

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

**KELVIN M. THOMAS, *et al.*,**

**Plaintiff,**

v.

**Case No.: 3:13cv825**

**FTS USA, LLC, *et al.*,**

**Defendant.**

**PLAINTIFF'S SUPPLEMENTAL 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 AWARD**

Plaintiff Kelvin M. Thomas, individually and on behalf of all other similarly situated individuals, submits this Supplemental Memorandum in Support of the 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 Award, filed on December 13, 2016. (Doc. 286.) Plaintiff previously filed a Memorandum in Support of the above-referenced motion, incorporated herein, and submits this Supplemental Memorandum to update the Court regarding the efforts of Class Counsel to locate additional Class Members.

During the Final Fairness hearing on January 12, 2017, the Court raised the issue of whether Class Members whose notices were returned as undeliverable were part of the Class. Plaintiff moved the Court to have those individuals excluded from the Class outright, and Defendants objected. (Docs. 301, 308, 310.) The motion was referred to the United States Magistrate Judge for resolution, pursuant to Paragraph 10.15 of the Settlement Agreement, and the Final Fairness Hearing was delayed until March 14, 2017. (Doc. 298.) The Magistrate Judge denied Plaintiffs' motion, and concluded that Class Members whose notices were returned as

undeliverable and for whom updated addresses cannot be obtained are nevertheless members of the Class. (Doc. 311.) Thus, because any funds remaining in the Settlement Fund revert to Defendants, and because the Settlement Administrator cannot send checks to unknown addresses, the Settlement share of Class Members with unknown addresses will revert to Defendants.

Class Counsel and the Class Administrator had made substantial efforts to locate each of the 7,095 individuals who Defendant identified as potential class members. Specifically, the Adverse Action Subclass includes 1,261 class members and the Impermissible Use Subclass contains 7,095 class members.<sup>1</sup> (Exhibit A, Declaration of Risa Neiman (“Neiman February 2017 Decl.”) ¶ 3.) The Defendant had provided Class Members’ names, addresses, and phone numbers on the Class List. (*Id.* ¶ 2.)

As previously described in Plaintiff’s Memorandum in Support of Final Approval, the Class Administrator mailed notices to all class members, using the address provided on the Class List, updated by processing through the National Change of Address database. (*Id.* ¶ 4.) Following that mailing, some notices were returned without a forwarding address. The undeliverable notices were processed through Accurint, using the class member’s name as the search term. (Doc. 302-1, Declaration of Risa Neiman (“Neiman January 2017 Decl.”) ¶ 6.) Following this processes, 129 notices from the Adverse Action Class and 496 notices from the Impermissible Use Class (consisting of 367 Impermissible Use Class Members only and 129 Class Members who are also Adverse Action Class Members), for a total of 625 notices, remained undeliverable as of January 12, 2017.<sup>2</sup> (*Id.*)

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<sup>1</sup> The Adverse Action Class members are necessarily also members of the Impermissible Use Class, and the reported number for the Impermissible Use Class (7,095) has now been properly reported to include the Adverse Action Class members.

<sup>2</sup> Some confusion exists as to whether the reported undeliverable notice numbers reported by the Class Administrator for the Impermissible Use Class included the Adverse Action Class members. They previously did not, as the Class Administrator was reporting the number of

Given the Magistrate Judge’s ruling on class membership and both the Court’s and Class Counsel’s belief that excess undeliverable addresses will lead to a large percentage of the settlement fund reverting to Defendant and thus render the settlement unfair and unreasonable, Class Counsel has devoted substantial new resources – attorney hours and the expense for additional third party skip-trace services<sup>3</sup> to attempt further discovery of updated and verifiable addresses to which checks could be mailed. The Class Administrator also identified and implemented four new strategies to update addresses for missing Class Members. The strategies were undertaken simultaneously, because it was unknown which would be the most fruitful. Class Counsel, who had access to the discovery which included Class Members’ personnel files, began an exhaustive review of this information in an attempt to find the missing Class Members. (Exhibit B, Declaration of William L. Downing (“Downing Decl.”) ¶ 3.) Class Counsel also used the information contained in the personnel files to conduct a number of Internet searches on the missing Class Members. Although Social Security numbers were not included on the Class List, it quickly became apparent that this information was included in the discovery and would allow the Class Administrator to order trace reports for the missing Class Member’s most recent address. (*Id.* ¶ 5.) Class Counsel therefore focused on conducting an intensive manual search of Defendants’ discovery to ascertain Class Members’ social security numbers. (*Id.* ¶ 6.) This required the manual review of thousands of class members’ files, which were produced in a form that was not searchable electronically. (*Id.* ¶ 6-7.) Once a Social Security number was found, Class Counsel provided the information to the Class Administrator, who processed it through Accurant. Class

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individuals that had not received notice, but undersigned has made an effort here to clarify this issue.

<sup>3</sup> The majority of these resources have been made and absorbed by attorneys Christopher North and William Downing. Class Counsel is not seeking any additional compensation or reimbursement for this new work.

Counsel provided 206 social security numbers to the Class Administrator, yielding 158 updated addresses and 48 confirmations of the address on file. (Neiman February 2017 Decl. ¶ 6.)

At the same time, the Class Administrator engaged in a telephone campaign to reach the missing class members on the most recent telephone number available to request their current address. (Neiman February 2017 Decl. ¶ 6.) This process is complete, and generated 67 updated addresses, although the Class Administrator is still receiving return calls. (*Id.*) Second, the Class Administrator processed the names and addresses on the Class List through a second data service firm, PacificEast, yielding 56 updated addresses. (*Id.*) Third, the Class Administrator conducted a reverse phone search service provided by PacificEast, which provided the address associated with the phone number provided on the Class List. (*Id.*) This approach yielded 112 updated addresses. All told, a total of 316 updated or confirmed addresses were identified, as some of the strategies were duplicative of each other. (*Id.* at ¶ 7.)

As of February 27, 2017, 1,170 of the 1,261 Adverse Action Class Members have known addresses, while 6,909 of the 7,095 Impermissible Use Class have known addresses. Thus, 91 Adverse Action Subclass Members and 180 Impermissible Use Subclass Members (91 of whom are also Adverse Action Subclass Members) have unknown addresses.

Defendants have agreed to pay a maximum of One Million Three Hundred Thousand Dollars (\$1,300,000) to settle the claims of the Classes. Included in this amount, Defendants agreed to pay up to \$100,000 in administration costs for Class Notice<sup>4</sup>, the proposed Service Award, and attorneys' fees and costs, not to exceed \$500,000.<sup>5</sup> The Settlement anticipated a substantial monetary net benefit of approximately \$50 to each Impermissible Use Class Member and

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<sup>4</sup> The Class Administrator's efforts to identify updated addresses for Class Members will undoubtedly result in forfeited fees above the \$100,000 cap.

<sup>5</sup> The United States Magistrate Judge issued a Report and Recommendation on January 9, 2017, recommending that Class Counsel be awarded \$400,000 for fees and \$61,701.55 for costs. (Doc. 292.) Plaintiffs did not object to this recommendation.

approximately \$250 to each Adverse Action Class Member. However, the Settlement acknowledges that these amounts are estimates, directing that “[t]he amount of [class members’] checks shall be calculated so that each net Adverse Action Class Member check will be five (5) times the amount of each net Impermissible Use Class Member check.” (Doc. 283-1 ¶ 2.3.) The benefit per class member is thus calculated by using the number of non-excluded Class Members and the Gross Class Fund, less the actual cost of notice and administration, awarded service award, and awarded attorneys’ fees and costs. Here, six individuals excluded themselves from the Impermissible Use Class, resulting in 7,089 Impermissible Use Class Members and 1,261 Adverse Action Class Members. These Class Members will share in the anticipated net Class Fund of approximately \$718,298.

Using this net amount, and the five-to-one ratio outlined in the Settlement Agreement, each Impermissible Use Subclass Member will receive approximately \$53.63, while each Adverse Action Subclass Member will receive approximately \$268.14, plus their share of the Impermissible Use Class Benefit of \$53.63. (Neiman February 2017 Decl. ¶ 11.) As discussed above, because some Class Members do not have known addresses, no check can be sent to them. These funds, along with any remaining funds after the administration of the settlement, will revert to the Defendants. Although Class Counsel continues to identify additional social security numbers, the reversion amount, should no new addresses be found, will be at least \$34,000. However, that reversion number will certainly be higher still, as a number of validly addressed checks will still not be cashed. Given the present circumstances, Plaintiffs’ counsel estimates a likely reversion rate of 25%. The undersigned will not take a position as to whether or not the Settlement is fair and reasonable assuming a 25% reversion rate.

To summarize, the Settlement Fund is expected to be disbursed as follows:

<b>GROSS CLASS FUND –</b>	<b>\$1,300,000</b>
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Class Notice and Administration –	\$100,000
Impermissible Use Class Benefit (7,089 x \$53.63) –	\$380,183
Adverse Action Class Benefit (1,261 x \$268.14) –	\$338,124
Service Award –	\$20,000
Attorneys’ Fees –	\$400,000
Costs –	\$61,701.55

Certainly and notwithstanding the possible reversion concerns, the notice and administration has been excellent and satisfies Fed. R. Civ. P. 23(c). The class list was compiled by the Parties and with the assistance of the Administrator, and 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 approximately 85% delivery).

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.

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,**

***Kelvin M. Thomas, on behalf of himself and others similarly situated,***

By: \_\_\_\_\_ /s/

Leonard A. Bennett, VSB #37523

**CONSUMER LITIGATION ASSOCIATES, P.C.**

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Newport News, VA 23601

Telephone: (757) 930-3660

Email: lenbennett@clalegal.com

***Counsel for Plaintiffs and the C***

**CERTIFICATE OF SERVICE**

I certify that on the 28th day of February 2017, 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:

Jessica (Perro) Haire  
**FOX ROTHSCHILD LLP**  
1030 15<sup>th</sup> Street NW  
Suite 380 East  
Washington, DC 20005  
(202) 461-3100  
JHaire@foxrothschild.com

Colin David Dougherty  
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CDougherty@foxrothschild.com

\_\_\_\_\_/s/\_\_\_\_\_  
Leonard A. Bennett, VSB #37523  
**CONSUMER LITIGATION ASSOCIATES, P.C.**  
763 J. Clyde Morris Blvd., Suite 1-A  
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Telephone: (757) 930-3660  
Facsimile: (757) 930-3662  
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FTS USA, LLC ET AL. LITIGATION

AFFIDAVIT OF MAILING

EXHIBIT "A"

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

KELVIN THOMAS, <i>et al.</i> ,	X	
Plaintiff,	:	
	:	
v.	:	Civil No. 3:13-cv-825
	:	
FTS USA, LLC, <i>et al.</i> ,	:	
Defendants.	:	
	X	

AFFIDAVIT OF RSM US LLP  
IN CONNECTION WITH NOTICE BY MAILING

COMMONWEALTH OF PENNSYLVANIA : SS  
COUNTY OF MONTGOMERY :

BE IT KNOWN that appeared before me Risa Neiman who being duly sworn deposes and says that:

1. I am an employee of RSM US LLP ("RSM") which was appointed to aid in giving notice to potential Class Members and I was principally responsible for overseeing the dissemination of Notices to members of the Class.

**Settlement Notice Mailing**

2. Pursuant to the Court's Order Approving Form and Manner of Class Notice Plan, dated February 23, 2016, Notices of Class Action Lawsuit were mailed to two classes of individuals. The class member data that was provided to RSM included the class members name, mailing address, and telephone number. This mailing was accomplished on May 3, 2016 and we previously submitted an Affidavit of Mailing on June 20, 2016, (See "Exhibit A").

3. Pursuant to the Preliminary Approval Order ("Order") dated September 15, 2016, RSM was instructed to mail Notices to a total of 7,095 Settlement Class Members.

- **The Impermissible Use Settlement Notice**, attached as "Exhibit B", was mailed to all 7,095 class members who are defined as all natural persons residing in the United States who (a) 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 Defendants on or after December 11, 2011, (c) where the Defendants used a form to make its disclosures pursuant to 15 U.S.C. § 1681b(b)(2) that did not state that they intended to use the applicant's consumer report to make a hiring decision.

- **The Adverse Action Settlement Notice**, attached as "Exhibit C", was mailed to 1,261 Impermissible Use Class Members who were also identified as Adverse Action Subclass members, defined as all natural persons residing in the United States who (a) 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 on or after December 11, 2011, (c) where the Defendant's records show that the person was denied employment because of the background check, (d) that the Defendant did not provide 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 of employment decision is first noted in Defendant's records.

4. Notices were mailed, via U.S. First Class Mail to all 7,095 Class Members on October 14, 2016, by James A. Lerner, President at Metro Action Group, LLC, as per the attached declaration, "Exhibit D". Prior to mailing, we processed these lists through the National Change of Address database in an attempt to obtain the most recent mailing addresses.

### **Website**

5. On October 14, 2016, <http://www.ftsunitekclassaction.com>, the Settlement website was created to provide Class Members with the ability to email questions to the Settlement Administrator. In addition, the following documents were posted on the website:

- Settlement Agreement
- Preliminary Order
- Adverse Action Subclass Notice
- Impermissible Use Class Notice
- Exclusion Request Form

### **Undeliverable Notices**

6. As of January 12, 2017, a total of 496 Notices remained undeliverable after our initial search efforts. Since that time, we have performed the following additional search procedures in an attempt to locate these 496 outstanding individuals:

- Telephone Calls – we attempted to contact the Class Member by calling the phone number that was provided on the class list. This effort yielded 67 updated addresses.
- Reverse Phone Search – we processed the list of phone numbers through a reverse phone search service provided by PacificEast, a data service firm. This effort yielded 112 updated addresses.
- Supplemental Address Search – we processed the list of individuals through PacificEast. This effort yielded 56 updated addresses.
- Social Security Number Search – we processed 206 social security numbers that we received from Class Counsel through Accurint. This yielded 158 updated addresses and 48 confirmations of the address on file.

7. In some instances, the additional search procedures resulted in multiple sources returning an updated address. The results described above resulted in 441 updated addresses of which 316 are mutually exclusive. Therefore, as of February 27, 2017, our additional search efforts have yielded an updated or confirmed address for 316 records, leaving 180 Impermissible Use Class Members that remain undeliverable, of which 91 are also members of the Adverse Action Settlement Subclass. Our additional search efforts are still ongoing at this time. We are still receiving return phone calls from our calling effort and still receiving additional social security numbers from Class Counsel.

**Exclusion Requests**

8. As of February 27, 2017, we have received six exclusion requests. All six exclusions are part of the Impermissible Use class. Therefore, reducing the Impermissible Use class to 7,089 Class Members. An additional request for exclusion was received from an individual who we could not locate as a valid class member. The deadline for exclusion request was December 12, 2016. In accordance with the Settlement Agreement, we were required to provide a list of the individuals who are requesting exclusion, along with copies of all correspondence, to Class Counsel and Defense Counsel not later than seven business days after December 12, 2016. A list was provided on December 13, 2016.

**Correspondence and Telephone Communications**

9. A toll free telephone number for the Settlement was activated on October 14, 2016. The toll free phone number provides callers with the ability to speak to a claimant services representative for additional information or to request a copy of the Notice by mail. Through February 27, 2017, we have received 40 calls to this toll free phone number.

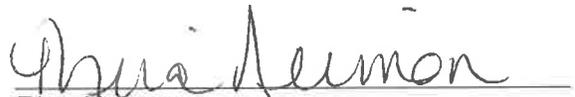
10. As of the close of business on February 27, 2017, the Settlement website has received five email inquiries.

**Class Distribution**

11. In accordance with Section 2.3 of the Settlement Agreement, upon receipt of the Final Approval Order, RSM is prepared to distribute net cash payments as follows:

- a. \$53.63 each to the 7,089 Impermissible Use Class Members less those Class Members who remain undeliverable after our search efforts; and,
- b. \$268.14 each to the 1,261 Adverse Action Subclass Members less those Class Members who remain undeliverable after our search efforts.

SWORN TO AND SUBSCRIBED TO  
before me this 27th day of

  
Risa Neiman

February, 2017.

  
NOTARY PUBLIC

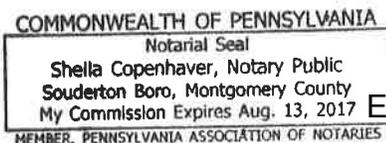


EXHIBIT "A"

# Exhibit A



disclosure as stated at 15 U.S.C. § 1681b(b)(2)(A)(i) to the applicant that they intended to obtain a consumer report for employment purposes, (b) and where as a result the Defendants failed to obtain a proper written authorization as stated at 15 U.S.C. § 1681b(b)(2)(A)(ii) signed by the applicant prior to obtaining the consumer report, and (c) whom Defendants found ineligible for the position for which the applicant had applied based on the applicant's consumer report; (d) to whom Defendants did not provide a copy of the consumer report as stated at 15 U.S.C. § 1681b(b)(3)(A)(i) at least five business days before the date the adverse employment decision is first noted in Defendants' records, (e) and to whom Defendants did not provide a written summary of Fair Credit Reporting Act rights as stated at 15 U.S.C. § 1681b(b)(3)(A)(ii) at least five business days before the date the adverse employment decision is first noted in Defendant's records. (See "Exhibit A")

- **The Impermissible Use Class** list contains 5,834 records of persons who applied for an employment position with Defendants or any of their subsidiaries within the two years immediately preceding the filing of the Complaint in this matter on December 11, 2013, and as part of this application process were the subject of a consumer report obtained by Defendants, (a) where the Defendants failed to provide a written disclosure as stated at 15 U.S.C. § 1681b(b)(2)(A)(i) to the applicant that they intended to obtain a consumer report for employment purposes, (b) and where as a result the Defendants failed to obtain a proper written authorization as stated at 15 U.S.C. § 1681b(b)(2)(A)(ii) signed by the applicant prior to obtaining the consumer report. (See "Exhibit B")

3. Notices were mailed, via U.S. First Class Mail to all 7,095 class members on May 3, 2016, by James A. Lerner, President at Metro Action Group, LLC, as per the attached declaration, "Exhibit C".

### Website

4. On May 3, 2016, a Settlement Website (<http://www.ftsunitekclassaction.com>) was created providing class members with the ability to email questions to the Settlement Administrator. In addition, the following documents were posted:

- Class Action Complaint
- Memorandum Opinion
- Order Approving Form and Manner of Class Action Notice Plan
- Order for Class Certification
- Order dated February 1, 2016
- Phase II Scheduling Order
- Adverse Action Class Notice
- Impermissible Use Class Notice
- Settlement Administrator's contact information

### Undeliverable Notices

5. As of the close of business on June 14, 2016, a total of 1,327 Notices have been returned by the U.S. Postal Service as undeliverable.

- Of the total undeliverable Notices, 74 were returned by the Postal Service with a forwarding address and they were promptly re-mailed to the updated address.
- The remaining 1,253 Notices were returned without a forwarding address. Through June 6, 2016, 1,230 undeliverable Notices were processed through Accurint, a LexisNexis address search service, in an attempt to locate updated mailing addresses. The results of this search yielded new addresses for 754 of the records. Between May 24, 2016 and June 6, 2016, Notices were re-mailed to these 754 class members for whom an updated mailing address was received from Accurint. As of June 14, 2016, 123 of these Notices have been returned again as undeliverable with no forwarding address. Subsequent to June 6, 2016, an additional 23 undeliverable Notices have been received but no further action was taken.
- In summary, of the of the 7,095 names and addresses that we were originally provided, and for whom Notices were originally mailed, 645, or 9% remain undeliverable and 91% have been delivered.

### Exclusion Requests

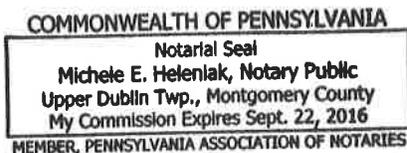
6. As of June 17, 2016, we have not received any exclusion requests.

SWORN TO AND SUBSCRIBED TO  
before me this 20<sup>th</sup> day of

June, 2016.

Michele E. Heleniak  
NOTARY PUBLIC

Risa Neiman  
Risa Neiman



# Exhibit B

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

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF VIRGINIA  
Kelvin Thomas v. FTS USA LLC, et al.  
Civil No. 3:13-cv-825

**NOTICE OF CLASS ACTION LAWSUIT**

You have received this notice because of a settlement in a lawsuit alleging FTS USA, LLC or UniTek Global Services, Inc. obtained your background check on or after December 11, 2011, 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 \$50.00,  
BUT YOU WILL RELEASE YOUR RIGHTS TO SUE THE DEFENDANT.***

**HERE ARE YOUR OPTIONS:**

<b>IF YOU DO NOTHING</b>	<b>If the Court approves the Settlement, a \$50 check for your portion of the Settlement Fund will be mailed to you automatically and without you having to do anything.</b> The Final Judgment in this case will be binding on you, meaning you give up all rights to sue FTS and UniTek or its affiliates separately about the same claims in this lawsuit.
<b>IF YOU EXCLUDE YOURSELF</b>	<b>If you ask to be excluded, you will not share in the money provided by the Settlement. But, you keep any rights to sue FTS and UniTek or its affiliates separately about the same legal claims in this case.</b> The Court's judgment will not be binding on you.
<b>YOU MAY OBJECT TO THE SETTLEMENT</b>	<b>You can write to the Court and tell it what you do not like about the Settlement.</b> 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.FTSUniTekClassAction.com](http://www.FTSUniTekClassAction.com)**

**What is this case about?**

Kelvin Thomas ("Thomas") applied for a job at FTS USA, LLC ("FTS"). FTS obtained a background check about him from backgroundchecks.com. FTS asked Mr. Thomas 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 state that FTS would obtain a consumer report.**

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

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

**Why did i get this notice package?**

FTS' and UniTek's records show that you (a) applied for an employment position with Defendant or any of its subsidiaries, (b) as part of the application process were the subject of a consumer report obtained by Defendants on or after December 11, 2011, (c) where Defendants used a form to make its disclosures pursuant to 15 U.S.C. § 1681b(b)(2) that did not state that they intended to use the applicant's consumer report to make a hiring decision.

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 may affect your legal rights and the options that you have to protect your legal rights.

**What does the Settlement provide?**

Defendants have agreed to pay up to \$1,300,000 (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 \$50 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 FTS USA, LLC and UniTek Global Services, Inc. and their agents, affiliates and other connected persons. The full release language is available at [www.FTSUniTekClassAction.com](http://www.FTSUniTekClassAction.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 included with this notice or by letter sent by mail, stating that you want to be excluded from "*Thomas v. FTS USA, LLC, et al.*" 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 12, 2016, to *Thomas v. FTS USA, LLC, et al.*, Exclusions, c/o Settlement Administrator, P.O. Box 1387, Blue Bell, PA 19422.

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

***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 and Susan M. Rotkis, of Consumer Litigation Associates, P.C., and Christopher North and William Downing, of the Consumer & Employee Rights Law Firm, 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](http://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, which the Defendants have agreed to pay as part of the Settlement Fund, in an amount up to \$500,000. However, the Court may ultimately award less than this amount. The requested \$500,000 will also include Class Counsel's costs and expenses incurred by them and by the Class Representative in litigating this matter. The Defendants have paid for the costs of this notice to you and will pay for the other costs of administering the settlement as 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 \$20,000 as an individual service award for his 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 Settlement 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 *Thomas v. FTS USA, LLC, et al.* Be sure to include: (1) the name of the Lawsuit, *Thomas v. FTS USA, LLC, et al.*, Case No. 3:13-cv-825-REP; (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 12, 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

**DEFENDANTS' COUNSEL**

Colin Dougherty  
**Fox Rothschild LLP**  
10 Sentry Parkway, Suite 200  
P.O. Box 3001  
Blue Bell, PA 19422-3001

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

**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 Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object to this Settlement because the case no longer affects you.

**When and where will the Court decide 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 12, 2017, at 10:00 o'clock 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 Settlement Administrator at (800) 222-2760, Class Counsel at (757) 930-3660, or visiting [www.FTSUniTekClassAction.com](http://www.FTSUniTekClassAction.com) to get updates, documents and other information regarding the case.

# Exhibit C

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

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF VIRGINIA  
Kelvin Thomas v. FTS USA LLC, et al.  
Civil No. 3:13-cv-825

**NOTICE OF CLASS ACTION LAWSUIT**

**You have received this notice as part of a settlement of a lawsuit in which FTS USA, LLC or UniTek Global Services, Inc. or one of their subsidiaries obtained a background check on or after December 11, 2011 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 \$250.00,  
BUT YOU WILL RELEASE YOUR RIGHTS TO SUE THE DEFENDANT.***

**HERE ARE YOUR OPTIONS:**

<b>IF YOU DO NOTHING</b>	<b>If the Court approves the Settlement, a \$250 check for your portion of the Settlement Fund will be mailed to you automatically and without you having to do anything.</b> The Final Judgment in this case will be binding on you, meaning you give up all rights to sue FTS and UniTek separately about the same claims in this lawsuit.
<b>IF YOU EXCLUDE YOURSELF</b>	<b>If you ask to be excluded, you will not share in the money provided by the Settlement. But, you keep any rights to sue FTS and UniTek separately about the same legal claims in this case.</b> The Court's judgment will not be binding on you.
<b>YOU MAY OBJECT TO THE SETTLEMENT</b>	<b>You can write to the Court and tell it what you do not like about the Settlement.</b> 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.FTSUniTekClassAction.com](http://www.FTSUniTekClassAction.com)**

**What is this case about?**

Plaintiff, Kelvin Thomas applied for a job at FTS USA, LLC ("FTS"). At the time he applied for a job, FTS and UniTek Global Services, Inc. obtained a background check about him from backgroundchecks.com. FTS denied employment to Mr. Thomas based on the results of his background check. FTS did not provide Mr. Thomas 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 FTS' failure to provide the required notices violated the Fair Credit Reporting Act, 15 U.S.C. § 1681b(b)(3).**

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

EXHIBIT "A"

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

**Why did i get this notice package?**

FTS' and UniTek's records show that you (a) 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 on or after December 11, 2011, (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 may affect your legal rights and the options that you have to protect your legal rights.

**What does the Settlement provide?**

Defendants have agreed to pay up to \$1,300,000 (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 Class.

**If the Court approves the Settlement, a \$250 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 FTS USA, LLC and UniTek Global Services, Inc. in their hiring process. You will release FTS USA, LLC and UniTek Global Services, Inc. and their agents, affiliates and other connected persons. The full release language is available at [www.FTSUniTekClassAction.com](http://www.FTSUniTekClassAction.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 included with this notice or by letter sent by mail, stating that you want to be excluded from "*Thomas v. FTS USA, LLC, et al.*" 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 12, 2016, to *Thomas v. FTS USA, LLC, et al.*, Exclusions, c/o Settlement Administrator, P.O. Box 1387, Blue Bell, PA 19422.

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

***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. The Court decided that Leonard Bennett and Susan M. Rotkis, of Consumer Litigation Associates, P.C., and Christopher North and William Downing, of the Consumer & Employee Rights Law Firm, 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](http://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, which the Defendants have agreed to pay as part of the Settlement Fund, in an amount of up to \$500,000. However, the Court may ultimately award less than this amount. The requested \$500,000 will also include Class Counsel's costs and expenses incurred by them and by the Class Representative in litigating this matter. The Defendants have paid for the costs of this notice to you and will pay for the other costs of administering the settlement as 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 \$20,000 as an individual service award for his 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 Settlement Class Member, you can object to the Settlement if you do not think any part of the Settlement is 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 *Thomas v. FTS USA, LLC, et al.* Be sure to include: (1) the name of the Lawsuit, *Thomas v. FTS USA, LLC, et al.*, Case No. 3:13-cv-825-REP; (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 than December 12, 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

**DEFENDANTS' COUNSEL**

Colin Dougherty  
**Fox Rothschild LLP**  
10 Sentry Parkway, Suite 200  
P.O. Box 3001  
Blue Bell, PA 19422-3001

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

**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 Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object to this Settlement because the case no longer affects you.

**When and where will the Court decide 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 12, 2017, at 10:00 o'clock 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 Settlement Administrator at (800) 222-2760, or Class Counsel at (757) 930-3660, or visiting [www.FTSUniTekClassAction.com](http://www.FTSUniTekClassAction.com) to get updates, documents and other information regarding the case.

# Exhibit D

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA

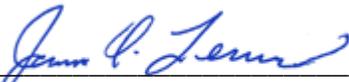
_____	X	
KELVIN THOMAS,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil No. 3:13cv825
	:	
FTS USA, LLC, ET AL.,	:	
	:	
Defendant.	:	
_____	X	

DECLARATION OF THE METRO ACTION GROUP LLC  
IN CONNECTION WITH NOTICE BY MAILING

I, James A. Lerner, declare under penalty of perjury as follows:

1. I am President at The Metro Action Group LLC, engaged by RSM US LLP to assist in providing notice to the Class.
2. The Metro Action Group LLC delivered to the United States Post Office, at Southampton, Pennsylvania, First Class Mail on October 14, 2016 consisting of the following items:
  - a. 5,834 Impermissible Notices to the Impermissible Use Class Members as defined in the Preliminary Order September 15, 2016.
  - b. 1,261 Impermissible Use and Adverse Action Notices to the Adverse Action Subclass Members as defined in the Preliminary Order dated September 15, 2016.
3. These mailings were requested and authorized by RSM US LLP.

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct, executed on February 27, 2017 in Havertown, Pennsylvania.

  
 \_\_\_\_\_  
 James A. Lerner

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

**KELVIN M. THOMAS,  
For himself and on behalf of all  
similarly situated individuals,**

**Plaintiff,**

**v.**

**Civil Action No: 3:13-cv-825 (REP)**

**FTS USA, LLC and UNITEK  
GLOBAL SERVICES, INC.**

**Defendants.**

**DECLARATION OF WILLIAM L. DOWNING**

I, William L. Downing, declare under penalty of perjury that the following is true:

1. My name is William L. Downing. I am an attorney with the Consumer & Employee Rights Law Firm, P.C. and one of the attorneys representing the plaintiff in the above captioned matter. The facts set forth herein are based upon my own personal knowledge.

2. On February 14, 2017, this Court, through the Honorable Magistrate Judge Novak, denied Plaintiff's Motion to Deem Excluded Class Members whose Notices were Returned Undeliverable, totaling approximately 476 of the 7,095 consumers who comprised the two Classes in this case. Under the terms of the Settlement Agreement as interpreted by Judge Novak, the monies that were to have been disbursed to those unlocated Class Members would revert to Defendants if the whereabouts of those Class Members remained unknown.

3. On February 16, 2017, I offered my assistance to Len Bennett and the administrator in this action to assist in the search for the Class Members whose notices were returned undelivered (hereafter the "missing Class Members"). This declaration summarizes my

participation in the search effort.

4. Upon receipt from the Administrator of the list and last known contact information for the missing class members, I proceeded to review the class member's personnel file for information and also conducted a number of Internet searches on a single missing class member using various tools at my disposal. My purpose was to ascertain which searches resulted in my obtaining useful information after which I intended to streamline my search effort for missing Class Members as a whole.

5. When I presented my search results for the test Class Member, the one item which the administrator was most interested in was the missing Class Member's social security number (obtained from his personnel file) which could be used to order trace reports for the class member's latest address. I was asked to concentrate my efforts on providing the administrator SSNs for the missing Class Members.

6. Although Defendants had provided a spreadsheet with the names and addresses of the 7,095 Class Members, their SSNs were not included in the spreadsheet. Likewise, the Class Member list did not include a reference to the location of the Class Member's personnel file. Therefore, in order to find the SSNs of the missing Class Members, I had to review the personnel files produced by Defendants and construct a simple spreadsheet to include columns for the beginning bates number and the corresponding Class Member's name. I then compared the names on my spreadsheet with the names of the missing Class Members on the spreadsheet provided to me by the administrator looking for last name matches and the same or similar first and middle names or initials. When an apparent match was found, I reviewed the personnel file for the Class Member to verify that there was indeed a match and to ascertain the SSN of the missing class member which was then provided to the Administrator.

7. As of the date of this declaration, using the foregoing methodology, I have a created spreadsheets containing the names and personnel file location for approximately 3,572 of the 7,095 Class Members. By comparing my spreadsheet with the Administrator's missing Class Members spreadsheet, I have located the personnel files and then the SSNs of 208 missing Class Members which I provided to the Administrator.

8. Using the SSN's provided to it, the Administrator has obtained trace reports with new addresses for many of the missing Class Members. Simultaneously, the Administrator has performed several other kinds of searches, and has been calling the last known phone numbers of missing Class Members in an effort to locate new addresses for the missing Class Members. It is my understanding that as a result of the combined efforts of the Administrator, myself and personnel at Consumer Litigation Associates who have recently joined in the SSNs search, the number of missing Class Members has been reduced from 476 to 180. Moreover, the search to locate more of the missing Class Members is ongoing.

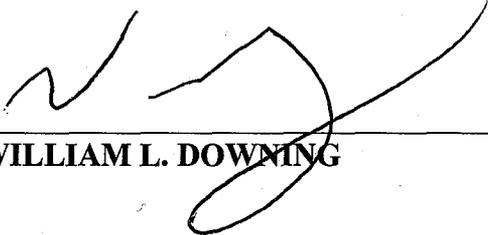
9. When I volunteered to assist in the process of searching for the missing Class Members, the matter of the attorneys fees in this matter had already been decided. For that reason, I have made little effort keep an accurate summary of my time and do not seek to augment the attorney fee award for my efforts. However, I have been asked to provide some estimate of my time to familiarize the Court with the extent of the extraordinary effort that has been made and is still being made to locate the missing Class Members.

10. From February 16 to today, February 28, the overwhelming majority of my time (including considerable time on two weekends) has been devoted to this effort. As I employed the methodology set forth above, I have generally worked on a group of 250 files to conclusion before moving to the next 250. More recently, as I have streamlined my efforts, it generally takes

five full hours to complete the process on 250 files from the construction of my spreadsheet to delivery of the SSNs for the whatever missing Class Members were among the 250 files. Based upon my having thus far created my spreadsheet for 3,572 Class Members and carried the review process to conclusion, that would suggest the expenditure of over 70 hours by myself alone in this effort. In fact my time has likely been closer to 100 hours as the first full day was devoted to a single missing Class Member. Moreover, when I first began the process, the construction of the spreadsheet and file review took considerably longer - estimated at 8 hours for 250 Class Members.

11. As should be apparent, the amount of time devoted to this task cannot be justified simply as a matter of economics. However, it was a task that needed to be done in fulfillment of counsel's fiduciary obligation to the Class Members, and in particular to those missing Class Members whose settlement benefits were in jeopardy reverting back to Defendants.

I declare under penalty of perjury, this 28<sup>th</sup> day of February 2017, that the foregoing is true and correct.



---

**WILLIAM L. DOWNING**

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

**KELVIN M. THOMAS, *et al.*,**

**Plaintiff,**

v.

**Case No.: 3:13cv825**

**FTS USA, LLC, *et al.*,**

**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, Plaintiff's Motion for Final Approval of Class Action Settlement, Dismissing Claims With Prejudice, and Awarding Attorneys' Fees, Costs, and Service Award (ECF 286) 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 12, 2017 at 10:00 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. Thereafter, on March 14, 2017 at 2:00 p.m., the Court held a second hearing and 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), who applied for an employment position with Defendants or any of their subsidiaries within the two years immediately preceding the filing of the Complaint in this matter on December 11, 2013, and as part of this application process were the subject of a consumer report obtained by Defendants, (a) where the Defendants failed to provide a written disclosure as stated at 15 U.S.C. § 1681b(b)(2)(A)(i) to the applicant that they intended to obtain a consumer report for employment purposes, (b) and where as a result the Defendants failed to obtain a proper written authorization as stated at 15 U.S.C. § 1681b(b)(2)(A)(ii) signed by the applicant prior to obtaining the consumer report.

There are 7,095 individual consumers who comprise this Class before accounting for any Class Members who have asked to be excluded.

**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), who applied for an employment position with Defendants or any of their subsidiaries within the two years immediately preceding the filing of the Complaint in this matter on December 11, 2013, as part of this application process were the subject of a consumer report obtained by Defendants, (a) where the defendants failed to provide a written disclosure as stated at 15 U.S.C. § 1681b(b)(2)(A)(i) to the applicant that they intended to obtain a consumer report for employment purposes, (b) and where as a result the Defendants failed to obtain a proper written authorization as stated at 15 U.S.C. § 1681b(b)(2)(A)(ii) signed by the applicant prior to obtaining the consumer report, and (c) whom Defendants found ineligible for the position for which the applicant had applied based on the applicant's consumer report; and (d) to whom Defendants did not provide a copy of the consumer report as stated at 15 U.S.C. § 1681b (b)(3)(A)(i) at least five business days before the date the adverse employment decision is first noted in Defendants' records.

There are 1,261 consumers in this Class.

The Court appoints the Plaintiff, Kelvin M. Thomas, as the Class Representative. 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 of Consumer Litigation Associates, P.C., and Christopher C. North and William L. Downing of The Consumer & Employee Rights Law Firm. 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 Plaintiff are typical of the claims of the Classes that the Named Plaintiff seeks to represent;
- d. The Named Plaintiff and his 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 93% of the 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.

One Class Member has objected to the Settlement in writing, and none raised oral objections at the Fairness Hearing.

Six Class Members, all members of the Impermissible Use Settlement Class, 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 \$20,000 for the Named Plaintiff, the Court concludes that the award is appropriate. No Class Members have objected to the request, and Defendants do not oppose it. Such awards are commonplace in class actions in this District and elsewhere, and the Court finds Plaintiff has earned it by prosecuting this case, answering discovery, keeping up-to-date on the case status through conferences with his Counsel, and preparing for and attending the trial of this case. The Court orders this \$20,000 payment to be made from the Settlement Fund.

Plaintiff's Counsel moved for attorneys' fees and costs of \$500,000.00, which the Defendants did not oppose pursuant to the Settlement Agreement ¶ 7.1. The Plaintiff's motion for reasonable attorneys' fees and costs was referred to the magistrate judge for a report and recommendation. The Plaintiff did not object to the report and recommendation. The magistrate judge recommended an award of \$400,000.00 in reasonable fees and \$61,701.55 in costs. (ECF 292.) The Court finds this is reasonable and hereby awards a \$400,000.00 in fees and \$61,701.55 in costs, to be separately paid from the Settlement Fund. 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 finds that the Settlement Agreement ¶ 7.1 contemplates payment of the amount of up to \$500,000.00 in attorneys' fees and costs by the Defendant. (ECF 283-1.) This results in a difference of \$38,298.45 between this ceiling and what the Magistrate Judge recommended. The Court finds that this \$38,298.45 shall remain in the Settlement Fund for distribution among the class members according to the Settlement Agreement.

Defendants have confirmed that they sent to the appropriate Class Action Fairness Act ("CAFA") notices on August 29, 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.

Plaintiff's 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