

**IN THE CIRCUIT COURT FOR THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION**

FERNANDEZ FORESTAL, on behalf
of himself and on behalf of all others
similarly situated,

Plaintiffs,

v.

Case No.: 23-CA-013634

SH GROUP OPERATIONS, L.L.C.,
and STERLING INFOSYSTEMS, INC.,

Defendants.

_____ /

**PLAINTIFF’S AMENDED UNOPPOSED MOTION FOR PRELIMINARY APPROVAL
OF CLASS SETTLEMENT AND NOTICE TO SETTLEMENT CLASS**

Pursuant to Florida Rule of Civil Procedure 1.220, Plaintiff, Fernandez Forestal (“Plaintiff”), on his own behalf and on behalf of the putative Settlement Class, and with the consent of Defendants, SH Group Operations, LLC., 1 SB Lessee LLC, SB Hotel Owner, LP, and Sterling Infosystems, Inc., (“SH Group” or “Sterling” or collectively “Defendants”), files this Amended Unopposed Motion for Preliminary Approval of Class Settlement and Notice to Settlement Class.¹ In support of Plaintiff’s Amended Unopposed Motion for Preliminary Approval of Class Settlement and Notice to Settlement Class, Plaintiff states as follows:

I. NATURE AND STAGE OF PROCEEDING

A. The Litigation

In this action, Plaintiff alleges that Sterling, a consumer reporting agency, and SH Group, a user of consumer reports, failed to comply with certain requirements of the Fair Credit Reporting

¹ The Motion filed on December 20, 2023, was inadvertently filed as a Joint Motion for Preliminary Approval of Class Settlement and Notice to Settlement Class.

Act, 15 U.S.C. § 1681a-x (“FCRA”) when issuing and using certain consumer reports for employment purposes. Throughout the litigation, Defendants have denied all allegations and claims asserted by Plaintiff, denied that class action treatment would have been appropriate if this case continued, and denied any liability whatsoever. The Parties have been litigating these claims since 2021.²

B. Mediation and Settlement Agreement

This Settlement was the result of three mediation sessions with two different mediators. The first mediation, with Carlos Burruezo, did not result in a resolution. Recognizing the risk of prolonged and continued litigation, the Parties enlisted the assistance of a former federal district court judge with extensive FCRA class action experience, the Honorable Diane M. Welsh.

After two mediation sessions with Judge Welsh and multiple comprehensive information exchanges, the Parties’ efforts culminated in a class action settlement encompassing the claims of 2,712 individuals in the Settlement Class (212 of whom comprise the SH Group Subclass). The Parties memorialized the terms of their agreement in the Class Settlement Agreement and Release attached to this motion as Exhibit “A” (the “Agreement”).

The Agreement, subject to Court approval, provides for settlement under the following key terms:

- Certification of the Settlement Class defined as:

All individuals in the United States who were the subject of a consumer report furnished by Sterling to Kiosite, LLC between December 9, 2019 and November 6, 2022, excluding any employees, officers, or directors of Sterling, any attorney appearing in this case, and any judge assigned to hear this action, together with their immediate family members and any persons employed by him or her.

² Plaintiff originally filed actions against SH Group on July 11, 2022, and against Sterling on August 19, 2022, both of which were voluntarily dismissed without prejudice in June 2023, and consolidated into this single action.

- Certification of the SH Group Subclass defined as:

All individuals in the Settlement Class who were the subject of a consumer report procured by SH Group from Kiosite, LLC for employment purposes between December 9, 2019 and November 6, 2022, excluding any employees, officers, or directors of the SH Group, any attorney appearing in this case, and any judge assigned to hear this action, together with their immediate family members and any persons employed by him or her.

- Defendants agree to establish a Settlement Fund in the amount of \$630,000.00.
- Every Settlement Class Member will receive one *pro rata* share of the Settlement. Each SH Group Subclass Member will receive a payment equal to two *pro rata* shares of the disbursement funds. Payments will be calculated, after deductions are made for attorney's fee and costs, a service award to the Named Plaintiff, and the costs of notice and administration of the Settlement.
- Payment from the Settlement Fund of an attorneys' fees award not to exceed one third of the Settlement Fund, if approved by the Court, plus reimbursement from the Settlement Fund for litigation-related costs and expenses; and
- Payment from the Settlement Fund of notice and administrative costs.
- Any unclaimed funds shall be allocated to a mutually agreeable *cy pres* recipient.

II. STATEMENT OF ISSUES

The issues before the Court are (a) whether to approve the Agreement on a preliminary basis, and (b) whether to approve the Notice of Class Action Settlement for distribution to members of the Settlement Class.

III. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED

A. The Law Governing Preliminary Approval

Explicit in Fla. R. Civ. P. 1.220(e) is that claims, issues, or defenses of a certified class may be settled only with the Court's approval. *Fla. Rule Civ. P. 1.220, based on Fed. R. Civ. P. 23*. In fact, FCRA class actions are commonly approved in Florida state courts. Similar FCRA class action settlements have been approved by Florida circuit courts. *Rodriguez v. TZ Insurance LLC, et. al*, Case No.: 23-CA-00401 (Fla. 13th Cir.) (approving FCRA class action settlement); *Lindsey v.*

Ring Power Corporation, No.: 18-CA-007124 (Fla. 13th Cir.) (approving FCRA class action settlement); *Bulgajewski v. R.T.G. Furniture Corporation, d/b/a Rooms To Go*, No.: 18-CA-007000 (Fla. 13th Cir.) (approving FCRA class action settlement); *Fagins v. Express Services, Inc., d/b/a Express Employment Professionals*, No.: 2022-CA-001194 (Fla. 8th Cir.) (approving claims made FCRA class action settlement).

This comports with the Eleventh Circuit’s recognition that “[p]ublic policy strongly favors the pretrial settlement of class action lawsuits.” *In re United States Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992); *see also Gevaerts v. TD Bank, N.A.*, 2015 WL 6751061, at *4 (S.D. Fla. Nov. 5, 2015) (“Federal courts have long recognized a strong policy and presumption in favor of class action settlements.”) Settlement “has special importance in class actions with their notable uncertainty, difficulties of proof, and length. Settlements of complex cases contribute greatly to the efficient utilization of scarce judicial resources and achieve the speedy resolution of justice. . . .” *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 538 (S.D. Fla. 1988), *aff’d*, 899 F.2d 21 (11th Cir. 1990) (citations omitted). As a general matter, “unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.” 4 Alba Conte & Herbert Newberg, *Newberg on Class Actions* §11.50, at 155 (4th ed. 2002).

“At the preliminary approval stage, the Court’s task is to evaluate whether the Settlement is within the ‘range of reasonableness.’” 4 Newberg on Class Actions § 11.26 (4th ed. 2010). “Preliminary approval is appropriate where the proposed settlement is the result of the parties’ good faith negotiations, there are no obvious deficiencies and the settlement falls within the range of reason.” *Smith v. Wm. Wrigley Jr. Co.*, 2010 WL 2401149, at *2 (S.D. Fla. Jun. 15, 2010). *Almanzar v. Select Portfolio Servicing, Inc.*, 2015 WL 10857401, at *1 (S.D. Fla. Oct. 15, 2015).

Judge Merryday has summarized the approval process:

Rule 23(e), Federal Rules of Civil Procedure, permits approval of a class action settlement if the settlement is “fair, reasonable, and adequate.” *See Strube v. Am. Equity Inv. Life Ins. Co.*, 226 F.R.D. 688, 697 (M.D.Fla.2005) (Fawsett, J.). Approval is generally a two-step process in which a “preliminary determination on the fairness, reasonableness, and adequacy of the proposed settlement terms” is reached. *See* DAVID F. HERR, ANNOTATED MANUAL FOR COMPLEX LITIGATION § 21.632 (4th ed. 2008). The factors considered are (1) the influence of fraud or collusion on the parties’ reaching a settlement, (2) “the likelihood of success at trial,” (3) “the range of possible recovery,” (4) “the complexity, expense[,] and duration of litigation,” (5) “the substance and amount of opposition to the settlement,” and (6) “the stage of proceedings at which the settlement was achieved.” *Bennet v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir.1984).

Holman v. Student Loan Xpress, Inc., 2009 WL 4015573, at *4 (M.D. Fla. Nov. 19, 2009).

1. The Settlement Agreement Is Not the Product of Fraud or Collusion.

In assessing this factor, courts must presume that no fraud or collusion occurred unless there is evidence to the contrary. *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 287 (W.D. Tex. 2007).

Here, the Agreement was reached with the assistance of a neutral mediator after multiple mediation sessions. There is no evidence of fraud or collusion. Indeed, the proposed Agreement was reached after substantial litigation and discovery (including written discovery document productions and other information exchanges, and third-party document subpoenas), and after three mediation sessions with two highly respected mediators. Courts have consistently held that the presence of an independent mediator negates any suggestion of fraud or collusion. *See, e.g., Montoya v. PNC Bank, N.A.*, 2016 WL 1529902, at *8 (S.D. Fla. Apr. 13, 2016) (use of mediator indicates there is “no suggestion of fraud or collusion”); *Hall v. Bank of America, N.A.*, 2014 WL 7184039, at *6 (S.D. Fla. Dec. 17, 2014). There can be no suggestion of fraud or collusion in reaching the Settlement.

Additionally, there is no suggestion that Plaintiff sacrificed the interests of Settlement Class for his own financial gain. Under the Agreement, Plaintiff will receive the same settlement payment

as the other Settlement Class Members, with a relatively small service award that is in line with those routinely approved by this Court.

The proposed Settlement is a product of the functioning of the adversarial and negotiations processes, not fraud or collusion. Accordingly, the first factor supports approval of the Settlement.

2. Litigating this Case Through Trial Would Be Complex, Expensive, and Time-Consuming with Significant Risk of an Unfavorable Outcome for Plaintiff and the Settlement Class.

The total expenses the Parties will incur if this litigation progresses and the duration of the litigation, including the appellate process, cannot be predicted with specificity. However, it is certain that Plaintiff and Defendants will vigorously advocate for their respective positions on various legal and factual issues, which will entail significant motion practice and likely trial.

In fact, Defendants have consistently and vigorously denied any liability for any violation of the FCRA, much less for any willful violation, as Plaintiff would need to show to certify and maintain a class. Absent settlement, protracted litigation is inevitable. The proposed Settlement will save considerable time and resources that would otherwise be spent litigating disputes resolved by the proposed Settlement.

Accordingly, this factor weighs in favor of approving the Settlement. *See Bennet v. Behring Corp.*, 737 F.2d982, 986 (11th Cir. 1984) (“In addition, our judgment is informed by the strong judicial policy favoring settlement as well as the realization that compromise is the essence of settlement.”); *Ayers v. Thompson*, 358 F.3d 356, 2369 (5th Cir. 2004) (holding that settlement would avoid the risks and burdens of potentially protracted litigation weighed in favor of approving settlement).

3. Class Counsel Has Obtained All the Information Necessary to Realistically Value the Claims of the Settlement Class.

The Parties possess “ample information with which to evaluate the merits of the competing

positions.” *Ayers*, 358 F.3d at 369. Counsel for Plaintiff and Defendants are experienced class action litigators with extensive FCRA class action experience. During the course of the litigation, Plaintiff’s Counsel obtained sufficient discovery through litigation to allow for a well-informed and comprehensive settlement. As such, the Parties believe that they have sufficient information to reach a fair, reasonable, and adequate settlement. The Agreement was negotiated based on the Parties’ realistic, independent assessments of the merits of the claims and defenses in this case and should be approved.

4. *Ultimate Success on the Merits of the Claims Is Uncertain Given the Risks of Litigation.*

When evaluating a proposed class action settlement, the Court must balance the benefits of a certain and immediate recovery through settlement against the inherent risks of litigation. *See Bennett*, 737 F.2d at 986; *Reed v. General Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983).

Here, recovery under the Agreement is favorable for the Settlement Class given the general uncertainty surrounding all litigation and the risks specific to this case. If this litigation proceeds, Defendants intend to continue to vigorously defend the claims, and Plaintiff and the Settlement Class will face obstacles on the path to recovery of statutory damages.

For instance, to recover any statutory damages under the FCRA, members of the Settlement Class must not only prove that Defendants failed to comply with the FCRA, but also that Defendants did so willfully. *See* 15 U.S.C. § 1681n(a). Although Plaintiff contends that the violations were willful, Defendants will continue to contest the question of willfulness if the lawsuit is further litigated and will move for summary judgment on the issue of liability on both a negligent and willful basis. *See, e.g., Schoebel v. Am. Integrity Ins. Co.*, 2015 WL 3407895, at *7 (M.D. Fla. May 27, 2015) (dismissing FCRA stand-alone disclosure case seeking statutory damages because alleged violation was not willful); *See also Lewis v. Southwest Airlines Co.*, 2018 U.S. Dist. LEXIS 5576

(N.D. Tex. Jan. 11, 2018) (summary judgment for defendant on issue of willfulness). Adverse rulings and appeals could significantly prolong the litigation and potentially result in no recovery whatsoever for the Settlement Class.

Although Defendants deny liability and have asserted affirmative and other defenses to the claims, Defendants nevertheless recognize, as Plaintiff does, the risks inherent in proceeding to trial. Each phase of litigation, including post-trial appeals, presents uncertainty and risks. A negotiated settlement that provides immediate relief is preferable to protracted litigation and an uncertain result in the future. Weighed against the risks associated with litigation, the proposed settlement is fair, reasonable, and adequate.

5. The Settlement Agreement Is Fair in Light of the Possible Range of Recovery and Certainty of Damages.

The Agreement should be approved because the proposed Settlement compares favorably to the limited range of damages available under the FCRA that could potentially be recovered at trial. In the action, Plaintiff seeks to recover compensation under 15 U.S.C. § 1681n(a)(1)(A), (2), and (3) for the Settlement Class consisting of (a) statutory damages of not less than \$100 and not more than \$1,000 per individual; (b) punitive damages, and (c) attorney’s fees and costs.³ However, as 15 U.S.C. § 1681n(a) of the FCRA indicates, proof of noncompliance with the technical requirements of the FCRA alone does not impose liability on a defendant. Recovery of damages under § 1681n(a) is contingent on establishing that the defendants *willfully* failed to comply with the FCRA; negligent noncompliance is not sufficient. *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 127 S. Ct. 2201, 2215

³ 15 U.S.C. § 1681(n)(a) of the FCRA states that a person who willfully fails to comply with any requirement under 15 U.S.C. § 1681 *et seq.* regarding a consumer is liable to the consumer in an amount equal to the sum (a) “any actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 and not more than \$1,000;” (b) punitive damages in such amount as the court may allow; and (c) the costs of an action, if successful, to enforce liability under this Section plus reasonable attorneys’ fees as determined by the court. 15 U.S.C. § 1681n(a)(1)(A), (2)-(3) (emphasis added).

(2007); 15 U.S.C. § 1681n(a). And, even if liability for willful noncompliance is established as Plaintiff believes, the determination as to the size of the award is left to the discretion of the jury, which may return an award of no damages as a possible outcome or, as could be very likely here, could return only the lower-end recovery of \$100 per individual.

The settlement proposed in the Agreement secures a monetary payment estimated to be at least \$140.00 for Settlement Class Members and at least \$280.00 for SH Group Subclass Members.⁴

Class Counsel believes that these net individualized payments of approximately \$140.00, and up to \$280.00, are a very favorable outcome, providing greater relief to class members when compared to class settlements of other FCRA claims. The district court in *Hillson v. Kelly Services Inc.*, summarized the results of other FCRA settlements, most of which provided for payments lower than the Settlement Class Members will receive if the Settlement here is approved, as follows:

The results counsel achieved for the class were good. The gross recovery (i.e., recovery before fees and other expenses are taken from the fund) is \$30 per class member (on average). This appears to be in line with the average per-class-member gross recovery in other settlements of stand-alone disclosure claims. *See Moore v. Aerotek, Inc.*, No. 2:15-CV-2701, 2017 WL 2838148, at *4 (S.D. Ohio June 30, 2017) (per-capita gross recovery of \$25 in case involving a stand-alone disclosure claim and a claim that employer did not provide a copy of consumer report), *report and recommendation adopted*, 2017 WL 3142403 (S.D. Ohio July 25, 2017); *Lagos v. Leland Stanford Junior Univ.*, No. 15-CV-04524-KAW, 2017 WL 1113302, at *2 n.1 (N.D. Cal. Mar. 24, 2017) (per-capita gross recovery of \$26); *Lengel v. HomeAdvisor, Inc.*, No. CV 15-2198, 2017 WL 364582, at *9 (D. Kan. Jan. 25, 2017) (citing FCRA disclosure cases with per-capita gross recoveries of \$33, \$40, and \$44).

2017 WL 3446596, at *3 (E.D. Mich. Aug. 11, 2017); *See also, Fosbrink v. Area Wide Protective*, No. 8:17-cv-1154 (M.D. Fla. 2019) (\$39 gross recovery); *Parker v. PGT Industries*, No. 8:18-cv-

⁴ If claims exceed the amount of the Net Settlement Fund after all Settlement Costs are deducted, then the Settlement Class Members making valid claims will receive an equal *pro rata* share of the Net Settlement Fund.

2250, (\$59 net payment to class members); *Marcum v. Dolgencorp, Inc.*, No. 3:12-cv-00108 (E.D. Va. 2014) (\$53 gross payment per class member reduced by attorneys' fees and service awards paid from class settlement fund).

The proposed Settlement provides for a reward well within the reasonable range of possible recovery for Settlement Class Members, who—assuming a class was certified, summary judgment was defeated, liability was established at trial, and the class successfully defeated appeals—could be limited to \$100 per class member or, less likely, up to \$1,000. Importantly, “[a] proposed settlement need not obtain the largest conceivable recovery for the class to be worthy of approval; it must simply be fair and adequate considering all the relevant circumstances.” *Klein v. O’Neal, Inc.*, 705 F. Supp. 2d 632, 649 (N.D. Tex. 2010).

Accordingly, after balancing the risk that liability would not be established against the range of the possible recovery, this factor also supports preliminary approval of the Settlement.

6. Counsel Support the Settlement.

Counsel for Plaintiff and Defendants both believe the Settlement is in their respective best interests. Plaintiff and Class Counsel have likewise concluded that the proposed Settlement is in the best interest of the Class.

Furthermore, the Parties anticipate that the Settlement will receive broad support from the Settlement Class, especially considering that each individual member will receive a settlement check that is reasonable and consistent in the context of class action litigation and, as described above, well within the range of settlements approved under the FCRA and its limited statutory range of allowable recovery. Even if Class Members were able to overcome the difficulties of financing and finding legal counsel to pursue their relatively small individual claims, few would be likely to pursue their individual claims. Therefore, it is unlikely that Class Members will oppose releasing their pertinent

FCRA claims that, in reasonable probability, they never intended to bring or were unaware to have possessed. Even if any putative class member does not agree with the terms of the proposed settlement, he or she is protected by the right to opt out of the proposed class settlement and retain his or her individual FCRA claims against Defendants rather than participate in the Settlement.

The Parties believe that the Agreement represents a fair, reasonable, and adequate settlement. Accordingly, this factor also weighs in favor of approving the Settlement.

B. The Class Should Be Certified for Settlement Purposes.

Circuit courts throughout Florida have certified classes alleging similar FCRA violations. *See, e.g., Rodriguez v. TZ Insurance LLC, et. al*, Case No.: 23-CA-00401 (Fla. 13th Cir.): *Lindsey v. Ring Power Corporation*, No.: 18-CA- 007124 (Fla. 13th Cir.) (approving FCRA class action settlement); *Bulgajewski v. R.T.G. Furniture Corporation, d/b/a Rooms To Go*, No.: 18-CA-007000 (Fla. 13th Cir.); *Fagins v. Express Services, Inc., d/b/a Express Employment Professionals*, No.: 2022-CA-001194 (Fla. 8th Cir.) (approving claims made FCRA class action settlement). *Blaney v. Aimbridge Hospitality, LLC*, No. 18-CA-001358 (Fla. 13th Cir. Ct. July 23, 2018).

The proposed Settlement Class meets the requirements of Florida Rule of Civil Procedure 1.220. “Before a class action can be certified, the trial court must conduct a rigorous analysis to determine that the elements of [Florida Rule of Civil Procedure 1.220(a)] . . . have been met.” *City of Tampa v. Addison*, 979 So. 2d 246, 251 (Fla. 2d DCA 2007). Rule 1.220(a) imposes four requirements for the certification of any class:

First, the class sought to be certified must be so numerous that joinder of all members is impracticable. *Id.* That requirement is easily satisfied here, where the proposed Settlement Class consists of 2,712 individuals. Moreover, the identities of the Settlement Class members are ascertainable from records available to Defendants.

Second, there must be “questions of law or fact common to the class.” *Fla. R. Civ. P. 1.220(a)(2)*. Even a single common issue may suffice. *See, e.g., Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1355 (11th Cir. 2009) (“[C]ommonality requires that there be at least one issue whose resolution will affect all or a significant number of the putative class members.”) (Internal quotation marks omitted). Under Plaintiff’s theories of recovery, that requirement is met by the common question of (1) whether Sterling failed to satisfy the FCRA’s requirements for issuing consumer reports and providing notice, when applicable; (2) whether SH Group obtained consumer reports for employment purposes lawfully; and (3) whether Defendants willfully violated the FCRA.

Third, Rule 1.220(a)(3) imposes a “typicality” requirement, which “is satisfied by showing the existence of ‘a sufficient nexus . . . between the claims of the named representative and those of the class at large.’” *Holman*, 2009 WL 4015573, at *2 (*quoting Hines v. Widnall*, 334 F.3d 1253, 1256 (11th Cir. 2003)). That requirement is met here because the claims of the named Plaintiff and Settlement Class members all stem from the same basic facts and legal theories — they were the subject of a background report prepared by Sterling. With respect to the SH Group Subclass, Plaintiff and the subclass allege they did not receive disclosures or provide authorization to SH Group to procure their consumer reports for employment purposes. *See, e.g., Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984) (typicality satisfied where claims “arise from the same event or pattern or practice and are based on the same legal theory”). Further, Plaintiff seeks the same relief on his own behalf and on behalf of each Settlement Class member, *i.e.*, statutory damages available under the FCRA.

Finally, Rule 1.220(a) requires “adequacy,” which is met if (1) “plaintiff’s counsel is qualified, experienced, and generally able to conduct the proposed litigation” and (2) the plaintiff

lacks ““interests antagonistic to those of the rest of the class.”” *Holman*, 2009 WL 4015573, at *2 (quoting *Kirkpatrick v. J.C. Bradford & Co.*, 827 F.2d 718, 726 (11th Cir. 1987)). Both of those things are true here. Plaintiff’s counsel and his firm are experienced in class action litigation and, specifically, in litigating claims under the FCRA. Plaintiff has no interests antagonistic to those of the Settlement Class.

In addition to Rule 1.220(a), a class must satisfy the requirements of one of the types of class actions authorized by Rule 1.220(b). Here, the Settlement Class meets the requirements of Rule 1.220(b)(3). The common questions identified above predominate over any individual questions that might be identified. *Fla. R. Civ. P. 1.220 (b)(3)* (court must find that “the questions of law or fact common to class members predominate over any questions affecting only individual class members”).

Further, in the context of this settlement, there is no question that “a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” *Id.* “Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Administration of a single, comprehensive settlement would be superior to thousands of individual lawsuits asserting the same claims.

C. The Notice of Class Action Settlement Should Be Approved Because the Form and Manner of The Notice Satisfies the Requirements of Rule 1.220 And Due Process.

The proposed notice plan is reasonable and provides the best notice practicable. Pursuant to the Settlement Agreement, the Notice of Proposed Class Action Settlement will be sent to each Class Member via e-mail based on information contained in Defendants’ records. For any e-mails that are

not deliverable, the Settlement Administrator will send a first class postcard notice to those Class Members' last known address. If the mailing is returned as undeliverable and no forwarding address is provided, the Settlement Administrator will perform a standard electronic search, including reviewing the National Change of Address Registry, to attempt to determine the most current mailing address and will resend the notice to that address. Such n is recognized as sufficient to provide due process to known affected persons as long as it is "reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *DeHoyos*, 240 F.R.D. at 296 (sending notice by mail is preferred when all or most class members can be identified).

The Notice of Proposed Class Action Settlement is written in a language that is easy to understand. The Notice to Class Members outlines the nature of the case, explains why the members are receiving the Notice, and directs them to the Settlement Website for additional information about the Settlement and their rights thereunder.

Because the Notice of Proposed Class Action Settlement communicates the essential terms of the proposed settlement in a manner that complies with Rule 1.220 and due process, the Court should approve its distribution to the Settlement Class.

IV. THE COURT SHOULD APPROVE A SCHEDULE AND PROCEDURES FOR A FINAL FAIRNESS HEARING, OPTING OUT, OBJECTING, AND FILING A MOTION FOR ATTORNEY'S FEES AND COSTS.

The Parties request that, in conjunction with preliminarily approving the Settlement, the Court schedule a fairness hearing to determine whether to finally approve the Settlement and approve the proposed deadlines and procedures for opting out, objecting, and for Class Counsel to move for attorney's fees and costs, reimbursement of costs, and Plaintiff's service award, as set

forth below:

Settlement Administrator e-mails Notice and sets up Settlement Website (“Notice Date”)	Within 14 days of Preliminary Approval Order
Deadline for Motion for Attorney’s Fees and Costs, Class Settlement Administration Costs, and Incentive Award for Plaintiff	30 days before the Objection Deadline
Deadline for Objections	60 days after Notice is mailed by Settlement Administrator
Deadline for Opt Outs (Exclusion Requests)	60 days after Notice is mailed by Settlement Administrator
Deadline for Motion for Final Approval	21 days before Fairness Hearing
Fairness Hearing	TBD by Court

The procedures for opting out and objecting are set forth in the Settlement Agreement.

CONCLUSION

The Court should approve the Agreement on a preliminary basis because the proposed Settlement is fair, reasonable, and adequate. The Court should appoint Plaintiff’s counsel as Class Counsel, Plaintiff as Class Representative, and preliminarily find Class Counsel’s attorneys’ fees and costs are appropriate under Rule 1.220 for settlement purposes. Additionally, the Notices of Proposed Class Action Settlement should be approved for distribution to the Settlement Class because they meet the requirements of Rule 1.220 and due process.

WHEREFORE, Plaintiff, Fernandez Forestal, for himself and on behalf of all others similarly situated, and with the consent of Defendants, moves the Court to grant this Amended Motion and enter an Order of Preliminary Approval.

Dated this 30th day of January, 2024.

/s/ Marc R. Edelman
MARC R. EDELMAN, ESQ.

Fla. Bar No. 0096342
MORGAN & MORGAN, P.A.
201 N. Franklin Street, Suite 700
Tampa, FL 33602
Telephone: 813-577-4722
Fax: 813-257-0572
MEdelman@forthepeople.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of January 2024, a true and correct copy of the foregoing has been electronically filed with the Clerk of the Court via the Florida E-Filing Portal which will send a notice of electronic filing to all counsel of record.

/s/ Marc R. Edelman
MARC R. EDELMAN, ESQ.

Exhibit A

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
HILLSBOROUGH COUNTY, FLORIDA
GENERAL CIVIL DIVISION**

FERNANDEZ FORESTAL, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

SH GROUP OPERATIONS, L.L.C., and
STERLING INFOSYSTEMS, INC

Defendant.

Case No.: 23-CA-013634

CLASS SETTLEMENT AGREEMENT AND RELEASE

This matter has been resolved by compromise and, subject to Court approval of the terms and conditions of this Settlement Agreement (“Settlement Agreement”), is made and entered into, as of January 22, 2024, by and among, on the one hand, Plaintiff Fernandez Forestal, on behalf of himself, his heirs, executors, administrators, successors, and assigns (“Named Plaintiff”) and the putative Settlement Class as defined below (the “Settlement Class” and, with the Named Plaintiff, the “Plaintiffs”), and, on the other hand, SH Group Operations, LLC, 1 SB Lessee LLC SB Hotel Owner, L.P., and Sterling Infosystems, Inc. (“SH Group” or “Sterling” or collectively “Defendants”). Plaintiffs and Defendants are collectively referred to herein as the “Parties.” This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Action and the Released Claims (as defined below), subject to the terms and conditions set forth herein.

1. Recitals. This Agreement is made with reference to the following:

- a. On August 11, 2023, Plaintiffs filed a Complaint against Defendant SH Group Operations, L.L.C. and Sterling Infosystems, Inc. in the Thirteenth Judicial Circuit in and for Hillsborough County, Case No.: 23-CA-013634. Plaintiffs alleged that Defendants SH Group and Sterling willfully failed to comply with certain requirements of the Fair Credit Reporting Act (“FCRA”).
- b. Defendants deny all allegations, claims, and charges of wrongdoing or liability arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged in the Action, and affirmatively state that they had numerous legal and factual defenses to the Released Claims asserted by Plaintiffs. Defendants believe that were this Action to proceed, class certification would be denied and they would prevail on a motion for summary judgment and/or at trial. Defendants, however, have

agreed to resolve this Action solely to avoid further fees and expenses and to bring closure to the Action. This Settlement Agreement constitutes a compromise settlement of disputed claims and shall not be deemed or construed to be an admission or acknowledgment of liability on any allegations or claim asserted in the Action or which could have been asserted in the Action.

- c. There has been no determination on the merits of the Action, including but not limited to whether this Action should properly proceed on a class basis.

2. **Definitions.** The defined terms set forth in this Agreement have the meanings ascribed to them below and in the preamble to the Agreement:

- a. **"Action" or "Litigation"** means the case styled Fernandez Forestal, on behalf of himself and all others similarly situated v. SH Group Operations, LLC and Sterling Infosystems, Inc., Case No. 23-CA-13634, pending in the Circuit Court of the Thirteenth Judicial Circuit, Hillsborough County, Florida.
- b. **"Administrative Costs"** means all amounts owed to the Settlement Administrator for administering this Settlement Agreement.
- c. **"Class Counsel"** means Marc Edelman, Morgan & Morgan, P.A.
- d. **"Class List"** means the list of Settlement Class Members to be delivered by the Defendants to the Settlement Administrator as set forth herein.
- e. **"Class Member" or "Settlement Class Member"** means any member of the Settlement Class or SH Group Subclass, as defined below, but does not include those individuals who timely opt out of the Settlement by submitting a valid Request for Exclusion, as set forth in this Agreement.
- f. **"Effective Date"** of this Settlement Agreement means the date on which Judgment approving this Settlement becomes Final.
- g. **"FCRA"** means the Fair Credit Reporting Act, 15 U.S.C. § 1681a-x *et seq.*
- h. **"Final"** means the Effective Date if there are no objectors or intervenors to the Settlement. If a Class Member objects to or appeals the Settlement, "Final" means the date on which all appellate rights with respect to the Judgment have expired or have been exhausted in such a manner as to affirm the Judgment."
- i. **"Final Approval Hearing"** means the hearing to be scheduled to consider final approval of the Settlement and awards to the Class Representative and Class Counsel.

- j. **“Final Approval Order”** or **“Judgment”** means a judgment and order of dismissal entered by the Court in the Action granting final approval of the Settlement and entering a judgment according to the terms set forth in this Settlement.
- k. **“Named Plaintiff”** or **“Class Representative”** means Fernandez Forestal.
- l. **“Notice”** or **“Settlement Notice”** means the form of notice to be provided to the Settlement Class by the Settlement Administrator after preliminary approval of this Settlement by the Court, as further described in this Agreement, and substantially in the form attached as Exhibit 1.
- m. **“Objection”** means a written objection made by a Class Member to this Settlement, and submitted in accordance with the procedures identified herein.
- n. **“Objection Deadline”** means the date sixty (60) days after the date of the Notice by which all objections must be submitted.
- o. **“Objector”** means a Class Member who has submitted an Objection.
- p. **“Opt-Out Deadline”** means the date sixty (60) days after the date of the Notice by which all Requests for Exclusion must be submitted electronically or postmarked and sent to the Settlement Administrator.
- q. **“Preliminary Approval Order”** means the order proposed and submitted by the Parties as set forth herein.
- r. **“Released Claims”** means all class action and individual claims that were or could have been brought in the Action under 15 U.S.C. §§ 1681a–x of the FCRA, and similar claims under any state law, including but not limited to California’s Consumer Credit Reporting Agencies Act (“CCRAA”) and Investigative Consumer Reporting Agencies Act (“ICRAA”) All Settlement Class Members release their right to bring a class action or individual action as well as the ability to seek actual, statutory and/or punitive damages and any other remedy based upon such Released Claims, except as to those claims that have been filed or of which Defendants have already been made aware in writing.
- s. **“Released Parties”** means Sterling and SH Group, 1 SB Lessee LLC SB Hotel Owner, L.P., Kiosite, LLC, and their past, current and former parents, affiliates, divisions, predecessors, successors, assigns, assignees, subsidiaries, insurers, reinsurers, beneficiaries, directors, officers, shareholders, members, control persons, employees, agents, advisors, representatives, consultants, accountants, associates, and attorneys both individually and in their professional capacities. This definition excludes any unaffiliated and unnamed customers or subscribers.

- t. **“Request for Exclusion”** means a written or electronic opt-out request submitted to the Settlement Administrator with the following information: (1) an identifying reference to the case; (2) the Class Member’s full name; (3) the Class Member’s current mailing address; (4) the Class Member’s telephone number; (5) the last four digits of the Class Member’s Social Security Number; (6) a statement of the Class Member’s desire to be excluded from the Settlement Class; and (7) the Class Member’s signature or the signature of an authorized representative.
- u. **“Release and No Rehire Compensation”** means the one-time payment to the Named Plaintiff for agreeing to release SH Group, 1 SB Lessee LLC, and SB Hotel Owner, L.P. from employment-related claims, agreeing not to re-enter their premises, and agreeing not to re-apply for employment. Additionally, Plaintiff agrees he will not in the future seek employment or independent contractor position with Sterling.
- v. **“Settlement,” “Settlement Agreement,” or “Agreement”** means the terms and conditions of settlement as described in the Class Settlement Agreement and Release, which includes all its Recitals, Definitions, and the attached Exhibits.
- w. **“Settlement Administrator”** means American Legal Claims Services (“ALCS”).
- x. **“Settlement Class,”** which the Parties state consists of 2,712 individuals, shall be defined as:

All individuals in the United States who were the subject of a consumer report furnished by Sterling to Kiosite, LLC between December 9, 2019 and November 6, 2022, excluding any employees, officers, or directors of the Sterling, any attorney appearing in this case, and any judge assigned to hear this action, together with their immediate family members and any persons employed by him or her.
- y. **“SH Group Subclass,”** which the Parties state consists of 212 individuals, shall be defined as:

All individuals in the Settlement Class who were the subject of a consumer report procured by SH Group from Kiosite, LLC for employment purposes between December 9, 2019 and November 6, 2022, excluding any employees, officers, or directors of the SH Group, any attorney appearing in this case, and any judge assigned to hear this action, together with their immediate family members and any persons employed by him or her.
- z. **“Settlement Fund” or “Gross Settlement Amount”** means the fund that will be established and maintained to resolve the contested claims at issue in this Litigation, and which the Parties intend to be a qualified settlement fund within the meaning of Internal Revenue Code § 468B and Treasury

Regulation § 1.468B-1. Defendants will transfer Six Hundred and Thirty Thousand Dollars and Zero Cents (\$630,000.00) to the Settlement Fund to resolve the Released Claims. This sum shall include all payments made to Settlement Class Members, any Service Award, Administrative Costs, and any attorneys' fees and costs as set forth below. In no event shall Defendants be required to pay any amount greater than that set forth in this paragraph.

3. **Consideration.** In consideration for signing this Agreement, and complying with its terms, including, but not limited to Plaintiff and Class Counsel providing W-9 forms to Defendants, Defendants agree to pay into the Settlement Fund the amount of Six Hundred and Thirty Thousand Dollars and Zero Cents (\$630,000.00). Settlement Class members shall receive their payment after the Settlement Fund is reduced by (a) attorneys' fees not to exceed one third of the Settlement Fund, plus costs incurred in the prosecution of the claims, as approved by the Court; (b) a Service Award to Plaintiff, subject to Court approval; and (c) Administrative Costs. The Parties shall mutually agree to a *cy pres* recipient for any unclaimed funds.
4. **Administration of Settlement.** The Parties have jointly agreed upon ALCS as the Settlement Administrator. All Administrative Costs shall come from the Settlement Fund.
 - a. Defendants shall provide the Settlement Administrator with the last known contact information for Settlement Class Members, which is expected to include e-mail and/or street address.
 - b. Notices shall be distributed by email notice to the last available email address. To the extent email address is not available, a postcard notice shall be sent to such Class Member's last known mailing address.
 - c. A settlement website shall be established upon which details of the Settlement will be made available.
5. **Allocation of Settlement Fund.** All Class Members who do not submit a timely and compliant Request for Exclusion will be entitled to receive compensation from the Settlement Fund. Each Settlement Class Member shall receive a payment equal to one *pro rata* share of the disburseable funds. Each SH Group Subclass Member shall receive a payment equal to two *pro rata* shares.
6. **Preliminary Approval Order.** On execution of this Settlement Agreement, Plaintiffs shall file with the Court the proposed Preliminary Approval Order and other necessary documents in support of preliminary approval. It is contemplated that the consent motion for preliminary approval will be filed contemporaneously with the filing of this Settlement Agreement. Plaintiffs shall submit to the Court the Settlement Agreement, together with its Exhibits, and shall apply for entry of the Preliminary Approval Order, substantially in the form and content of Exhibit 2 hereto, requesting, *inter alia*, (a) preliminary approval of the Settlement;

(b) preliminary certification of the Settlement Class and SH Group Subclass pursuant to Rule 1.220 solely for purposes of settlement only; (c) appointing Class Counsel as counsel for the Settlement Class; (d) approval for the distribution of the Notice substantially in the form and content of Exhibit 1 hereto, and directing the mailing of the Notice by the Settlement Administrator; and (d) a time and date for the Final Approval Hearing. Within fourteen (14) days of the entry of the Preliminary Approval Order, Defendants shall provide to the Settlement Administrator the Class List.

7. **Duties of the Parties Following Preliminary Approval Order.** Within seven (7) days of receipt of the Class List, the Settlement Administrator shall send the Notice to the Settlement Class Members. The Notice shall first be sent by e-mail. For any e-mails that are not deliverable, the Settlement Administrator shall send a first class postcard notice to such Class Member's last known addresses. If the mailing is returned as undeliverable and no forwarding address is provided, the Settlement Administrator shall perform a standard electronic search, including, but not limited to, reviewing the National Change of Address Registry to attempt to determine the most current mailing address and shall resend the Notice to that address. The Settlement Administrator is only required to attempt to locate a current mailing address and resend the Notice once for each Class Member. The Parties agree that the deadlines contained herein shall not be extended for Class Members whose Notices were returned as undeliverable and re-mailed pursuant to this paragraph. No Class Member shall be subject to any coercion or retaliation of any kind based on their decision to participate or not to participate in or claim funds provided by this Agreement.
8. **Procedure to Opt-Out of the Settlement.** Class Members will have 60 days from the date Notice is sent to submit a Request for Exclusion. A Settlement Class Member may request to be excluded from the Settlement Class by sending a written or electronic request for exclusion to the Settlement Administrator. To be effective, the Settlement Class Member's Request for Exclusion must contain: (1) an identifying reference to the case; (2) the Class Member's full name; (3) the Class Member's current mailing address; (4) the Class Member's telephone number; (5) the last four digits of the Class Member's Social Security Number; (6) a statement of the Class Member's desire to be excluded from the Settlement Class; and (7) the Class Member's signature or the signature of an authorized representative. Requests for Exclusion must be postmarked no later than the Opt-Out Deadline, or the deadline set by the Court in the Preliminary Approval Order. In no event shall persons who purport to opt out of the Settlement Class as a group, on an aggregate basis or as a class involving more than one Class Member be considered valid Opt-Outs. Requests for Exclusion that do not comply with any of the foregoing requirements are invalid. No later than seven (7) business days after the deadline for submission of a request to opt out, the Settlement Administrator shall provide Class Counsel and Defense Counsel with a complete list of all Requests for Exclusion, together with copies of the opt-out requests. Class Members who do not submit a timely Request for Exclusion shall be bound by the terms of this Settlement Agreement and shall have released each of the Released Claims. If the

number of valid Requests for Exclusion exceeds twenty (20), then Defendants may in their discretion rescind this Agreement.

9. **Procedure to Object to the Settlement.** Class Members will have 60 days from the date Notice is sent to object to the Settlement. Any Settlement Class Member who wishes to object to the Settlement may do so by filing with the Clerk of Court a notice of their intention to object (which shall set forth each objection and the basis therefore and containing the objecting Class Member's original signature), along with any papers in support of their position. The Settlement Administrator must be copied on any Objection filed with the Clerk of Court. Objections must be mailed so that they are postmarked no later than the Objection Deadline, or the deadline set by the Court in the Preliminary Approval Order. Objections to Class Counsel's attorneys' fees may be supplemented up to seven (7) days after the filing of a motion for such fees to address additional information or materials in the motion. Objections must indicate whether the Class member and/or their attorney(s) intends to appear at the Final Approval Hearing, and must identify any documents the attorney(s) intend to introduce at the Final Approval Hearing. Any attorney who intends to appear at the Final Approval Hearing must enter a written Notice of Appearance of Counsel with the Clerk of Court no later than the deadline set by the Court in the Preliminary Approval Order. Any individual who fails to comply with this requirement will be deemed to have waived any right to submit an Objection.
10. **Motion for Final Approval of Settlement.** Within fifteen (15) days after the expiration of the Opt-Out Deadline and Objection Deadline, the Parties will jointly file a Motion for Final Approval with the proposed Final Approval Order. In connection with that Motion for Final Approval, the Parties shall file a declaration outlining the completion of the Notice plan outlined above. The Parties shall also file with the Court the names of: (1) Class Members who submitted timely and valid Requests for Exclusion; and (2) Class Members who submitted valid Objections. The Parties shall also advise the Court of the number of Class Members who did not seek to be excluded or object to the settlement and hence are part of the Settlement Class.

Through the motion, the Parties will apply to the Court for a Final Approval Order that accomplishes the following:

 - a. Excludes those Class Members who submitted timely and valid Requests for Exclusion as provided in Rule 1.220; and
 - b. Dismisses this Action with prejudice and permanently bars all Settlement Class Members who did not exclude themselves from this Settlement Agreement from bringing and prosecuting any of the Released Claims.
11. **Settlement Payments.** Within fourteen (14) days after the Effective Date, Defendants shall deposit the Settlement Fund. Within fourteen (14) days of the

delivery of the Settlement Fund, the Settlement Administrator will distribute all settlement payments, Plaintiff's service award, and attorneys' fees and costs.

Class Members shall have 90 days after the date on the check to cash their settlement checks. If any Class Members do not cash their checks within 90 days after the date on the check and their check is not returned, their checks will be voided and a stop-payment will be placed. Any funds from checks that are not cashed will be designated for the agreed-upon *cypres* recipient. In such event, those Class Members will be deemed to have waived irrevocably any right in or claim to a share of the Settlement Fund, but this Agreement and the Released Claims contained herein will nevertheless be binding upon them.

12. **Tax Responsibility.** Plaintiffs agree the settlement payments are not wages and therefore W-2s shall not be issued. Class Members agree that they will be exclusively responsible for the payment of any and all taxes owed on any amounts paid to them under the terms of this Agreement. Defendants make no representations as to the taxability of the amounts paid to Plaintiff, Class Members, or their Counsel. Plaintiff and Class Members agree to pay their portion of federal, state or local taxes, if any, which are required to be paid with respect to this Agreement. Moreover, Plaintiff and Class Members agree to indemnify Defendants and hold it/them harmless from any interest, taxes, or penalties assessed against it/them by any governmental agency as the result of the non-payment of taxes on any amounts paid to them or their counsel under this Agreement.
13. **No Consideration Absent Execution of this Agreement.** Plaintiff understands and agrees that Plaintiff and Class Members would not receive the monies and/or benefits specified in Section 3 above, except for his execution of this Agreement and the fulfillment of the promises contained herein.
14. **Release of Claims by Class Members.** Upon dismissal of the Action with prejudice, each member of the Settlement Class who has not validly opted out of the Settlement agrees to fully and forever release, waive, and acquit and discharge Defendants and the Released Parties from any and claims encompassed by the Released Claims. The Class Members acknowledge, agree and understand that they are estopped from bringing any subsequent action or suit against the Released Parties on any and all such claims or later contending they are entitled to any such damages.
 - a. **Governmental Agencies.** Nothing in this Agreement prohibits or prevents Plaintiff from filing a charge with or participating, testifying, or assisting in any investigation, hearing, or other proceeding before any federal, state, or local government agency (*e.g.*, DOL, EEOC, NLRB, SEC, *etc.*), nor does anything in this Agreement preclude, prohibit, or otherwise limit, in any way, Plaintiff's rights and abilities to contact, communicate with, report matters to, or otherwise participate in any investigation. However, to the maximum extent permitted by law, Plaintiff agrees that if such an

administrative claim is made, Plaintiff shall not be entitled to recover any individual monetary relief or other individual remedies.

- b. Collective/Class Action Waiver. If any claim is not subject to release, to the extent permitted by law, Plaintiff waives any right or ability to be a class or collective action representative or to otherwise participate in any putative or certified class, collective or multi-party action or proceeding based on such a claim in which Defendants or any other Released Party is a party.

15. **Acknowledgments and Affirmations.** Plaintiff affirms that he has not filed, caused to be filed, and presently is not a party to any claim against Defendants, except the Action which will be dismissed pursuant to the terms of this Agreement with prejudice. Plaintiff acknowledges this Settlement Agreement is intended to encompass all FCRA related claims against Releasees arising out of Plaintiff's application for employment and subsequent termination of employment.
16. **Waiver of Future Employment.** Plaintiff expressly waives any employment-related claims, a claim of right to employment, and/or re-entry with SH Group, 1 SB Lessee LLC, and SB Hotel Owner, L.P. and agrees not in the future to apply for employment or an independent contractor position Sterling., The Parties agree that the Parties have irreconcilable differences.
17. **Mutual Full Cooperation.** The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and taking such other action as may be reasonably necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as practicable after execution of this Agreement, Class Counsel shall, with the assistance and cooperation of Defendants and their counsel, take all necessary steps to ensure final dismissal of the Action with prejudice.
18. **Jurisdiction.** This Agreement shall be governed and conformed in accordance with the laws of the State of Florida without regard to its conflict of laws provision. In the event of a breach of any provision of this Agreement, any Party may institute an action with this Court specifically to enforce any term or terms of this Agreement and/or to seek any damages for breach. Should any provision of this Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, excluding the general release language, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect.
19. **Nonadmission of Wrongdoing.** The Parties agree that neither this Agreement nor the furnishing of the consideration for this Agreement shall be deemed or construed at any time for any purpose as an admission by Defendants or the Released Parties of wrongdoing or evidence of any liability or unlawful conduct of any kind. The

Parties also agree that nothing about this Agreement shall be offered or construed as an admission or evidence of the propriety or feasibility of certifying a class in this Action or any other action for adversarial, rather than settlement purposes. While Defendants have stipulated that class certification is appropriate solely for settlement purposes, this stipulation is solely for purposes of settlement and Defendants maintains that class certification would be inappropriate if the Parties were to continue litigating this Action.

20. **Non-Publicity.** The Parties shall not issue any press releases, website advertisements, or otherwise in which the other Party is identified. Nothing in this provision shall be construed to limit the ability of Plaintiff or Class Counsel to discuss this settlement in full detail with Class Members.
21. **Counterparts.** This Agreement may be executed in one or more counterparts by facsimile or email. All executed copies of this Agreement and photocopies thereof (including facsimile and/or emailed copies of the signature pages), shall have the same force and effect and shall be as legally binding and enforceable as the original.
22. **Amendment.** This Agreement may not be modified, altered or changed except in writing and signed by the Parties wherein specific reference is made to this Agreement.
23. **Entire Agreement.** This Agreement sets forth the entire agreement between the Parties hereto, and fully supersedes any prior agreements or understandings between the Parties. Plaintiff acknowledges that Plaintiff has not relied on any representations, promises, or agreements of any kind made to Plaintiff in connection with his decision to accept this Agreement, except for those set forth in this Agreement.

THE SIGNATORIES HAVE CAREFULLY READ THIS ENTIRE CLASS SETTLEMENT AGREEMENT. THE PARTIES HAVE BEEN REPRESENTED BY COUNSEL THROUGHOUT THE NEGOTIATION OF THIS AGREEMENT, AND HAVE CONSULTED WITH THEIR ATTORNEYS BEFORE SIGNING THIS AGREEMENT. THE PARTIES FULLY UNDERSTAND THE FINAL AND BINDING EFFECT OF THIS AGREEMENT. THE ONLY PROMISES OR REPRESENTATIONS MADE TO ANY SIGNATORY ABOUT THIS AGREEMENT ARE CONTAINED IN THIS AGREEMENT.

HAVING ELECTED TO EXECUTE THIS CLASS SETTLEMENT AGREEMENT AND GENERAL RELEASE, TO FULFILL THE PROMISES SET FORTH HEREIN, AND TO RECEIVE THEREBY THE SETTLEMENT SUMS AND BENEFITS SET FORTH HEREIN, PLAINTIFF FREELY AND KNOWINGLY AND AFTER DUE CONSIDERATION, ENTERS INTO THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE INTENDING TO WAIVE, SETTLE AND RELEASE ALL CLAIMS HE HAS OR MIGHT HAVE AGAINST RELEASEES. THE PARTIES ARE SIGNING THIS AGREEMENT VOLUNTARILY AND KNOWINGLY.

1/24/2024

Dated: _____

Fernandez Forestal

Fernandez Forestal
Sign: _____

Fernandez Forestal
Print: _____

Title: _____

Dated: _____

SH Group Operations, L.L.C.

Milton Sgarbi
Sign: _____

Print: Milton Sgarbi

Title: VP of Operations

Dated: January 22, 2024

Sterling Infosystems, Inc.

DocuSigned by:
Theresa Strong
Sign: E27408ED23FB424...

Print: Theresa Neri Strong

Title: Chief Accounting Officer

Exhibit 1

To: [class member email address]

From: -- @americanlegal.com [Fernandez Forestal v SH Group Operations, LLC and Sterling Infosystems, Inc.]

Sent: January - - , 2024

Subject: Important notice of your rights in a class action settlement – *Forestal v SH Group Operations and Sterling Infosystems, Inc.* Case No.: 23-ca-013634

In the Circuit Court of the Thirteenth Judicial Circuit
In and for Hillsborough County, Florida
Civil Division

Individuals Who Were the Subject of Certain Consumer Reports Furnished by Sterling Infosystems or Used by SH Group *Could Receive Money from a Class Action Settlement*

A State Circuit Court authorized this notice. This is not a solicitation from a lawyer. You are not being sued.

[Para una notificación en Español, llamar o visitar nuestro sitio web.](#)

Your ID Number: #####

Your Contact Information: JOHN DOE
123 STREET RD
ANYTOWN, PA 12345-1234

If the address listed above is incorrect, please update your address by replying to this email.

- A purported class action lawsuit was filed against SH Group Operations, LLC and Sterling Infosystems, Inc. (“SH Group” and “Sterling” or “Defendants”). The lawsuit alleges that SH Group and Sterling did not comply with the requirements of the Fair Credit Reporting Act (“FCRA”) when Sterling prepared consumer reports at the request of Kiosite, LLC and when SH Group used such reports for employment-related purposes.
- On _____, 2024, the Court preliminarily approved a settlement in which Defendants agreed to contribute the total amount of \$630,000.00 into a settlement fund. This notice is being provided to inform you about the Settlement and your potential rights under the Settlement.
- You are receiving this notice because you are identified as one of the 2,712 consumers who were the subject of a consumer report furnished by Sterling to Kiosite, LLC for employment purposes between December 9, 2019 and November 6, 2022. (“Settlement Class”). If your specific report was one of 212 that were used by SH Group for employment purposes during this time, you are also a member of the SH Group Subclass.
- The Settlement will provide \$630,00.00 to pay (1) money to eligible Class Members, (2) any Court-approved attorneys’ fees and expenses, (3) a Class Representative service payment, and (4) administrative and notice costs. Anyone who was not subject to a consumer report furnished by Sterling to Kiosite, LLC, is not eligible to receive any money.

- Your legal rights are affected by the proposed Settlement even if you do nothing.
- Your rights and options relating to the Settlement — and the deadlines to exercise them — are explained in this notice. Please read this entire notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
Do Nothing	Get a cash payment if you qualify. If you were the subject of a consumer report furnished by Sterling Infosystems, Inc. to Kiosite, LLC between December 9, 2019 and November 6, 2022, you will automatically receive a payment of at least \$100.00 from the Settlement Fund. If your report was ordered by SH Group, you will receive an additional payment of an equal amount. If the Settlement is approved, you will give up any right to sue SH Group or Sterling regarding the legal claims covered in this Settlement (<i>see</i> Questions 9, 11).
Opt-Out of the Settlement	Write to the Settlement Administrator stating that you do not wish to participate in the proposed Settlement. Your exclusion request must be postmarked by - - , 2024. <i>See</i> Question 10 below. If you validly opt-out, you will not receive any monetary payments from the Settlement.
Object to the Settlement	Write to the Court about why you do not like the proposed Settlement (<i>see</i> Question 15). Objections must be filed or postmarked by - - 2024.
Go to a Hearing	Ask to speak in Court about the fairness of the proposed Settlement (<i>see</i> Question 19).

BASIC INFORMATION

1. Why was this notice issued?

A Court authorized this notice to inform you about the proposed Settlement and your rights. Before any final judgment is entered, the Court will have a hearing to decide whether to approve the Settlement. This notice is only a summary of the Settlement. More details about the proposed Settlement are in the Settlement Agreement available at www.--.com.

The lawsuit is known as *Fernandez Forestal v SH Group Operations, LLC and Sterling Infosystems, Inc.*, Case No.: 23-ca-013634 (In the Circuit Court of the Thirteenth District, in and For Hillsborough County, Florida). Judge Helene Daniel is overseeing the case. The person who sued is called “Plaintiff” or “Named Plaintiff.” The companies that they sued are the “Defendants.”

2. What is this lawsuit about?

The lawsuit claims that SH Group and Sterling violated the Fair Credit Reporting Act, 15 U.S.C. § 1681a-x (“FCRA”) when: (1) Sterling allegedly furnished consumer reports to Kiosite, LLC for employment purposes without complying with the FCRA’s specific requirements, and (2) SH Group used some of those reports without complying with the FCRA’s requirements for using consumer reports for employment purposes.

The Court did not decide whether either side was right or wrong. Defendants denied all allegations, claims, and charges of wrongdoing or liability. If the case proceeded, Defendants intended to vigorously defend against the claims asserted in the lawsuit. Instead, the parties agreed to the Settlement to resolve the case and avoid further fees and expenses.

3. Why is this a class action?

A class action lawsuit tries to bring similar claims into one case in one court. In a class action, one or more people called “Class Representatives” (in this case, Fernandez Forestal) brought the case to court. His name is listed in the title of the case. He sued on behalf of himself and other people who have similar claims — called the Class or Class Members — which in this case may include you. One court resolves the issues for everyone in the Class. The Class Representative filed this case as a proposed class action.

4. Why is there a proposed Settlement?

The Court has not decided which side is right or wrong in this case. Instead, both sides agreed to a settlement to avoid the costs and risks of a lengthy trial and appeals process. Class Members will receive the benefits described in this notice. Class counsel thinks the proposed Settlement is best for all Class Members.

5. How do I know if I am part of the Settlement Class?

The Court has decided that the following consumers are in the Settlement Class and SH Group Subclass:

- (1) The Settlement Class is defined generally as “All individuals in the United States who were the subject of a consumer report furnished by Sterling to Kiosite, LLC between December 9, 2019, and November 6, 2022”
- (2) The SH Group Subclass is defined generally as “All individuals in the Settlement Class who were the subject of a consumer report procured by SH Group from Kiosite, LLC for employment purposes between December 9, 2019, and November 6, 2022”

The complete criteria for who is included can be found in the Settlement Agreement, available at [www. - - settlement.com](http://www.- - settlement.com).

6. What benefits does the Settlement provide?

Defendants have agreed to establish a Settlement Class Fund in the amount of \$630,000.00. Payments of at least \$100.00 will be made by check to each Settlement Class Member who is eligible for a payment (*see* Question 8). Payments of at least \$200.00 will be made by check to each Settlement Class Member who is also a member of the SH Group Subclass.

7. How can I get a payment?

Settlement Class Members will only qualify to get a payment if they remain in the Class.

The check will be mailed to the address on your Class Notice. If your address has changed or is changing, you should contact the Settlement Administrator at *Forestal v SH Group Operations and Sterling Infosystems, Inc.* c/o Settlement Administrator, America Legal Claims Services, LLC, 8011 Phillips Highway #7, Jacksonville, FL 32256.

8. If I am a member of the Settlement Class, when will I get my payment?

Payments will be made to Settlement Class Members after the Court grants “final approval” to the Settlement and any appeals are resolved. It is always uncertain whether any appeals can be resolved and resolving them can take time. Please be patient. You can visit [www. - - .com](http://www.- - .com) after - - , 2024 to check on the progress of the Court-approval process.

9. How does the Settlement affect my rights?

If the Court approves the Settlement, you will receive a monetary payment if you are a member of the Class. As part of the monetary payment, you will give up any possible legal remedy against SH Group and Sterling for any claims that are released in the lawsuit.

The Court's decisions in this case will apply to you even if you object to this Settlement or have any other claim, lawsuit, or proceeding pending against SH Group and/or Sterling relating to covered claims. If you have any questions about the release, you should visit the Settlement website for more information or consult with a lawyer (see Question 13).

"Released Claims" is defined in the Settlement Agreement and generally means any claims that were or could have been brought in the lawsuit under the FCRA or similar state laws.

10. Can I choose not to be in the Settlement Class?

Yes, you may exclude yourself from the Settlement Class. If you do not want to remain a member of the Settlement Class and want to keep any rights you may have against SH Group or Sterling, you must take steps to exclude yourself. This is sometimes referred to as "opting out" of the Settlement Class. Opting out gives you the right to bring your own lawsuit but does not guarantee that your own lawsuit will be successful.

If you opt out of the lawsuit, you will not receive any of the monetary benefits that will be received by the Settlement Class.

To exclude yourself from the Settlement Class, you must send a written request for exclusion to the Settlement Administrator, at the address below:

Fernandez Forestal v SH Group Operations, LLC and Sterling Infosystems
c/o Settlement Administrator
8011 Phillips Highway #7
Jacksonville, FL 32256

To be valid, the proposed exclusion request must contain:

- Your full name, original signature, current postal address, last four digits of your Social Security Number, and current telephone number, and
- A statement that you want to be excluded from the Rule 1.220 Settlement Class in *Fernandez Forestal v SH Group Operations and Sterling Infosystems, Inc.*

Your exclusion request must be postmarked no later than -- , 2024.

You cannot exclude yourself by telephone. You also cannot exclude yourself by mailing a request to any location other than the address specified above or by mailing a request after the deadline. You also cannot exclude yourself as part of a group, aggregate, or class involving more than one consumer.

11. If I exclude myself from the Settlement Class, can I get a payment?

No. If you exclude yourself from the Settlement Class, you will not receive a cash payment.

12. Do I have a lawyer in this case?

Yes. The Court approved the following lawyer as “Class Counsel” to represent you and other Settlement Class Members:

- Marc R. Edelman, Esq., Morgan & Morgan, P.A.

You will not be charged for this attorney. You may hire your own attorney, if you so choose, but you will be responsible for paying your attorney’s fees and expenses.

You may contact the attorney representing you for further information or assistance at: (813)577-4722 or write to: Morgan & Morgan, P.A. 201 North Franklin Street, 7th Floor, Tampa, FL 33602.

13. How will the lawyers be paid? What will the Class Representative receive? Who paid for this Notice?

Class Counsel will ask the Court to approve attorneys’ fees in an amount up to 33.33% of the Settlement Class Fund, and for reimbursement of all expenses incurred in the litigation. Additionally, Class Counsel will ask that additional compensation be provided to the Class Representative as consideration for relinquishing additional claims against Defendants and foregoing future employment opportunities. The cost of notice and administration of the Settlement will also be deducted from the Settlement Fund. Amounts approved by the Court will be paid out of the Settlement Class Fund.

14. How do I tell the Court if I do not agree with the proposed Settlement?

If you are a Class Member, you can object to this Settlement if you do not like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views before deciding whether to approve this Settlement.

You can ask the Court to deny approval by filing an objection. You can’t ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval, the lawsuit will continue. If that is what you want to happen, you should object.

Any objection to the proposed Settlement must be in writing, but the Court may excuse this requirement if you show good cause for not submitting a written objection. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Fernandez Forestal v. SH Group Operations, LLC and Sterling Infosystems, Inc.* Case No.23-ca-013634, in the Circuit Court of the Thirteenth Judicial Circuit, in and for Hillsborough County, Florida), (b) be submitted to the Court either by filing them electronically or in person at the Hillsborough County Courthouse, or by mailing them to the Clerk of the Courts, 800 East Twiggs Street, Tampa, Florida 33602, and (c) be filed or postmarked on or before - - , 2024.

Your objection letter must include:

- Your name, address, email address, and telephone number;
- The name of the case and the case number: *Fernandez Forestal v SH Group Operations, LLC and Sterling Infosystems, Inc.* Case No.: 23-cv-013634, Hillsborough Circuit Court, Florida); and
- A written statement about why you object to the Settlement.

If you are submitting an objection through an attorney, in addition to the above information, your objection must include:

- Identity, mailing address, email address, and phone number for your attorney;
- A statement of whether you or your attorney intend to appear at the Final Approval Hearing; and
- A written statement detailing the specific basis for each objection, including any legal and factual support that you wish to bring to the Court's attention and any evidence you wish to introduce in support of the objection.

You may also appear at the Final Approval Hearing, either in person or through your own lawyer. If you intend to have a lawyer present, your lawyer must enter a written Notice of Appearance of Counsel with the Court no later than - - , 2024. If you appear through your own lawyer, you are responsible for paying that lawyer.

For more information about the Final Approval Hearing, *see* Questions 17-19 below.

The Court requires substantial compliance with the process outlined above, meaning if you do not substantially comply you may not be allowed to object, appear at the Final Approval Hearing, or appeal the final approval of the proposed Settlement or the dismissal of the case.

15. What is the difference between objecting and opting out?

Objecting is simply telling the Court that you do not like something about the Settlement. Opting out, or excluding yourself, means that you will not be included in the Settlement.

You can object **or** opt-out of the Settlement Class but you cannot do both. If you exclude yourself, you have no basis to object to the Settlement because it will no longer affect you. However, even if you exclude yourself from the Settlement Class, you can still object to the Settlement as a Class Member.

Go to www.- - settlement.com to learn more about your rights in the Settlement.

16. When and where will the Court decide whether to finally approve the proposed Settlement?

The Court will hold a Final Approval Hearing to decide whether to approve the proposed Settlement. You may attend and you may ask to speak at the hearing, but you do not have to.

The hearing will be on - - , 2024, at ? :00 AM/PM Judge Helene Daniel, Courtroom 502, Hillsborough County Courthouse, 800 East Twiggs Street, Tampa, FL 33602.

At the hearing, the Court will consider whether the proposed Settlement is fair, reasonable, and adequate. The Court will consider all timely and proper objections. The Court will listen to people who have asked for permission to speak at the hearing (*see* Question 18).

After the hearing, the Court will decide whether to approve the proposed Settlement. There may be appeals. We do not know how long these decisions will take.

The Court may change the date of the Final Approval Hearing without further notice to the Class. Please check the website, www.- - settlement.com, for updates on the hearing date, the Court-approval process, and the Effective Date.

17. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. However, you are welcome to come to the hearing at your own expense. You may also pay your own lawyer to attend, but it is not necessary.

If you send an objection, you do not have to come to Court to talk about it. As long as you filed your written objection on time and it includes the required information, the Court will consider it.

18. May I speak at the hearing?

You or your lawyer may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must tell the Court in your objection letter that you or your lawyer would like to speak at the hearing. You must also follow the process outlined in Question 14. You cannot speak at the hearing if you do not follow this procedure.

19. What happens if I do nothing at all?

If you do nothing, you will receive a cash payment if you are eligible for one. If the Court approves the proposed Settlement, you will be bound by the Court's final judgment and the released claims explained in the Settlement Agreement.

20. How do I get more information?

This notice is only a summary of the Settlement. More details about this Settlement, including the the dates when appeals are no longer allowed, when the Settlement is final, important deadlines, and your options are available in the Settlement Agreement.

You can get a copy of the entire Settlement Agreement by visiting [www. - - settlement.com](http://www.--settlement.com). The website also provides answers to commonly asked questions, plus other information, to help you determine whether you are a Class Member. In addition, some of the key documents in the case will be posted on the website.

You also may write with questions to the Settlement Administrator at *Fernandez Forestal v SH Group Operations and Sterling Infosystems, Inc.* c/o Settlement Administrator, American Legal Claim Services, LLC 8011 Phillips Highway #7, Jacksonville, FL 32256. You may also email at _____. You may also call the toll-free number, (8--).

This notice summarizes the proposed Settlement. For the precise terms of the Settlement, please see the Settlement Agreement available at [www.- - settlement.com](http://www.--settlement.com), by contacting Class Counsel at Morgan & Morgan, 201 North Franklin Street 7th Floor, Tampa, FL 33602, by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records <https://www.hillsclerk.com/> or by visiting the office of the Clerk of the Court for the Circuit Court for the Thirteenth Judicial Circuit, 800 East Twiggs Street, Tampa, FL 33602 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.

Questions? Call Toll-Free (8--) or Visit [www. - - .com](http://www.--.com)

**COURT ORDERED
NOTICE**

Fernandez Forestal

v

*SH Group Operations, LLC
and Sterling Infosystems, Inc.*

Case No.: 23-ca-013634

Class Action Notice

**Forestal v SH Operations, LLC and Sterling
Infosystems, Inc.**

c/o Claims Administrator

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A settlement has been reached in a class action lawsuit alleging SH Group Operations, LLC and Sterling Infosystems, Inc. (“Defendants” or “SH Group” or “Sterling”) did not comply with certain requirements of the Fair Credit Reporting Act (“FCRA”) with respect to employment-related background checks. SH Group and Sterling deny violating any law and deny any liability whatsoever, but have agreed to the settlement to avoid the uncertainties and expenses of continuing the case. The total Settlement Fund is in the amount of \$630,000.00.

Am I a Class Member? Defendants’ records indicate you are a member of the Class, generally defined as follows:

“All individuals in the United States who were the subject of a consumer report furnished by Sterling to Kiosite, LLC between December 9, 2019, and November 6, 2022” (“the Settlement Class”).

Am I a Subclass Member? If you are a Class Member and are one of 212 individuals whose reports were used by SH Group Operations during that same time period, you are also a Subclass Member.

What Will the Settlement Mean for Me? If the Court approves the Settlement you will receive a payment by check. The Settlement Fund will be divided equally on a pro rata basis among all Settlement Class Members who do not opt out of the settlement. Subclass Members will receive a double payment. However, certain deductions will be made from the Settlement Fund, as approved by the Court, for Class Counsel’s attorneys’ fees and costs, additional compensation to the Class Representative, and the costs of settlement administration. The anticipated final payments will a minimum of \$100.00 for Class Members and \$200.00 for persons in both the Class and Subclass.

(Continued on reverse side.)

What Do I Need to Do to Receive a Payment? To receive a settlement payment, you do not need to do anything. You will receive your pro-rata portion of the net Settlement Fund provided you do not opt-out of the Settlement, as described in further detail below.

Who Represents Me? The Court appointed lawyer Marc. R. Edelman of Morgan & Morgan, P.A. to represent the Settlement Class. Class Counsel request to be paid legal fees of approximately \$209,979.00 out of the Settlement Fund as described above. You may hire and pay for a lawyer at your own expense if you do not wish to be represented by Class Counsel.

What If I Don’t Like the Settlement? You may exclude yourself from participating in the Settlement or object to its terms. To exclude yourself (“opt out”) and keep any rights you may have against Defendants, t, you must specifically

state in writing that you want to opt out of the Settlement and send your written notice to the Settlement Administrator by [DATE]. If you do not opt out of the Settlement, you may object to the terms of the proposed Settlement by filing a written objection with the Court by [DATE].

When Will the Court Consider the Proposed Settlement? The Court will hold the Final Approval Hearing on [date] at the Hillsborough County Courthouse, 800 East Twiggs Street, Tampa, FL 33602 in Courtroom [502] on [DATE] at [TIME].

How May I Get More Information? For more information, contact the Settlement Administrator, _____, at [NUMBER FOR ADMIN HERE] via e-mail at [EMAIL FOR ADMIN HERE] or visit [INSERT WEBSITE FOR ADMIN HERE].

Please use this section to update your address

<<noticeid>>

<<keyline>>

NAME _____

ADDRESS _____

CITY, STATE, ZIP _____

PLACE
STAMP
HERE

Fernandez Forestal v SH Group Operations,
LLC and Sterling Infosystems, Inc.,
c/o Claims Administrator