

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

**STEVEN D. GUNN, on behalf of himself
and all others similarly situated**

Plaintiff,

vs.

E-VERIFILE.COM, INC., et al.

Defendants.

CASE NO. 3:19-cv-00176-TSL-LRA

DISTRICT JUDGE TOM S. LEE

MAGISTRATE JUDGE LINDA R.
ANDERSON

**ORDER GRANTING PLAINTIFF’S UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT
AND ORDER CERTIFYING SETTLEMENT CLASS**

WHEREAS, Plaintiff, Steven D. Gunn (“Gunn”), on behalf of himself all others similarly situated in this action styled *Steven D. Gunn v. Sterling Infosystems-Ohio, Inc., et al.*, Case No. 1:18-cv-00457 (the “Litigation”) and Defendants have entered into a Stipulation of Settlement, filed on February 5, 2020 (the “Stipulation”), after lengthy arms-length settlement discussions and mediation;

AND, WHEREAS, the Court has received and considered the Stipulation;

AND, WHEREAS, the Parties have made an application, pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving the settlement of the Litigation, and for its dismissal with prejudice upon the terms and conditions set forth in the Stipulation;

AND, WHEREAS, the Court has reviewed the Parties’ application for such order, and has found good cause for the same.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Pursuant to Federal Rule of Civil Procedure 23, and for settlement purposes only, the Court hereby certifies this Litigation as a class action on behalf of the following Class:

All natural persons residing in the United States (including all territories and other political subdivisions of the United States) who authorized e-Verifile to obtain a consumer report for employment purposes between February 1, 2017 and November 30, 2018 and (a) such consumer report included at least one criterion for denial of access to any property of one or more Railroads or their respective corporate affiliates; (b) any Defendant relying on such consumer report, in whole or in part, took adverse action against such person and/or denied access to one or more properties of the Railroads; and (c) any Defendant did not provide such person with a copy of their e-Verifile consumer report and a description in writing of the rights of such person under 1681g(c)(3) before taking such adverse action and/or denying such access to one or more properties of the Railroads.

If the settlement is not finally approved, Defendants' stipulation to the certification of the class shall be null and void ab initio, and may not be used or relied upon by the Plaintiff for any purpose.

2. With respect to the Class, the Court preliminarily finds the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been met; in that: (a) the Class is so numerous that joinder of all individual Class Members in the Litigation is impracticable; (b) there are questions of law and fact common to the Class and those common questions of law and fact predominate over any individual questions; (c) the claims of the class representative are typical of the claims of the Class; (d) the class representative and Class Counsel will fairly and adequately represent the interests of the Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby appoints the Plaintiff, Steven D. Gunn, as the class representative of the Class.

4. Having considered the factors set forth in Rule 23(g) of the Federal Rules of Civil Procedure, the Court hereby appoints John C. Bazaz of the Law Offices of John C. Bazaz, PLC; Leonard Bennett, Craig Marchiando and Elizabeth Hanes of Consumer Litigation Associates, P.C;

and Matthew A. Dooley and Stephen M. Bosak, Jr. of O’Toole McLaughlin Dooley & Pecora Co LPA as Class Counsel to represent the Class.

5. The Court hereby preliminarily approves the Stipulation and terms and conditions set forth therein, subject to further consideration at the Settlement Hearing described below.

6. The Court has conducted a preliminary assessment of the fairness, reasonableness, and adequacy of the Stipulation, and hereby finds that the settlement falls within the range of reasonableness meriting possible final approval. The Court therefore preliminarily approves the proposed settlement as set forth in the Stipulation.

7. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Court will hold a Fairness Hearing on _____ at _____. in the Courtroom of U.S. District Judge Tom S. Lee, United States District Court for Southern District of Mississippi, located at Thad Cochran U.S. Court House, 501 E. Court Street, Jackson, MS 39201 for the following purposes:

- a. finally determining whether the Class meets all applicable requirements of Federal Rule of Civil Procedure 23 and, thus, the Class claims should be certified for purposes of effectuating the settlement;
- b. determining whether the proposed settlement of the Litigation on the terms and conditions provided for in the Agreement is fair, reasonable, and adequate and should be approved by the Court;
- c. considering the application of Class Counsel for an award of attorney fees and reimbursement of expenses, as provided for under the Stipulation;
- d. considering whether the Court should enter the [Proposed] Judgment, Final Order, and Decree;

- e. considering whether the release by the Settlement Class Members of the Released Claim as set forth in the Stipulation should be provided; and
 - f. ruling upon such other matters as the Court may deem just and appropriate.
8. The Court may adjourn the Settlement Hearing and later reconvene such hearing without further notice to the Settlement Class Members.
 9. The Parties may further modify the Stipulation prior to the Settlement Hearing, so long as such modifications do not materially change the terms of the settlement provided thereunder. The Court may approve the Stipulation with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Settlement Class Members.
 10. Class Members must file and serve any objections to the proposed settlement not later than 60 days after distribution of the Class Notice, including any memorandum and/or submissions in support of said objection, which deadline will be set forth in the Class Notice.
 11. No Appeal Subclass Members shall submit a valid claim from to the Settlement Administrator not later than 60 days after distribution of the Class Notice.
 11. All papers in support of the Settlement and any application for an award of attorney fees, actual out-of-pocket expenses and/or class representative incentive awards must be filed with the Court and served at least ten (10) days prior to the Settlement Hearing.
 12. The Court approves, as to form and content, the proposed Notices of Class Action Settlement, which are attached as Exhibits A, B, C and D to the Stipulation.
 13. Within 60 days of this Order, Class Counsel shall provide to each Class member the Class Notice.
 14. The Court finds that the distribution of the Class Notices substantially meets the requirements of Federal Rule of Civil Procedure 23 and due process, is the best notice practicable

under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

15. The Court approves the designation of Class Counsel to administer the settlement through a third-party administrator. Class Counsel shall cause the dissemination of the Class Notices and supervise and carry out the notice procedure, the processing of claims, and other administrative functions, and shall respond to Class Member inquiries, as set forth in the Stipulation and this Order under the direction and supervision of the Court.

16. All costs administering the settlement shall be paid from the Settlement Fund, as set forth in the Stipulation.

17. As provided in the Class Notice, each Class Member shall have the right to exclude himself or herself from the settlement class by mailing a request for exclusion to Class Administrator postmarked no later than sixty (60) days after mailing of the Class Notice. Requests for exclusion must set forth the class member's name and address. No later than seven (7) business days after the Opt-Out Deadline, the Settlement Administrator shall provide to Class Counsel and Defense Counsel a complete list of all persons who have properly opted out of the Settlement, together with copies of the opt-out requests.

18. As provided in the Class Notice, each class member who does not timely opt out of the class shall have the right to object to the settlement or to the request by Class Counsel for an award of attorneys' fees and expenses by filing written objections with the Court not later than sixty (60) days after mailing of the Class Notice, and copies of the objections shall be served on Class Counsel. Failure to timely file and serve written objections will preclude a class member from objecting at the fairness hearing.

19. All briefs, memoranda, petitions, and affidavits to be filed in support of final approval of the settlement and for an award of attorney fees and expenses by counsel for the class shall be filed not later than ten (10) days before the fairness hearing.

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

IT IS SO ORDERED.

UNITED STATES JUDGE TOM S. LEE