and Defendant's rebuttals, further point to the conclusion that the Settlement was the product of arm's-length negotiation by experienced counsel and thus warrants final approval. *See Jiffy Lube*, 927 F.2d at 159; *see also Strang v. JHM Mortgage Sec. Ltd. P'ship*, 890 F. Supp. 499, 501–02 (E.D. Va. 1995) (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. The remaining *Jiffy Lube* factors confirm the Settlement terms are adequate.

In an analysis of the adequacy of a proposed settlement, the relevant factors to be considered may include: (1) the relative strength of the plaintiff's case on the merits; (2) any

[10] *See, e.g.*, *Thomas v. FTS USA, LLC*, 312 F.R.D. 407, 420 (E.D. Va. 2016) (concluding same set of Class Counsel "is qualified, experienced, and able to conduct this litigation so as to fully and adequately represent both classes"); *Manuel v. Wells Fargo Nat'l Ass'n*, No. 3:14CV238, 2015 WL 4994549, at *15 (E.D. Va. Aug. 19, 2015) (finding same set of Class 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 Soutter v. Equifax Info. Servs., LLC,* 3:10CV107, 2011 WL 1226025 (E.D. Va. Mar. 30, 2011) ("[T]he 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."); *Williams v. Lexis-Nexis Risk Mgt.*, No. 3:06CV241 (E.D. Va. 2008).

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 at the time settlement was proposed; (7) the extent of discovery that had been conducted; (8) the circumstances surrounding 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 Plaintiffs' Counsel firmly believes in the merits of Plaintiffs' claims, demonstrating liability on the FCRA claims at issue is not at all a certainty. As noted above, liability under the FCRA is not strict and only arises upon a finding of negligence or willful failure to comply. 15 U.S.C. §§ 1681n and 1681o. This reality is of course highlighted by the ability of the Parties to observe each other at trial and gauge the jury's reaction to the evidence presented. (Ex. 2, Bennett Decl. ¶ 27.) Defendant of course contested liability in all regards, having dug-in its heels for protracted litigation. Further, unless there is a finding of a willful noncompliance, Plaintiffs (and thus the Classes) must establish actual damages. Consequently, absent approval of the Settlement, Plaintiffs would be put to challenging proofs, including as to Defendant's willfulness, and all Parties face the prospect of continued litigation through the completion of a trial and jury deliberations followed, thereafter, by a lengthy appeal. (Ex. 2, Bennett Decl. ¶ 28.)

It is convincing that despite the successful delivery of over 1,100 total notices, no Class Members have objected and a very small number have opted out. "Such a lack of opposition to the partial settlement 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 previously explained,

"[b]ecause '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 partial settlement and the small number of class members choosing to opt-out of the case strongly compel a finding of adequacy" *Id*. (citing *Sala v*. *Nat'l R.R*. *Passenger Corp*., 721 F. Supp. 80, 83 (E.D. Pa. 1989). "The small number of objections necessarily must be evaluated relative to the size of this Class of over 1.0 million members. In litigation involving a large class it would be 'extremely unusual' not to encounter objections." *See In re Anthracite Coal Antitrust Litig*., 79 F.R.D. 707, 712–13 (M.D.Pa.1978), *aff'd in part,* 612 F.2d 571 and 612 F.2d 576 (3d Cir.1979)." *In re NASDAQ Mkt*.-*Makers Antitrust Litig*., 187 F.R.D. 465, 478-79 (S.D.N.Y. 1998). Where "[t]he parties objecting to the settlements are both qualitatively and quantitatively insignificant," their objections may be disregarded. *In re Corrugated Container Antitrust Litig*., 659 F.2d 1322, 1327 (5th Cir. 1981), *cert*. *denied sub nom*. *CFS Continental, Inc*. *v*. *Adams Extract Co*., 456 U.S. 998 (1982). Courts recognize that where the class as a whole supports a settlement, it should be approved.[11] 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 nevertheless approved).

If the Court finally approves the Settlement, then the Class Members will receive genuine, cash relief without the need to show any harm whatsoever or that Defendant's conduct meets the

[11] *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) (small number of objectors demonstrates 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.) (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).

standards for willfulness. Class Members believing their cases are even more valuable or who have actual damage claims in excess of these expected awards have had the opportunity to opt-out and pursue those claims on an individual basis. Only two have done so, further supporting the conclusion that the Settlement is adequate. The absence of any significant opposition to the Settlement, coupled with the lack of any other competing class cases supports the strength of the Settlement. For these reasons, the opinion of all Counsel involved is that the terms of the Settlement Agreement represent a fair, reasonable, and adequate resolution of the claims alleged. The Court should conclude likewise.

B. The Court Should Award The Proposed Attorneys' Fees, Costs, And Class Representative Service Award.

1. The Court should award the well-earned Service Award to Plaintiffs.

Plaintiffs request—and the Defendant does not oppose—a modest award of $5,000 for their participation in this case and service to the Classes. In this case, the Plaintiffs took as active a role as could be imagined, answering discovery, testifying in depositions, and appearing for and preparing to testify at trial. They understand their roles as class representative and were answerable to counsel in prosecuting the case. (Ex. 2, Bennett Decl. ¶ 29, 38.) And they ask that the Court approve the Settlement. (*Id.* ¶ 39.) Such awards in this amount and range are reasonable and have been regularly approved by judges in the Eastern District of Virginia.[12] Particularly in light of

[12] *See, e.g.*, *Manuel v. Wells Fargo Nat'l Ass'n*, No. 3:14cv238(DJN), 2016 WL 1070819, at *6 (E.D. Va. Mar. 15, 2016); *Beverly v. Wal-Mart Stores, Inc.*, No. 3:07cv469; *Williams v. Lexis Nexis Risk Mgmt.*, No. 3:06cv241; *Cappetta v. GC Servs. LP*, No. 3:08cv288-JRS (E.D. Va.); *Makson v. Portfolio Recovery Assoc., Inc.*, No. 3:07cv982-HEH (E.D. Va. Feb. 9, 2009); *Daily v. NCO*, No. 3:09CV31-JAG; *Conley v. First Tenn.*, No. 1:10CV1247-TSE; *Lengrand v. Wellpoint*, No. 3:11Cv333-HEH; *Henderson v. Verifications Inc*., No. 3:11CV514-REP (E.D. Va.); *Pitt v. K-Mart Corp*., No. 3:11CV697 (E.D. Va. May 24, 2013); *James v. Experian Info. Sols*., No. 3:12CV902 (E.D. Va.); *Manuel v. Wittstadt*, No. 3:12CV450 (E.D. Va.); *Shami v. Middle E. Broadcast Network*, No. 1:13CV467-CMH (E.D. Va.); *Goodrow v. Freidman Freidman & MacFadyen*, No. 3:11CV20 (E.D. Va.); *Berry v. LexisNexis Risk & Info. Analytics Grp., Inc.*, No. 3:11CV274 (E.D. Va.); *Marcum v. Dolgencorp*, No. 3:12CV108 (E.D. Va.); *Kelly v. Nationstar*, No. 3:13CV311 (E.D. Va.); *Wyatt v. SunTrust Bank*, No. 3:13CV662 (E.D. Va.).

historical incentive awards both within and outside this District, the incentive awards sought are appropriate. *See, e.g.*, *Staton v. Boeing Co.*, 327 F.3d 938, 976–77 (9th Cir. 2003); *In re Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998). An empirical study published in 2006 suggests that the average award per class representative is about $16,000[.]" 4 NEWBERG ON CLASS ACTIONS § 11:38 (4th ed.).

There have been no objections to or comments regarding the Service Awards, and Plaintiffs properly earned them through their unwavering participation in the case and trial. (Ex. 2, Bennett Decl. ¶ 29.) The Court should therefore approve the awards. *See Manuel*, 2016 WL 1070819, at *6 (approving award of $10,000 for named plaintiff).

2. The requested attorneys' fees and costs are appropriate and should be awarded.

Plaintiffs' counsel has previously and consistently made the argument that a common fund settlement should pay class counsel based on the value produced for the class. While present counsel has often benefited from a fee multiplier as a result of the (correctly applied) percentage-of-fund model, here it (also correctly) works to the benefit of the Class (and maybe less correctly to the Defendant). Class Counsel's fees are exponentially greater than the amount now sought. And thus certainly the motion at bar should be granted.

a. A percentage-of-the-fund award is appropriate and reasonable here.

The Supreme Court has consistently calculated attorneys' fees in common funds cases on a percentage-of-the-fund basis. *See Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 165–67 (1939); Boeing Co. v. van Gemert, 444 U.S. 472, 478–79 (1980); *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984); *see also Report of the Third Circuit Task Force, Court Awarded Attorney Fees*, 108 F.R.D. 237, 242 (Oct. 8, 1985) (noting that fee awards in common funds cases have historically been computed based on a percentage of the fund). The Supreme Court has never adopted the lodestar method over the percentage of recovery method in a common fund case, even when lower federal

courts began using the lodestar approach in the 1970's. *See Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 943 (E.D. Tex. 2000); *see also* MANUAL FOR COMPLEX LITIGATION § 24.121 at 210.

Since *Blum*, virtually every Circuit Court of Appeals has joined the Supreme Court in affirmatively endorsing the percentage of recovery method as an appropriate method for determining an amount of attorneys' fees in common fund cases. *See In re GMC Corp. Pick-up Truck Fuel Tank Prods. Liability Litig.*, 55 F.3d 768, 821–22 (3rd Cir. 1995); *Vizcaino v. Microsoft Corp*., 290 F.3d 1043, 1047-50 (9th Cir. 2002); *In re Thirteen Appeals Arising out of the San Juan DuPont Plaza Hotel Fire Litig*., 56 F.3d 295 (1st Cir. 1995); *Gottlieb v. Barry*, 43 F.3d 474, 487 (10th Cir. 1994); *Rawlings v. Prudential-Bache Props., Inc*., 9 F.3d 513, 515–16 (6th Cir. 1993); *Camden I. Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991); *Swedish Hosp. Corp v. Shalala*, 1 F.3d 1261, 1268-70 (D.C. Cir. 1993); *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 49 (2nd Cir. 2000).

In the Fourth Circuit, attorneys' fees in common fund cases such as this one are almost universally awarded on a percentage-of-the-recovery basis. *Manuel*, 2016 WL 1070819, at *5–6; *Smith v. Krispy Kreme Doughnut Corp.*, No. 1:05cv00187, 2007 WL 119157, at *1 (M.D.N.C. Jan 10, 2007); *see DeLoach v. Philip Morris Cos*., No. 00-1235, 2003 WL 23094907, at *3 (M.D.N.C. Dec. 19, 2003) (citing, with approval for this same proposition, *In re Compact Disc Minimum Advertised Price Antitrust Litig*., 216 F.R.D. 197, 215 (D. Me. 2003)); *see also Strang*, 890 F. Supp. at 502 (explaining "[a]lthough the Fourth Circuit has not yet ruled on this issue, the current trend among the courts of appeal favors the use of a percentage method to calculate an award of attorneys' fees in common fund cases.").

The Fourth Circuit has not established a benchmark for fee awards in common funds cases, but district courts within the Fourth Circuit have noted that most fee awards range from 25 to 40

percent of the settlement fund.[13] Percentage-fee awards are exactly what the name suggests—class counsel's fees are determined as a percentage of the total settlement fund they are able to recover for the class. This Court has recognized the importance of incentivizing experienced class counsel to take on risky cases. *See In re Microstrategy*, 172 F. Supp. 2d at 788. In fact, a comprehensive study of attorneys' fees in class action cases notes "a remarkable uniformity in awards between roughly 30% to 33% of the settlement amount." Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. OF EMPIRICAL LEGAL STUDIES 27, 31, 33 (2004). This holds true even in instances where the class recovery runs into the hundreds of millions of dollars. *See In re Thirteen Appeals*, 56 F.3d at 295 (approving award of thirty percent of $220 million); *In re Combustion, Inc.*, 968 F. Supp. 1116, 1136 (W.D. La. 1997) (awarding thirty-six percent of $125 million); *In re Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (approving award of 36% of $3.5 million settlement fund); *Gwozdzinnsky v. Sandler Assoc.*, No. 97-7314, 1998 WL 50368, 159 F.3d 1346 (2d Cir. 1998) (table) (affirming district court's award of 25% of $1 million common fund) (unpublished); *In re Educ. Testing Serv.*, 447 F. Supp. 2d 612, 631 (E.D. La. 2006)(concluding the customary fee award for class actions "is between 22% and 27%"); *In re CMS Energy ERISA Litig.*, No. 02-72834, 2006 WL 2109499, at *1 (E.D. Mich. June 27, 2006) (awarding fee of 28.5% of $28 million settlement fund); *In re Xcel Energy, Inc.*, 364 F. Supp. 2d 980, 995 (D. Minn. 2005) (awarding 25% of $80 million settlement fund); *Strougo ex*

[13] Indeed, "empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in the class actions average around one-third of the recovery." 4 NEWBERG ON CLASS ACTIONS § 14:6 (4th ed.); *see also In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 735 (E.D. Pa. 2001) (review of 289 class action settlements demonstrates "average attorney's fees percentage [of] 31.31%" with a median value that "turns out to be one-third."). In an analysis of such historic patterns, Silber and Goodrich explained that empirical evidence does not necessarily establish what a court should do in any given case, but it does provide guidance to the court in determining whether a fee is reasonable. Reagan W. Silber & Frank E. Goodrick, *Common Funds and Common Problems: Fee Objections and Class Counsel's Response*, 17 REV. LITIG. 525, 545–46 (1998).

rel. Brazilian Equity Fund, Inc. v. Bassini, 258 F. Supp. 2d 254, 262 (S.D.N.Y. 2003) (granting attorneys' fees in amount of 33 1/3% of $1.5 million settlement fund); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 370 (S.D.N.Y. 2002) (awarding 33.3% of $3.8 million settlement fund); *Kidrick v. ABC TV & Appliance Rental*, No. 3:97cv69, 1999 WL 1027050, at *1-2 (N.D. W. Va. May 12, 1999) (awarding 30.6% of approximately $400,000 settlement fund, noting that "[a]n award of fees in the range of 30% of the fund has been held to be reasonable. . . . Fees as high as 50% of the fund have been awarded.") (internal citations omitted).

In this case, the Defendant agreed not to oppose Class Counsel's fee and costs combined request of up to $179,600, and Counsel requests $177,700. The attorneys fee amount sought—$105,700—represents only 35% of the total Class Fund, as set forth fully below, it is far below Counsel's lodestar. (Ex. 2, Bennett Decl. ¶¶ 30–31.) As with any class case that they agree to take on, Plaintiffs' Counsel live by the result that they obtain for the Class Members. That is true in cases that yield large fees as well as in cases like this one, which results in one far below the reasonable lodestar incurred. In this case, where Class Counsel bore the risk of the litigation entirely and advanced significant funds in furtherance of the litigation, Class Counsel submits that the fee sought is reasonable. Class Counsel has consistently taken the position in all cases that the attorneys' fees should be based on a percentage of the recovery obtained for the class. This has been true even in cases where the result is an objectively small fee such as in *Mayfield v. Memberstrust Credit Union*, 3:07cv506 (E.D. Va.), where the class size was so small that counsel's fee ended up being $8,300, well below the actual time counsel had invested in the case. Indeed, in *Conley v. First Tennessee*, 1:10cv1247 (E.D. Va.), counsel took the same consistent position with respect to a class of 350 consumers and resulted in recovery of an approved fee of only $20,000.00. (*Conley* Doc. 37). The same is true in another case, *Lengrand v. Wellpoint*, No. 3:11Cv333-HEH (E.D. Va., (Doc. 42)), in which counsel requested only 20% of the class recovery, $8,550, where

the class size was very small. In each case, the standards of Rule 23 demand that Class Counsel represent the interest of the class with the same attention, zeal, and competence whether the class is in the millions or not.

b. A cross-check against Counsel's lodestar confirms the requested fee is reasonable.

A cross-check is not required to determine the fairness of a fee when the percentage-of-recovery method is used. However, courts have, on occasion, requested information regarding an estimate of Class Counsel's lodestar as a cross-check in determining the percentage of the common fund that should be awarded. MANUAL FOR COMPLEX LITIGATION (FOURTH) § 21.724. Here, the requested award—$177,700—includes not only Counsel's attorneys' fees, but also the more than $72,000 in expenses Counsel has incurred in prosecuting this case. (Ex. 2, Bennett Decl. ¶ 32.) Class Counsel estimates that its combined lodestar for this case exceeds $700,000 in fees and it has not been reimbursed for any of its expenses incurred. (Ex. 2, Bennett Decl. ¶¶ 30–31.) Counsel's expenses include ordinary costs that are passed on to clients such as transcript processing, research fees, depositions, and mailing, to name a few categories. (Ex. 2, Bennett Decl. ¶ 31.) Other than the $70,000 separate payment from Defendant to settle the Parties' discovery dispute (Doc. 306-1 ¶ 7.2), which includes far more attorney and paralegal time than expenses incurred for that trip alone, Class Counsel will not be separately repaid for their expenses. (Ex. 2, Bennett Decl. ¶ 31.)

Similarly, Counsel's hourly rates are reasonable for this District and complex, class action litigation under the FCRA. In *Berry v. LexisNexis*, Class Counsel submitted a lodestar-based fee request, placing their hours expended and hourly rates—comparable rates to those attributed to this case—before Judge Spenser for decision. (*Id.* ¶¶ 33–36.) Judge Spencer approved the requested award, which included a risk multiplier of 1.99, and the Fourth Circuit approved that award in full. (*Id.* ¶ 34–35); *see Berry*, 807 F.3d at 617 (approving multiplier of 1.99); *see also In*

re Cardinal Health Inc. Sec. Litig., 528 F. Supp. 2d 752, 768 (S.D. Ohio 2007) (finding that requested fee amount with a lodestar multiplier of 7.89 was not unreasonable "[g]iven the outstanding settlement in this case and the noticeable skill of counsel"); *In re Charger Commc'n, Inc., Sec. Litig.*, No. MDL 1506, 4:02CV1186CAS, 2005 WL 4045741, at *1, *18 (E.D. Mo. June 20, 2005) (approving lodestar multiplier of 5.61); *In re Excel Energy, Inc., Sec., Derivative & ERISA Litig*., 364 F. Supp. 2d 980, 989 (D. Minn. 2005) (approving a multiplier of 4.7 in a case that only involved document review, and was resolved without any depositions after two days of mediation); *In re Rite Aid Corp. Sec. Litig*., 362 F. Supp. 2d 587, 589 (E.D. Pa. 2005) (awarding lodestar multiplier of 6.96 despite the fact that the parties engaged mostly in informal discovery and took no depositions); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 362 (S.D.N.Y 2002) (describing multiplier of 4.65 as "modest" in a case in which plaintiffs conducted no depositions, only interviews, and confirmatory discovery consisted of tens of thousands of pages of documents); *In re NASDAQ Market-Makers Antitrust Litig*., 187 F.R.D. 465, 489 (S.D.N.Y. 1998) (awarding 3.97 multiplier, reasoning that multipliers between 3 and 4.5 were common); *In re WorldCom, Inc., Sec. Litig*., 388 F. Supp. 2d 319, 353 (S.D.N.Y. 2005) (awarding multiplier of 4). Notably, the Classes were made aware of both the proposed fee and $70,000 discovery-dispute award, and none expressed opposition to either figure.

And while these decisions confirm that Courts continue to award fees that include risk multipliers, here the multiplier goes the other direction—to the negative. On lodestar alone, the multiplier here is actually negative, meaning the fee to be paid is lower than the estimated actual lodestar. While Counsel could certainly support an award of the more than $700,000 incurred in a contested, lodestar-based fee petition, it maintains its position that it should be paid as a portion of the result obtained for Class Members, even when the result for Class Counsel personally is less

than favorable. There should be no basis for the Court to conclude that the requested fee is unreasonable, and the Court should award it.

V. CONCLUSION.

The Settlement is an excellent result considering the contentiousness of the litigation and the lengthy litigation process. The terms of the Settlement, as well as the circumstances surrounding negotiations and its elimination of further costs caused by litigating this case through the completion of trial and appeal, satisfy the strictures for final approval.

Respectfully Submitted,

Derrick A. Milbourne and Samantha Churcher, ***on behalf of themselves and others similarly situated*****,**

By: /s/

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CERTIFICATE OF SERVICE

I certify that on the 2nd day of December 2016, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which sent notification of such filing to the following:

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

DERRICK A. MILBOURNE and SAMANTHA CHURCHER, *et al.*,	)	
Plaintiff,	)	
v.	)	Civil Action No.: 3:12cv861
JRK RESIDENTIAL AMERICA, LLC.	)	
Defendant	)	

AFFIDAVIT OF AMERICAN LEGAL CLAIM SERVICES, LLC REGARDING PROOF OF MAILING NOTICE OF CLASS ACTION SETTLEMENT, ESTABLISHMENT OF TELEPHONE ASAND PROOF OF ESTABLISHMENT OF SETTLEMENT WEBSITE

STATE OF FLORIDA)
) ss:
COUNTY OF DUVAL)

I, Steven R. Platt, being duly sworn, represent and say:

1. I am an employee of American Legal Claim Services, LLC ("ALCS") and, unless otherwise indicated, have personal knowledge of the facts set forth herein.

2. I am a Consultant of American Legal Claim Services, LLC ("ALCS") which was hired to aid in giving notice to potential Class Members and I was principally responsible for overseeing the dissemination of the Notice of Class Action Settlement and establishing and maintaining an informational website for Class Members.

Impermissible Use Class Noticing

3. Pursuant to the signed Preliminary Approval Order dated, September 16, 2016, ALCS caused the Impermissible Use Class Notice of Class Action Settlement, attached hereto as Exhibit A, to be mailed on October 14, 2016, via the United States Postal Service ("USPS") first-class postage prepaid, to all 1,107 Impermissible Use Class Members.

4. ALCS processed all mail returned by the USPS. ALCS took reasonable steps to obtain correct address information of any Class Member for whom the Notice Package was returned by first, submitting the Class Member's name and address information to the USPS National Change of Address ("NCOA") database prior to the initial mailing and second, subsequent to any Notice Package being returned without an updated address being provided by the USPS, submitting the Class Member's name and address to a nationally recognized location service. For any updated addresses received, ALCS updated the Class Member database and re-mailed the Notice Packages.

Exhibit 1

5. Of the 1,107 Impermissible Use Class Member Notices mailed, 189 were returned undeliverable. We received an additional 2 that had forwarding addresses, for which we re-mailed the notice to the forwarding address. We used a nationally recognized location service to locate and update the remaining addresses, and by December 2, 2016, we re-mailed 186 notices to updated Class Member addresses. As of December 2, 2016, we were unable to locate 3 addresses from the Impermissible Use Class Member Notices returned as undeliverable, despite using the skip trace database.

6. **Summary of Impermissible Use Class Noticing (as of December 2, 2016):**
   - Total number of Impermissible Use class members: 1,107
   - Total number mailed: 1,107
   - Total number of mailed notices that were returned and processed, for which no forwarding or updated address was found: 3[1]
   - Presumed U.S. Mail delivery rate for Adverse Action: 99.7 %

Adverse Action Class Noticing

7. Pursuant to the signed Preliminary Approval Order, ALCS caused the Adverse Action Class Notice of Class Action Settlement, attached hereto as Exhibit B, to be mailed on October 14, 2016, via the USPS first-class postage prepaid to all 44 Impermissible Use Class Members.

8. Of the 44 Adverse Action Class Member Notices mailed, 10 were returned undeliverable. We used a nationally recognized location service to locate and update the remaining addresses, and by December 2, 2016, we re-mailed 10 notices to updated Class Member addresses. As of December 2, 2016, we were able to locate 100% of the addresses from the Adverse Action Class Member Notices returned as undeliverable.

9. **Summary of Adverse Action Class Noticing (as of December 2, 2016):**
   - Total number of Adverse Action class members: 44
   - Total number mailed: 44
   - Total number of mailed notices that were returned and processed, for which no forwarding or updated address was found: zero
   - Presumed U.S. Mail delivery rate for Adverse Action: 100%

Settlement Website

10. Pursuant to the Settlement Agreement, ALCS established and maintained a case-specific, standalone website to provide notice of the Settlement located at www.jrkclassaction.com. The website contained the Class Member Notices, answers to frequently asked questions, key dates, class counsel's contact information, the Complaint, the Answer to the Complaint, the Settlement Agreement and Preliminary Approval Order. The website also includes the functionality allowing Class Member to submit their updated address information.

[1] ALCS continues to receive and process mail, for which no forwarding address is available. The number of pieces of this type of mail will increase and the presumed delivery rate will be reduced as processing continues.

Exhibit 1

Telephone Assistance Program

11. ALCS established a dedicated toll-free phone number to provide answers to Class Member questions. The toll-free number provided a voice response unit listing of questions and answers to frequently asked questions and the ability to leave a message requesting additional information. As of December 2, 2016, ALCS has received 78 calls to the toll-free hotline.

Exclusion Requests

12. Pursuant to the Class Member Notices, Exclusion Requests were to be mailed such that they are postmarked on or before December 1, 2016. As of December 2, 2016, ALCS has received 2 Exclusion Requests. Attached hereto as Exhibit C, are copies of the Exclusion Requests ALCS received.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. Executed on December 2, 2016.

Steven R. Platt

Subscribed and sworn before me

This 2nd day of December, 2016

Notary Public

NOTARY PUBLIC STATE OF FLORIDA
DEMETRIUS JENKINS
MY COMMISSION #FF171650
EXPIRES October 26, 2018
(407) 398-0153 FloridaNotaryService.com

Exhibit 1

EXHIBIT A

Exhibit 1

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF VIRGINIA
Derrick A. Milbourne and Samantha Churcher v. JRK Residential America, LLC,
Civil No. 3:12-cv-861

NOTICE OF CLASS ACTION SETTLEMENT

You have received this notice because of a settlement in a lawsuit alleging JRK Residential America, LLC obtained your background check between November 30, 2010 and March 15, 2016, without first providing you with a legal disclosure that it was doing so.

THIS CLASS ACTION SETTLEMENT WILL AFFECT YOUR RIGHTS BECAUSE IT WILL AUTOMATICALLY SEND YOU A CHECK FOR $100.00, BUT YOU WILL RELEASE YOUR RIGHTS TO SUE THE DEFENDANT.

HERE ARE YOUR OPTIONS:

IF YOU DO NOTHING	**If the Court approves the Settlement, a $100 check for your portion of the Settlement Fund will be mailed to you automatically and without you having to do anything.** The Final Judgment in this case will be binding on you, meaning you give up all rights to sue JRK Residential America LLC or their affiliates separately about the same claims in this lawsuit.
IF YOU EXCLUDE YOURSELF	**If you ask to be excluded, you will not share in the money provided by the Settlement. But, you keep any rights to sue** JRK Residential America LLC or their affiliates separately about the same legal claims in this case. The Court's judgment will not be binding on you.
YOU MAY OBJECT TO THE SETTLEMENT	**You can write to the Court and tell it what you do not like about the Settlement.** You will remain a part of the Class, and will still share in the Settlement.

IF YOU WOULD LIKE FURTHER INFORMATION: PLEASE CONTACT THE LAWYERS REPRESENTING PLAINTIFFS AND MEMBERS OF THE CLASS AT

(757) 930-3660 OR www.JRKCLASSACTION.com

What Is The Case About?

Plaintiff Samantha Churcher applied for and was offered a job at JRK Residential America, LLC. At the time she applied for a job, JRK obtained a background check about her from U.S. Background Screening. JRK asked Ms. Churcher to sign a background check disclosure and authorization form. **The court found that the background check disclosure and authorization form violated the Fair Credit Reporting Act, 15 U.S.C. § 1681b(b)(2) because it did not consist solely of the disclosure.**

The Court entered Orders certifying that this case may proceed as a Class Action. The parties agreed to settle this case. The Court preliminarily approved the settlement.

Exhibit 1

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

Why Did I Get This Notice Package?

JRK Residential America, LLC's records show that you (a) applied for an employment position with Defendant or any of their subsidiaries, (b) as part of this application process were the subject of a consumer report obtained by Defendant between November 30, 2010 and March 15, 2016, (c) where Defendant used a form to make its disclosures pursuant to 15 U.S.C. § 1681b(b)(2) that contained a release and/or waiver of the signing consumer's claims and/or rights.

This means that ***you are a member of the "Impermissible Use Class."*** In a class action lawsuit, the court resolves the issues for a group of people in the "Class" —except for those people who choose to remove themselves from the Class.

The Court authorized this Notice because you have a right to know that the settlement of this class action lawsuit that may affect your legal rights and the options that you have to protect your legal rights.

What does the Settlement provide?

Defendant has agreed to pay up to $305,000.00 (the "Settlement Fund") for the benefit of the Classes, which funds will be used to make the payments to Class Members described below, to pay Plaintiff's attorneys' fees and litigation expenses, and to pay the costs of administering the Settlement. There are two Classes, the Impermissible Use Class and the Adverse Action Class. You are receiving this Notice because you are a member of the Impermissible Use Class. The Settlement Fund will go to compensate members of both Classes. Also, because there are two Classes, you may receive a second notice detailing the Settlement of Claims for the Adverse Action Class.

If the Court approves the Settlement, a $100 check for your portion of the Settlement Fund will be mailed to you automatically and without you having to do anything.

The Settlement Administrator will mail you a check automatically about 35 days after the Court grants final approval to the Settlement. The Administrator will mail that check to the same address as this Notice, so **please update the Administrator with your new address if you move.** You can contact the administrator at the address below to let it know your address has changed.

What am I giving up to get a benefit or stay in the Impermissible Use Class?

If you do not exclude yourself from the Impermissible Use Class, you will agree to Release (give up) all claims related to the use of consumer reports by JRK Residential America, LLC and JRK Property Holdings, Inc. in their hiring process. You will release JRK Residential America, LLC and JRK Property Holdings, Inc. and their agents, affiliates and other connected persons. The full release language is available at www.JRKCLASSACTION.com or you may call (800) 222-2760 to request that it be mailed to you.

How do I exclude myself from the Class?

To be excluded, you must send an "Exclusion Request" in the form attached to this notice or by other letter sent by mail, stating that you want to be excluded from "*Milbourne v. JRK Residential America LLC.*" You must include your name, address, and signature on the letter. You must mail your Exclusion Request such that it is **postmarked** on or before December 1, 2016, to *Milbourne v. JRK Residential America LLC, 3:12CV861,* Exclusions, c/o Class Administrator, P.O. Box 1387, Blue Bell, PA, 19422.

You must exclude yourself from this Settlement if you want to later sue the Defendant for the claims in this case.

Exhibit 1

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

Do I have a lawyer in the case and should I get my own lawyer?

Yes, you have a lawyer in the case. The Court decided that Leonard Bennett, Susan M. Rotkis, Matthew Erausquin, and Casey S. Nash of Consumer Litigation Associates, P.C., and Thomas Ray Breeden are qualified to represent you and all Class Members. Together, the law firms are called "Class Counsel." They are experienced in handling similar consumer class cases. More information about the law firms, their practices, and their lawyers' experience is available at www.clalegal.com.

You do not need to hire your own lawyer because Class Counsel is working on your behalf. But, if you want your own lawyer, you will have to "exclude" yourself from the Class and pay that lawyer separately.

How will the lawyers be paid?

Class Counsel will ask the Court for an award of attorneys' fees and costs, which the Defendant has agreed to pay as part of the Settlement Fund, in an amount up to $179,600. However, the Court may ultimately award less than this amount. The requested $179,600 includes Class Counsel's costs and expenses of up to $100,000 incurred by them and by the Class Representatives in litigating this matter. The Defendant has paid for the costs of this notice to you and will pay up to $10,000.00 for the other costs of administering the settlement, inclusive of the costs of this notice.

Defendant has also agreed to separately pay $70,000 in attorneys' fees and costs to resolve a previous discovery dispute in this case. This is not part of the Settlement Fund.

Is the Class Representative entitled to any additional payment?

In addition to the monetary relief described above, Class Counsel will ask the Court to approve a payment to the Class Representative of an amount not to exceed $5,000 as an individual service award for her efforts and time expended in prosecuting the Lawsuit. However, the Court may ultimately award less than this amount. Any payment will be made from the Settlement Fund.

How do I tell the Court what I do not like about the Settlement?

If you are a Class Member, you can object to the Settlement if you think any part of the Settlement is not fair, reasonable, or adequate. You can and should explain the detailed reasons why you think that the Court should not approve the Settlement, if this is the case. The Court and Class Counsel will consider your views carefully. To object, you must send a letter stating that you object to the Settlement in *Milbourne v. JRK Residential America LLC.* Be sure to include: (1) the name of the Lawsuit, *Milbourne v. JRK Residential America LLC, 3:12CV861*; (2) your full name, current address, telephone number; and (3) a detailed explanation of the reasons you object to the settlement and any papers in support of your position. Mail or deliver the foregoing to these three different places so that it is received no later than December 1, 2016:

COURT
Clerk of the Court
United States District Court
701 East Broad Street
Richmond, VA 23219

CLASS COUNSEL
Leonard A. Bennett
CONSUMER LITIGATION ASSOCIATES, P.C.
763 J. Clyde Morris Blvd 1A
Newport News, VA 23601

DEFENDANT'S COUNSEL
George Peter Sibley, III
HUNTON & WILLIAMS LLP
951 E Byrd St
Riverfront Plaza
Richmond, VA 23219

What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you remain in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object to this Settlement because the case no longer affects you.

Exhibit 1

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

When and where will the Court decide whether to approve the Settlement?

The Court will hold a hearing to decide whether to approve the settlement as fair, reasonable, and adequate. The hearing is on January 4, 2017, at 9:30 a.m. in the courtroom of Judge Robert E. Payne of the United States District Court for the Eastern District of Virginia, 701 East Broad Street, Richmond, VA 23219.

You may attend and you may ask to speak, but you do not have to.

Are there more details available?

You may request more information or speak to one of the lawyers representing you by calling the Class Administrator at (800) 222-2760, the Attorneys at (757) 930-3660, or visiting www.jrkclassaction.com to get updates, documents and other information regarding the case.

Exhibit 1

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

EXCLUSION REQUEST
Derrick A. Milbourne and Samantha Churcher v. JRK Residential America, LLC.
Receive No Settlement Benefits

(If you choose this option, you are removing yourself from this settlement, will not receive a settlement check or participate in any other settlement benefits)

To exclude yourself from the settlement, you must complete the attached Exclusion Request, selecting "I am opting out" where indicated, or send a letter stating that you want to be excluded from the settlement of the *Milbourne, et al. v. JRK Residential America, LLC.* case. Be sure to include: (1) the name of this lawsuit, *Milbourne, et al. v. JRK Residential America, LLC.*; (2) your full name, current address; (3) the following statement: "I request to be excluded from the class settlement in *Milbourne, et al. v. JRK Residential America, LLC.*, United States District Court, Eastern District of Virginia, Case No. 3:12-cv-861"; and (4) your signature.

You must mail your Exclusion Request so that it is postmarked no later than December 1, 2016, to:

Exclusion Requests – *Milbourne, et al. v. JRK Residential America, LLC.*, Settlement Administrator

P.O. Box 1387
Blue Bell, PA 19422

Exclusion Request – *Milbourne, et al. v. JRK Residential America, LLC.* Settlement Administrator

FILL OUT AND RETURN THIS FORM **ONLY** IF YOU WISH TO EXCLUDE YOURSELF FROM THE SETTLEMENT. IF YOU WISH TO PARTICIPATE IN THE SETTLEMENT, YOU DO NOT NEED TO RETURN THIS FORM.

____ I am opting out of the Settlement in *Milbourne, et al. v. JRK Residential America, LLC., Case No. 3:12-cv-861.*

Full name: _____

Current address: _____

_____

_____

_____
Signature

Exhibit 1

EXHIBIT B

Exhibit 1

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF VIRGINIA
Derrick A. Milbourne and Samantha Churcher v. JRK Residential America, LLC,
Civil No. 3:12-cv-861

NOTICE OF CLASS ACTION SETTLEMENT

You have received this notice as part of a settlement of a lawsuit in JRK Residential America, LLC obtained your background check between November 30, 2010 and March 15, 2016 and took an adverse employment action against you without first providing you with a copy of your background report and a legal notice of your rights under the Fair Credit Reporting Act.

THIS CLASS ACTION SETTLEMENT WILL AFFECT YOUR RIGHTS BECAUSE IT WILL AUTOMATICALLY SEND YOU A CHECK FOR $150.00, BUT YOU WILL RELEASE YOUR RIGHTS TO SUE THE DEFENDANT.

HERE ARE YOUR OPTIONS:

IF YOU DO NOTHING	**If the Court approves the Settlement, a $150 check for your portion of the Settlement Fund will be mailed to you automatically and without you having to do anything.** The Final Judgment in this case will be binding on you, meaning you give up all rights to sue JRK Residential America LLC or its affiliates separately about the same claims in this lawsuit.
IF YOU EXCLUDE YOURSELF	**If you ask to be excluded, you will not share in the money provided by the Settlement. But, you keep any rights to sue** JRK Residential America LLC or its affiliates separately about the same legal claims in this case. The Court's judgment will not be binding on you.
YOU MAY OBJECT TO THE SETTLEMENT	**You can write to the Court and tell it what you do not like about the Settlement.** You will remain a part of the Class, and will still share in the Settlement.

IF YOU WOULD LIKE FURTHER INFORMATION: PLEASE CONTACT THE LAWYERS REPRESENTING PLAINTIFFS AND MEMBERS OF THE CLASS AT

(757) 930-3660 OR www.JRKCLASSACTION.com

What Is The Case About?

Plaintiff Derrick A. Milbourne applied for and was offered a job at JRK Residential America, LLC. At the time he applied for a job, JRK obtained a background check about him from U.S. Background Screening. JRK denied employment to Mr. Milbourne based on the results of his background check. JRK did not provide Mr. Milbourne with a copy of his consumer report and other required disclosures at least five business days before denying him employment as a result of his background check. **The court found that JRK's failure to provide the required notices violated the Fair Credit Reporting Act, 15 U.S.C. § 1681b(b)(3).**

The Court entered Orders certifying that this case may proceed as a Class Action. The parties agreed to settle this case. The Court preliminarily approved the settlement.

Exhibit 1

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

Why Did I Get This Notice Package?

JRK Residential America, LLC's records show that you (a) applied for an employment position with Defendant or any of their subsidiaries, (b) as part of this application process were the subject of a consumer report obtained by Defendant between November 30, 2010 and March 15, 2016 (c) where Defendant's records show that you were denied employment because of the background check (d) and that Defendant did not provide you a copy of the consumer report and other disclosures required by 15 U.S.C. § 1681b(b)(3)(A)(ii) at least five business days before the date the employment decision is first noted in Defendant's records.

This means that ***you are a member of the "Adverse Action Class."*** In a class action lawsuit, the court resolves the issues for a group of people in the "Class" —except for those people who choose to remove themselves from the Class.

The Court authorized this Notice because you have a right to know that the settlement of this class action lawsuit that may affect your legal rights and the options that you have to protect your legal rights.

What does the Settlement provide?

Defendant has agreed to pay up to $305,000.00 (the "Settlement Fund") for the benefit of the Classes, which funds will be used to make the payments to Class Members described below, to pay Plaintiff's attorneys' fees and litigation expenses, and to pay the costs of administering the Settlement. There are two Classes, the Impermissible Use Class and the Adverse Action Class. You are receiving this Notice because you are a member of the Adverse Action Class. The Settlement Fund will go to compensate members of both Classes. Also, because there are two Classes, you may receive a second notice detailing the Settlement of Claims for the Impermissible Use.

If the Court approves the Settlement, a $150 check for your portion of the Settlement Fund will be mailed to you automatically and without you having to do anything.

The Settlement Administrator will mail you a check automatically about 35 days after the Court grants final approval to the Settlement. The Administrator will mail that check to the same address as this Notice, so **please update the Administrator with your new address if you move**. You can contact the administrator at the address below to let it know your address has changed.

What am I giving up to get a benefit or stay in the Adverse Action Class?

If you do not exclude yourself from the Adverse Action Class, you will agree to Release (give up) all claims related to the use of consumer reports by JRK Residential America, LLC and JRK Property Holdings, Inc. in their hiring process. You will release JRK Residential America, LLC and JRK Property Holdings, Inc. and their agents, affiliates and other connected persons. The full release language is available at www.JRKCLASSACTION.com or you may call (800) 222-2760 to request that it be mailed to you.

How do I exclude myself from the Class?

To be excluded, you must send an "Exclusion Request" in the form attached to this notice or by other letter sent by mail, stating that you want to be excluded from "*Milbourne v. JRK Residential America LLC.*" You must include your name, address, and signature on the letter. You must mail your Exclusion Request such that it is **postmarked** on or before December 1, 2016, to *Milbourne v. JRK Residential America LLC, 3:12CV861,* Exclusions, c/o Class Administrator, P.O. Box 1387, Blue Bell, PA, 19422.

You must exclude yourself from this Settlement if you want to later sue the Defendant for the claims in this case.

Exhibit 1

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

Do I have a lawyer in the case and should I get my own lawyer?

Yes, you have a lawyer in the case. The Court decided that Leonard Bennett, Susan M. Rotkis, Matthew Erausquin, and Casey S. Nash of Consumer Litigation Associates, P.C., and Thomas Ray Breeden are qualified to represent you and all Class Members. Together, the law firms are called "Class Counsel." They are experienced in handling similar consumer class cases. More information about the law firms, their practices, and their lawyers' experience is available at www.clalegal.com.

You do not need to hire your own lawyer because Class Counsel is working on your behalf. But, if you want your own lawyer, you will have to "exclude" yourself from the Class and pay that lawyer separately.

How will the lawyers be paid?

Class Counsel will ask the Court for an award of attorneys' fees and costs, which the Defendant has agreed to pay as part of the Settlement Fund, in an amount up to $179,600. However, the Court may ultimately award less than this amount. The requested $179,600 includes Class Counsel's costs and expenses of up to $100,000 incurred by them and by the Class Representatives in litigating this matter. The Defendant has paid for the costs of this notice to you and will pay up to $10,000.00 for the other costs of administering the settlement, inclusive of the costs of this notice.

Defendant has also agreed to separately pay $70,000 in attorneys' fees and costs to resolve a previous discovery dispute in this case. This is not part of the Settlement Fund.

Is the Class Representative entitled to any additional payment?

In addition to the monetary relief described above, Class Counsel will ask the Court to approve a payment to the Class Representative of an amount not to exceed $5,000 as an individual service award for her efforts and time expended in prosecuting the Lawsuit. However, the Court may ultimately award less than this amount. Any payment will be made from the Settlement Fund.

How do I tell the Court what I do not like about the Settlement?

If you are a Class Member, you can object to the Settlement if you think any part of the Settlement is not fair, reasonable, or adequate. You can and should explain the detailed reasons why you think that the Court should not approve the Settlement, if this is the case. The Court and Class Counsel will consider your views carefully. To object, you must send a letter stating that you object to the Settlement in *Milbourne v. JRK Residential America LLC.* Be sure to include: (1) the name of the Lawsuit, *Milbourne v. JRK Residential America LLC, 3:12CV861*; (2) your full name, current address, telephone number; and (3) a detailed explanation of the reasons you object to the settlement and any papers in support of your position. Mail or deliver the foregoing to these three different places so that it is received no later than December 1, 2016:

COURT
Clerk of the Court
United States District Court
701 East Broad Street
Richmond, VA 23219

CLASS COUNSEL
Leonard A. Bennett
CONSUMER LITIGATION ASSOCIATES, P.C.
763 J. Clyde Morris Blvd 1A
Newport News, VA 23601

DEFENDANT'S COUNSEL
George Peter Sibley, III
HUNTON & WILLIAMS LLP
951 E Byrd St
Riverfront Plaza
Richmond, VA 23219

What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you remain in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object to this Settlement because the case no longer affects you.

Exhibit 1

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

When and where will the Court decide whether to approve the Settlement?

The Court will hold a hearing to decide whether to approve the settlement as fair, reasonable, and adequate. The hearing is on January 4, 2017, at 9:30 a.m. in the courtroom of Judge Robert E. Payne of the United States District Court for the Eastern District of Virginia, 701 East Broad Street, Richmond, VA 23219.

You may attend and you may ask to speak, but you do not have to.

Are there more details available?

You may request more information or speak to one of the lawyers representing you by calling the Class Administrator at (800) 222-2760, Class Counsel at (757) 930-3660, or visiting www.jrkclassaction.com to get updates, documents and other information regarding the case.

Exhibit 1

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

EXCLUSION REQUEST
Derrick A. Milbourne and Samantha Churcher v. JRK Residential America, LLC.
Receive No Settlement Benefits

(If you choose this option, you are removing yourself from this settlement, will not receive a settlement check or participate in any other settlement benefits)

To exclude yourself from the settlement, you must complete the attached Exclusion Request, selecting "I am opting out" where indicated, or send a letter stating that you want to be excluded from the settlement of the *Milbourne, et al. v. JRK Residential America, LLC.* case. Be sure to include: (1) the name of this lawsuit, *Milbourne, et al. v. JRK Residential America, LLC.*; (2) your full name, current address; (3) the following statement: "I request to be excluded from the class settlement in *Milbourne, et al. v. JRK Residential America, LLC.*, United States District Court, Eastern District of Virginia, Case No. 3:12-cv-861"; and (4) your signature.

You must mail your Exclusion Request so that it is postmarked no later than December 1, 2016, to:

Exclusion Requests – *Milbourne, et al. v. JRK Residential America, LLC.*, Settlement Administrator

P.O. Box 1387
Blue Bell, PA 19422

Exclusion Request – *Milbourne, et al. v. JRK Residential America, LLC.* Settlement Administrator

FILL OUT AND RETURN THIS FORM **ONLY** IF YOU WISH TO EXCLUDE YOURSELF FROM THE SETTLEMENT. IF YOU WISH TO PARTICIPATE IN THE SETTLEMENT, YOU DO NOT NEED TO RETURN THIS FORM.

____ I am opting out of the Settlement in *Milbourne, et al. v. JRK Residential America, LLC., Case No. 3:12-cv-861.*

Full name: _____

Current address: _____

_____

_____

_____
Signature

Exhibit 1

EXHIBIT C

Exhibit 1

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

EXCLUSION REQUEST
Derrick A. Milbourne and Samantha Churcher v. JRK Residential America, LLC.
Receive No Settlement Benefits

(If you choose this option, you are removing yourself from this settlement, will not receive a settlement check or participate in any other settlement benefits)

To exclude yourself from the settlement, you must complete the attached Exclusion Request, selecting "I am opting out" where indicated, or send a letter stating that you want to be excluded from the settlement of the *Milbourne, et al. v. JRK Residential America, LLC.* case. Be sure to include: (1) the name of this lawsuit, *Milbourne, et al. v. JRK Residential America, LLC.*; (2) your full name, current address; (3) the following statement: "I request to be excluded from the class settlement in *Milbourne, et al. v. JRK Residential America, LLC.*, United States District Court, Eastern District of Virginia, Case No. 3:12-cv-861"; and (4) your signature.

You must mail your Exclusion Request so that it is postmarked no later than December 1, 2016, to:

Exclusion Requests – *Milbourne, et al. v. JRK Residential America, LLC.*, Settlement Administrator

P.O. Box 1387
Blue Bell, PA 19422

Exclusion Request – *Milbourne, et al. v. JRK Residential America, LLC.* Settlement Administrator

FILL OUT AND RETURN THIS FORM **ONLY** IF YOU WISH TO EXCLUDE YOURSELF FROM THE SETTLEMENT. IF YOU WISH TO PARTICIPATE IN THE SETTLEMENT, YOU DO NOT NEED TO RETURN THIS FORM.

/ I am opting out of the Settlement in *Milbourne, et al. v. JRK Residential America, LLC., Case No. 3:12-cv-861.*

Full name: Joseph Brent Richardson

Current address: 1850 Tennessee Ave KCMO 64126

Signature

135 Milbourne v JRK
3:12-CV-861

Exclusion 90001

Exhibit 1

1850 Tennessee Ave
KC MO 64126
KANSAS CITY
25 OCT 2016
RECEIVED
OCT 31 2016
P.O. BOX 1287
Blue Bell, PA 19422

Exhibit 1

Exclusion Request – *Milbourne, et al. v. JRK Residential America, LLC.* Settlement Administrator

FILL OUT AND RETURN THIS FORM ONLY IF YOU WISH TO EXCLUDE YOURSELF FROM THE SETTLEMENT. IF YOU WISH TO PARTICIPATE IN THE SETTLEMENT, YOU DO NOT NEED TO RETURN THIS FORM.

/ I am opting out of the Settlement in *Milbourne, et al. v. JRK Residential America, LLC., Case No. 3:12-cv-861.*

Full name: Angel Seguinot

Current address: Saugus MA

Signature

135 Milbourne v JRK
3:12-CV-861
Exclusion 90002

Exhibit 1

BOSTON MA 021
24 OCT 2016 PM 10 L
Angel Segundo
2412 Teodors way
Saugus MA 01906
RECEIVED
OCT 31 2016
By
P.O. Box 1387
Blue Bell PA.
19422-0865

Exhibit 1

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

DERRICK MILBOURNE
and SAMANTHA CHURCHER, *et al.*,

Plaintiff,

v. **Case No.: 3:12cv861**

JRK RESIDENTIAL AMERICA, LLC,

Defendant.

DECLARATION OF LEONARD A. BENNETT IN SUPPORT OF CONSENT MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, DISMISSING CLAIMS WITH PREJUDICE, AND AWARDING ATTORNEYS' FEES, COSTS, AND SERVICE AWARD

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 Plaintiffs 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 five-attorney law firm with offices in Hampton Roads 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 Plaintiffs' Consent Motion for Final Approval of Class Action Settlement, Dismissing Claims With Prejudice, and Awarding Attorney's Fees, Costs, and Service Awards.

Exhibit 2

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 and presently am 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 *pro hac vice* in United States District Courts across the country including in Alabama, California, Louisiana, Florida, Rhode Island, Hawaii, New Hampshire, Connecticut, Ohio, South Carolina, Pennsylvania, Arizona, Massachusetts, Tennessee, Georgia, Wyoming, Texas, Washington, Nevada, West Virginia, Wisconsin, Illinois, Michigan, South Dakota, Maryland, and the District of Columbia. I have never been denied admission or admission *pro hac vice*.

5. Since 1996, my practice has been limited to consumer protection litigation. While my experience representing consumers has come within several areas, my most developed area of expertise is in plaintiffs' litigation under the Federal Consumer Credit Protection Act, 15 U.S.C. §1601, *et seq.*, and in particular the Fair Credit Reporting Act, 15 U.S.C. §1681, *et seq.* Our firm has litigated more FCRA cases and taken more to trial than any or all but two other firms in the nation.

6. Since 2001, I have been asked to and did speak at numerous CLE programs, seminars and events in the area of Consumer Credit Protection litigation, mostly regarding the FCRA.[1]

[1] 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

Exhibit 2

7. I have been invited to and did testify before the United States House Financial Services Committee on multiple occasions. In 2014, I was invited to and did speak before the Consumer Financial Protection Bureau Consumer Advisory Board. I have also been invited to and did serve 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 the Virginia Poverty Law Center,

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Advocates, Fair 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.*

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and am a member of the Public Justice Foundation. I have been named as a multi- year Super Lawyer, a Law Dragon Top 500 Plaintiffs' Attorney and a Virginia Leader in the Law.

8. I was one of the contributing authors of the leading and comprehensive treatise "Fair Credit Reporting" published by National Consumer Law Center and used by judges and advocates nationally.

Consumer Litigation Associates, P.C.'s Class Action Experience

9. I have substantial experience in complex litigation, including class action cases, prosecuted under the Consumer Credit Protection Statutes, including the Fair Credit Reporting Act, the Equal Credit Opportunity Act, and the Fair Debt Collection Practices Act.

10. I have litigated dozens of class action cases based on consumer protection claims in the past decade. In each of the class cases where I have represented plaintiffs in a consumer credit case, 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.

11. Additionally, for example, with respect to litigation of class actions, the attorneys of CLA and I have litigated the following class cases to a successful conclusion based upon the allegation that the defendant violated the FCRA as to an employment purpose report: *White v. CRST, Inc*., No. 1:11-cv-2615 (N.D. Ohio); *Hall v. Vitran Express, Inc*., No. 1:09- cv-00800 (N.D. Ohio); *Williams v. LexisNexis Risk Mgmt.*, 3:06-CV-241 (E.D. Va.); *Beverly v. Wal-Mart Stores, Inc*., 3:07-CV-469 (E.D. Va.); *Anderson v. Signix, Inc*., No. 3:08-CV-570 (E.D. Va.); *Reardon v. Closetmaid,* No. 2:08-cv-1730 (W.D. Pa.); *Smith v. Talecris Biotherapeutics, Inc*., No. 1:09-CV-l53 (M.D.N.C. July 7, 2010); *Daily v. NCO Fin.*, No. 3:09-CV-31-JAG (E.D. Va.); *Black v. Winn-Dixie Stores, Inc*., No. 3:09-CV- 502 (M.D. Fla.); *Ryals v. HireRight Solutions, Inc.,* 3:09-CV-625 (E.D. Va.); *Harris v. U.S. Physical Therapy, Inc.*, No. 2:10-CV-1508 (D. NV.); *Bell v. U.S.*

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Express, Inc., No. l:11-CV-181 (E.D. Tenn.); *Goode v. First Advantage LNS Screening Solutions, Inc.*, No. 2:11-cv-2950 (E.D. Pa.) (class awaiting approval)*; Lengrand v. Wellpoint,* No. 3:11-CV-333 (E.D. Va.); *Henderson v. Verifications Inc.*, No. 3:1l-CV-514 (E.D. Va.); *Pitt v. K-Mart Corp*, 3:11-CV-697 (E.D. Va.); *Teagle v. LexisNexis Screening Solutions, Inc.*, No. 1:11-cv-1280 (N.D. Ga.); *Stinson v. Advance Auto Parts,* No. 7:12-cv-433 (W.D. Va.); *Ellis v. Swift Transp. Co. of Az.*, No. 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.,* No. 1:13-cv-467 (E.D. Va.); *Marcum v. Dolgencorp*, *d/b/a Dollar Gen.*, No. 3:12-cv-108 (E.D. Va.); *Wyatt v. SunTrust Bank*, 3:13CV662 (E.D. Va.); *Henderson v. HRPLus*, No. 3:14cv82 (E.D.Va.); *Henderson v. Backgroundchecks.com*, 3:13CV29 (E.D.Va.); *Henderson v. Acxiom Risk Sols.*, 3:12CV589 (E.D. Va.); *Manuel v. Wells Fargo Bank, Nat'l Ass'n*, No. 3:14-cv-238 (DJN) (E.D. Va.); *Ryals v. Strategic Screening Solutions, Inc.*, No. 3:14-cv-00643-REP (E.D. Va.); *Thomas v. First Advantage Screening Solutions, Inc.*, No. 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.); *Roe v. Intellicorp Records, Inc.*, No. 1:12-cv-02288 (N.D. Ohio); *Black v. Winn Dixie*, 3:09-cv-502 (M.D. Fla.); *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.

12. Specifically with respect to the claims prosecuted in this case against an employer using consumer reports as part of its hiring process we have led the development and prosecution of such cases.

13. Another attorney in my firm who has worked extensively on this case is Craig C. Marchiando. His practice is also exclusively consumer protection litigation, including the FCRA. He is among the most experienced attorneys in the nation in this highly specialized field of Fair

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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, but began working on this case at his former firm, Co-Class Counsel Caddell & Chapman. 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. Another attorney in my firm who has worked extensively on this case is Susan M. Rotkis. Her practice is also limited to consumer-protection litigation, including the FCRA. She is among the most experienced attorneys in Virginia, and even in the nation, in this highly specialized field of Fair Credit Reporting Act class action litigation.

16. Ms. Rotkis joined Consumer Litigation Associates in 2010, and since that time has focused her practice on federal consumer protection law and class actions, representing consumers in cases against banks, mortgage companies, consumer reporting agencies and debt collectors. She is a member of the National Association of Consumer Advocates. She has practiced law in Virginia since 1996 and is admitted to practice in the United States District Courts for the Eastern and Western Districts of Virginia and the Fourth Circuit Court of Appeals. She has represented consumers in over 250 federal cases, including more than twenty class actions. She was invited to and has taught the introductory courses on class action litigation,

Exhibit 2

Fair Credit Reporting Act litigation, and understanding e-OSCAR and METRO-II at the National Consumer Litigation Conference's seminars. She has spoken at the NACA Fair Credit Reporting Conference, and taught Continuing Legal Education on consumer protection issues to other attorneys through the Virginia State Bar, Rossdale CLE, and Practicing Law Institute (PLI). Prior to joining CLA, Ms. Rotkis had considerable experience in the federal courts where she served as a judicial law clerk for a total of almost eight years. She also has experience working as in-house and general counsel for two private organizations. She is a member of the Newport News Bar Association, the Virginia Trial Lawyers Association, the American Association for Justice, Public Justice, and the National Association of Consumer Advocates.

17. The primary paralegals who worked for our firm in this case are experienced in the field of consumer protection and the legal field generally. Donna Winters and Vicki Ward have been legal assistants and then paralegals for more than twenty years each. Both have been with me practically since I began my practice and have deep understanding of the FCRA and class action litigation. Their hourly rates were most recently approved in a lodestar case under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq*., by the United States District Court for the Eastern District of Virginia, Richmond Division as follows: $675 for Leonard Bennett, $450 for Susan Rotkis and Craig Marchiando, and $200 for paralegals Donna Winters and Vicki Ward.

18. All of this work was carefully divided so that not only was it shared as broadly as possible, but so that tasks were allocated to avoid needless duplication of work. In addition, wherever possible, tasks were assigned to minimize the hourly rate assigned to subordinate tasks, meaning, for example, associate or paralegal-level work was not assigned to partners simply to increase Counsel's lodestar figures.

Work Completed In This Litigation

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19. After hotly contested litigation of this case, including dispositive motions, significant discovery, multiple depositions, preparation for trial twice, and the presentation of Plaintiffs' case to the jury, the Parties were able to reach a settlement of basic terms with the assistance of Judge Novak. In preparation for the first trial, set for July 13–14, 2015 (Doc. 81), saw the Parties submit witness lists, discovery designations, jury instructions, voir dire, and motions in limine. The Court continued that trial date, reopening discovery after Defendant produced the different disclosure form referenced in the preceding paragraph. (Doc. 132.) Discovery and motions practice continued and was protracted, with Plaintiffs' Counsel even sending a group of lawyers and staff from its Newport News office to Defendant's headquarters in Los Angeles to review documents.

20. Defendant moved to compel arbitration of Plaintiffs' claims and for summary judgment a second time, which the Court largely denied. (Docs. 196, 200, 202.) In addition, the Court permitted briefing of a motion to dismiss by Defendant based on the Supreme Court's *Spokeo, Inc. v. Robins* decision, which issued in May of 2016. (Docs. 211, 213, 217, 220.) The Court denied that motion, and the Parties submitted a second round of witness lists, discovery designations, jury instructions, voir dire, and motions in limine in preparation for trial on August 15, 2016. After one day of trial, the Parties reached the Settlement with the assistance of Judge Novak. On August 16, 2016, the Parties notified the Court that they had reached a settlement of the class claims and presented the basic terms of the settlement in open court.

21. We approached settlement negotiations as we always do, with our first priority being to bring the best benefit possible to our clients and the Class.

22. The Settlement administration has been uneventful. The Administrator was able to reach nearly every Class Member by mail notice, and our Firm received and handed dozens of

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direct, live calls from Class Members. The mailed notice process was certainly the best available given the circumstances of this case, including the length of time the case was litigated and the fact that the Administrator assisted in developing the address list using a commercially available database. The Settlement Notices in this case informed Class Members of their ability to exclude themselves from the Settlement, giving them a second opportunity to do so.

23. There was one objection to the Settlement, but after speaking with Mr. Marchiando, that Class Member agreed to withdraw her objection because her intention is to remain part of the Class and receive her settlement benefits.

24. 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:

- Significant and thorough discovery on both class and merits issues;
- Substantive and contested briefing, including on motions for summary judgment by both sides;
- Full briefing of class certification;
- Standing briefing as a result of *Spokeo*, one of the first opportunities of any set of counsel to brief the issue; and
- Preparation for two trials, and the presentation of Plaintiffs' case to the jury at the second one.

25. 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 appropriately litigated by the Parties and sufficient discovery has been obtained by both Plaintiffs and Defendant to assess the strength of their respective claims and defenses. Class Counsel endorses the Settlement as fair and adequate under the circumstances.

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26. That settlement was appropriate at the time it was reached is highlighted by the ability of the Parties to observe each other at trial and gauge the jury's reaction to the evidence presented.

27. With Defendant's willfulness a key, and unanswered, question, absent approval of the Settlement, Plaintiffs would be put to challenging proofs, including as to Defendant's willfulness, and all Parties face the prospect of continued litigation through the completion of a trial and jury deliberations followed, thereafter, by a lengthy appeal.

28. In this case, the Plaintiffs took as active a role as could be imagined, answering discovery, testifying in depositions, and appearing for and preparing to testify at trial. They understand their roles as class representative and were answerable to counsel in prosecuting the case. There have been no objections to or comments regarding the proposed Service Awards, and Plaintiffs properly earned them through their unwavering participation in the case and trial.

CLA's Lodestar and Expenses Incurred In This Litigation

29. We began the investigation and research that led to the coordination of the present Class Counsel several weeks before this case was actually first filed. I have taken one of the two lead roles in the prosecution of the case and through the hard-fought settlement discussions. Through the date of this Declaration, my firm, Consumer Litigation Associates, P.C., has accumulated approximately and in excess of $700,000 in attorneys' fees litigating this case. I say this is an estimate because it is not intended to embrace every single email response, minute of telephone time, or hour of strategy discussions that are necessary to pursue and settle a case of this magnitude against such a well-funded and sophisticated Defendant and top-notch defense team. Certainly, some of the time individuals at my Firm spent on this case was missed in this total.

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30. I estimate that Class Counsel has incurred more than $72,000 in expenses, none of which have been reimbursed. These expenses include ordinary costs that are passed on to clients such as travel, transcript processing, depositions, and mailing, to name a few categories. Other than the $70,000 separate payment from Defendant to settle the Parties' discovery dispute (Doc. 306-1 ¶ 7.2), which includes attorney and paralegal time incurred, Class Counsel will not be repaid for their expenses.

31. The proposed award of attorneys' fees and costs —$177,7000— includes not only Counsel's attorneys' fees, but will also subsume the more than $72,000 in expenses Counsel has incurred in prosecuting this case.

32. The hourly rates that make up my Firm's lodestar are:

Timekeeper	**Years of Experience**	**Hourly Rate**
Leonard A. Bennett	20	$675
Susan M. Rotkis	20	$450
Craig C. Marchiando	14	$450
Donna Winters	34	$200
Vicki Ward	27	$200
Dawn Chaffer		$125

33. These hourly rates are reasonable for this District and complex, class action litigation under the FCRA. In *Berry v. LexisNexis*, Class Counsel submitted a lodestar-based fee request, placing their hours expended and hourly rates—comparable rates to those attributed to this case—before Judge Spenser for decision. Judge Spencer approved the requested award, which included a risk multiplier of 1.99, and the Fourth Circuit approved that award in full. *Berry v.*

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Schulman, 807 F.3d 600, 617 (4th Cir. 2015), *cert. denied sub nom. Schulman v. LexisNexis Risk & Info. Analytics Grp., Inc.*, 137 S. Ct. 77 (2016).

34. The Court is of course aware that litigation is expensive, and preparing for trial is even more-so. This case was prepared for trial *twice*, with enough intervening changes between those two settings that preparation for the second required more than merely the re-packaging of the previously filed jury instructions, discovery designations, and pretrial briefing. Not only that, but the Parties engaged in significant additional discovery once Defendant's use of the second disclosure form became known. In short, all of the time accumulated by Class Counsel was necessary given the defense strategy and the case posture, and the case was as thoroughly litigated as any class action likely could have been. The hours expended were absolutely reasonable and necessary under the circumstances.

35. Plaintiffs agreed to serve as Class Representatives in this lawsuit after Class Counsel explained to them the responsibilities required of an individual serving in this role. They understand the basic theories of this lawsuit, have kept abreast of the case's status, reviewed documents provided to them by Counsel, and discussed with Counsel aspects of the case, discovery issues, and trial preparation. The Class Representatives have participated actively in this case by searching for and producing documents in response to Defendant's discovery requests, answering interrogatories, and preparing for and appearing at trial.

36. The Class Representatives have all had the opportunity to review and comment on the proposed Settlement, and all 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.

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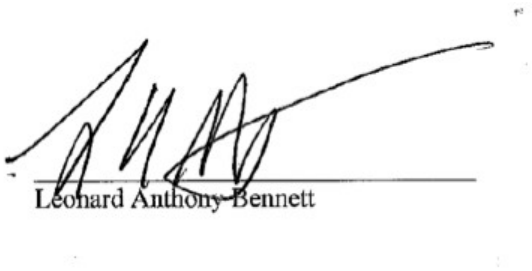
DATED: December 2, 2016, Newport News, Virginia



Leonard Anthony Bennett

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

DERRICK MILBOURNE
and SAMANTHA CHURCHER, *et al.*,

Plaintiff,

v. **Case No.: 3:12cv861**

JRK RESIDENTIAL AMERICA, LLC,

Defendant.

[PROPOSED] ORDER GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, DISMISSING CLAIMS WITH PREJUDICE, AND AWARDING ATTORNEYS' FEES, COSTS, AND SERVICE AWARD

For the reasons below, Plaintiffs' Motion for Final Approval of Class Action Settlement, Dismissing Claims With Prejudice, and Awarding Attorneys' Fees, Costs, and Service Award (ECF No. __) is hereby GRANTED.

Pursuant to Fed. R. Civ. P. 23(e), the Settlement of this action, as embodied in the terms of the Settlement Agreement, is hereby finally approved. The Settlement Agreement and any capitalized, defined terms are hereby incorporated by reference into this Final Order and Judgment Approving Settlement and Dismissing Action ("Order"). Capitalized terms in this Order shall, unless otherwise defined, have the same meaning as in the Settlement Agreement.

Based upon the Stipulation of Settlement and all of the files, records, and proceedings herein, it appears to the Court that the Settlement is fair, reasonable, and adequate. The Court held a hearing on January 4, 2017 at 9:30 a.m., of which the Classes were notified by Court-approved, mailed notice. Counsel for the Parties appeared and no other Class Members were in attendance. Following that hearing, the Court makes the following findings and conclusions.

Pursuant to Federal Rule of Civil Procedure 23(b)(3), the Court finally certifies the following Classes:

1. The Impermissible Use Settlement Class.

The Impermissible Use Settlement Class is certified as:

All natural persons residing in the United States (including all territories and other political subdivisions of the United States), (a) who applied for an employment position with Defendant or any of its subsidiaries (b) as part of this application process were the subject of a consumer report obtained by Defendant, (c) on or after November 30, 2010, and before March 15, 2016, (d) where the Defendant used a form to make its disclosures pursuant to 15 U.S.C. § 1681b(b)(2) that contained a release and/or waiver of the signing consumer's claims and/or rights, and (e) Defendant did not provide the applicant with any other disclosure form prior to obtaining the applicant's consumer report.

There are 1,107 individual consumers who comprise this Class.

2. The Adverse Action Settlement Class.

Under the Adverse Action Settlement Class is certified as:

All natural persons residing in the United States (including all territories and other political subdivisions of the United States), (a) who applied for an employment position with Defendant or any of its subsidiaries (b) as a part of this application process were the subject of a consumer report background check obtained by Defendant on or after two years preceding the filing of the Complaint; (c) where the Defendant's records show that the applicant was denied employment because of the background check; and (d) to whom Defendant did not provide a copy of the consumer report and other disclosures stated at 15 U.S.C. § 1681b(b)(3)(A)(ii) at least five business days before the date the employment decision is first noted in Defendant's records.

There are 44 consumers in this Class.

The Court appoints the Plaintiff, Samantha Churcher, as the Class Representative for the Impermissible Use Settlement Class and the Plaintiff, Derrick Milbourne, as the Class Representative for the Adverse Action Settlement Class. The Court has previously found adequate and appointed as Class Counsel Fed. R. Civ. P. 23(g)(1): Leonard A. Bennett, Susan M. Rotkis, Craig C. Marchiando, Matthew J. Erausquin and Casey S. Nash of Consumer Litigation Associates, P.C., and Thomas R. Breeden. The Court reaffirms that appointment.

Relative to these Classes, the Court specifically finds:

a. The Classes are so numerous that joinder of all members is impracticable;

b. There are questions of law or fact common to the Classes;

c. The claims of the Named Plaintiffs are typical of the claims of the Classes that the Named Plaintiffs seek to represent;

d. The Named Plaintiffs and their Counsel will fairly and adequately protect the interests of the Classes;

e. The questions of law or fact common to members of the Classes, and which are relevant for settlement purposes, predominate over the questions affecting only individual members; and

f. Certification of the Classes is superior to other available methods for fair and efficient adjudication of the controversy.

Through a Court-approved Settlement Administrator, the Parties notified all Class Members whose addresses could be obtained through reasonable measures of the terms of the proposed Settlement and the Court's Final Fairness Hearing. The Administrator asserts that this notice is presumed to have reached approximately 99.7% of Impermissible Use Class Members, and all Adverse Action Class Members. The Court finds that this notice program was the best practicable under the circumstances, and satisfies the requirements of Rule 23 and due process.

The Court finds that the terms of the Settlement and the Settlement Agreement are fair, reasonable, and adequate, and in the best interest of the Settlement Classes. Accordingly, the Settlement Agreement is finally approved and shall govern all issues concerning the Settlement and all rights of the Parties, including Settlement Class Members. The Court finds that the Settlement provides Class Members with genuine cash relief in exchange for a proportionate release of claims.

No Class Members have objected to the Settlement in writing, and none raised oral objections at the Fairness Hearing.

Two Class Members have timely and validly excluded themselves from the Settlement. Those individuals are listed in Exhibit A to this Order, and will not be bound by the Settlement or any of its terms.

Having considered Plaintiff's request for an agreed-upon Service Award of $5,000 for each Named Plaintiff ($10,000 total), the Court concludes that the award is appropriate. No Class Members have objected to the request, and Defendant does not oppose it. Such awards are commonplace in class actions in this District and elsewhere, and the Court finds Plaintiffs have earned it by prosecuting this case, answering discovery, keeping up-to-date on the case status through conferences with their Counsel, and preparing for and attending the trial of this case. The Court orders these two $5,000 payments to be made from the Settlement Fund.

The Court likewise concludes that Plaintiff's Counsel's requested attorneys' fees of $105,700 and costs of $72,000, is reasonable and should be awarded. The award is to be separately paid from the Settlement Fund. Class Counsel's estimated lodestar accumulated in this case is more than six times this award, resulting in a negative multiplier. No Class Member has objected to the proposed award, and the Defendants do not oppose it. Courts in this District and across the country award amounts in common-fund class actions, and this case is no different.

The Court likewise approves the award of $70,000 in attorneys' fees and costs to resolve the Parties' dispute over discovery of Defendant's employee files, to be paid from the Settlement Fund. This amount is reasonable and will be awarded, for reasons stated by the Court during a hearing with the Parties on August 16, 2016.

Defendants have confirmed that they sent to the appropriate Class Action Fairness Act ("CAFA") notices on September 21, 2016. There were no objections or comments from the government officials to whom CAFA notice was sent.

The Court hereby retains jurisdiction over the Parties and the Classes to ensure the effective administration of the Settlement.

Plaintiffs' claims, and those of Class Members not listed in Exhibit A to this Order, are hereby dismissed with prejudice in accordance with the Settlement Agreement.

IT IS SO ORDERED.

Robert E. Payne
UNITED STATES DISTRICT JUDGE