

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

GREGORY STEWART, on behalf of)
himself and on behalf of all others)
similarly situated,)

PLAINTIFF(S))

v.)

Case No.: 2:21-cv-02377-TLP-cgc

BAPTIST MEMORIAL HEALTH)
CARE CORPORATION,)

DEFENDANT.)

**PLAINTIFF’S AMENDED UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

For the reasons set forth in their Memorandum, Plaintiff Gregory Stewart, on his own behalf and on behalf of the putative class, respectfully ask the Court to certify, for settlement purposes only, the Settlement Class, grant preliminary approval of the Settlement, and to order notice and claim forms be sent to the Settlement Class. This Amended Motion is filed only to include a Memorandum of Law that was mistakenly omitted from the original filing and correcting an exhibit, specifically the proposed notice to the Disclosure Class, previously filed at Dkt. 18-2.

Dated this 28th day of December 2023.

/s/ Marc R. Edelman
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CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2023, I electronically filed the Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the attorneys of record:

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE**

GREGORY STEWART, on behalf of
himself and on behalf of all others
similarly situated,

Plaintiff,

v.

Case No.: 2:21-cv-02377-TLP-cgc

BAPTIST MEMORIAL HEALTH
CARE CORPORATION,

Defendant.

_____ /

**MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT**

Plaintiff, Gregory Stewart, (“Plaintiff”), by and through the undersigned counsel, hereby files this Memorandum in Support of Plaintiff’s Unopposed Motion for Preliminary Approval of Class Settlement and Notice to Settlement Class and in support states as follows:

I. BACKGROUND

A. History of the Litigation

On June 7, 2021, Plaintiff initiated this Action by the filing of the Class Action Complaint alleging Defendant violated 15 U.S.C. § 1681(b)(b)(3) of the Fair Credit Reporting Act (“FCRA”) by failing to: 1) provide applicants and employees who were subject to an adverse employment action, based in whole or in part on their consumer report, pre-adverse action notice, including a copy of their consumer report, before being subjected to an adverse employment action, and 2) provide applicants and employees a summary of their FCRA rights [Dkt. 1]. On December 7, 2021, Plaintiff amended his Complaint to include additional allegations regarding alleged violations of 15 U.S.C. §§ 1681b(b)(2)(A)(i)–(ii), the FCRA’s disclosure and authorization

requirements, alleging Defendant obtained and used consumer reports for employment purposes on Plaintiff and other class members without first making a lawful disclosure and obtaining the requisite authorization. [Dkt. 13-1]. The Parties engaged in early exchanges of discovery and negotiations during the pleadings phase of this lawsuit, both with respect to Plaintiff's original Class Action Complaint and his later Amended Class Action Complaint. In early discovery, Defendant furnished Plaintiff information, including the relevant FCRA disclosure and authorization forms and pre-adverse action notices. However, the Parties continued to disagree as to whether Defendant's forms and processes complied with the FCRA.

Thereafter, the Parties continued exchanging discovery in connection with the mediation of Plaintiff's claims. On June 20, 2023, the Parties engaged in mediation with a neutral mediator with expertise in this specialized area of the law. The neutral mediator helped the Parties negotiate a fair class-wide settlement for a Disclosure and Authorization Class and a Pre-Adverse Action Subclass (referred to in combination as the "Settlement Class"), despite the Parties' disagreement as to the merits of their respective positions. On August 31, 2023, after several exchanges, the settlement terms were memorialized in an executed Memorandum of Understanding, ultimately formalized in the Joint Stipulation of Settlement. (Ex. A – Joint Stipulation of Settlement).

B. Parties Agreed Mediation as Potential Pathway to Efficient Resolution

Early into the litigation, Plaintiff's Counsel and Defendant's Counsel agreed a relatively early mediation would be a viable option to conserve the Parties' and Court's resources. Counsel, both experienced in Rule 23 FCRA class actions, acknowledged litigating this action to conclusion would require a significant investment of resources from both sides, as extensive discovery and heavy motion practice were inevitable. Plaintiff's counsel and Defendant's counsel agreed it made sense to exchange the information Defendant acknowledged Plaintiff would ultimately obtain in

discovery and at the class certification stage *before* both sides expended more time and incurred greater costs.¹

Over time, Plaintiff obtained from Defendant the information necessary to evaluate and analyze his claims. On June 20, 2023, the Parties attended a mediation session with Mr. Carlos Burruezo, Esq., a respected mediator with nationally recognized expertise in FCRA class action litigation. The mediation session, although often contentious, ultimately concluded in a settlement in principle. Since that time, the Parties have documented the Settlement, contingent upon this Court's approval.

Plaintiff and Class Counsel acknowledge Defendant has real and significant defenses to the claims alleged. If Defendant was to prevail on some or all of its defenses, Plaintiff and the Settlement Class may not receive any benefit or consideration for their claims. Class Counsel has thoroughly analyzed and evaluated the claims and Defendant's defenses. Balancing the relief the proposed settlement delivers to the Settlement Class against the risk of continued litigation and further delay, Class Counsel has concluded that this Settlement is fair and reasonable and in the best interests of the Settlement Class. Against this backdrop, the Parties now present the Settlement for the Court's preliminary approval.

C. Key Terms of the Settlement

The settlement is memorialized in the Parties' Joint Stipulation of Class Settlement, a copy of which is attached as Exhibit "A," and capitalized terms in this Memorandum shall have the same meaning as in the Stipulation. The key terms of the settlement are as follows:

- Certification, for settlement purposes only, of a Disclosure Class with approximately 14,041 members consisting of all persons residing in the United

¹ At various junctures, the Parties' efforts were delayed by the pandemic's impact on Defendant's operations, as its attention as a healthcare provider understandably was focused elsewhere for much of the time. In November 2021, Defendant began providing information requested Plaintiff's counsel. In early 2022, the Parties began the process of identifying and selecting a mediator.

States (1) who applied for a position with Defendant; and (2) about whom Defendant procured a consumer report between June 7, 2019, through August 8, 2022;

- Certification, for settlement purposes only, of a Pre-Adverse Action Subclass with approximately 111 members, consisting of all persons residing in the United States (1) who are members of the Disclosure and Authorization Class; (2) who Defendant declined to hire; (3) who are marked in Defendant's system as "Failed Background Report," "Null" or "Other" and (4) who Defendant has been unable to confirm receipt of a pre-adverse action notice;
- The settlement establishes a Maximum Common Fund of up to **Four Hundred Twenty Thousand Five Hundred and Sixty-Six Dollars (\$420,566.00)** as the maximum possible amount Defendant will pay under the settlement. The Maximum Common Fund includes all possible payments to the Settlement Class Members, Settlement Administration Expenses, Attorney's Fees and Expenses, and a General Release and Agreement Not to Seek Future Employment by Plaintiff;
- If approved by the Court, a payment shall be paid to Plaintiff in the amount of \$5,000.00 in exchange for executing a general release and his agreement to forego future employment;
- If approved by the Court, Settlement Administration Costs, estimated to be \$25,000.00, shall be paid to the approved Settlement Administrator;
- Class Counsel shall receive Attorney's Fees in an amount approved by the Court but not to exceed thirty three percent (33.33%) of the total settlement plus reimbursement of incurred costs;
- Each Disclosure and Authorization Class Member who timely submits a Claim Form shall receive their *pro rata* share of the **Three Hundred Sixty-Five Thousand and Sixty-Six Dollars (\$365,066.00)** allocated to the Disclosure and Authorization Class, less their proportional share of Class Counsel's Fees and Costs, their proportional share of Settlement Administration Costs, and their proportional share of Plaintiff's General Release and Agreement Not to Seek Future Employment;
- Each Pre-Adverse Action Subclass Member who timely submits a Claim Form shall receive their *pro rata* share of the **Fifty-Five Thousand and Five Hundred Dollars (\$55,500.00)** allocated to the Pre-Adverse Action Subclass, less their proportional share of Class Counsel's Fees and Costs, their proportional share of Settlement Administration Costs, and their proportional share of Plaintiff's General Release and Agreement Not to Seek Future Employment;

- Class Members have 60 days to opt-out and submit objections; 60 days to submit a Claim Form; and 90 days to negotiate settlement checks; and
- Unclaimed funds will revert to Defendant.

The foregoing is a brief summary of some of the terms of the settlement. Nothing in this Unopposed Motion is intended to supplant or supplement the plan language of the Joint Stipulation of Settlement, which comprehensively sets forth the terms of the Parties' proposed settlement and which the Parties intend to be the controlling settlement document.

II. ARGUMENT

A. The Settlement Class Should Be Certified for Settlement Purposes²

A class action may be maintained if the class fulfills the four "prerequisites" in Rule 23(a) and fits within one of the "types of class actions" under Rule 23(b). *UAW v. General Motors Corp.*, 497 F.3d 615, 625 (6th Cir. 2007). The Court must conduct a "rigorous analysis" to confirm Rule 23 is satisfied. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 347 (2011). Here, the Parties seek certification of the following classes of individuals, for the purposes of settlement only ("Settlement Class and Subclass"), respectively defined as:

Disclosure Class

All persons residing in the United States: (1) who applied for a position with Defendant during the Covered Period; and (2) about whom Defendant procured a consumer report during the Covered Period; and

Pre-Adverse Action Subclass

All persons residing in the United States: (1) who are members of the Disclosure Class; (2) who Defendant declined to hire; (3) who are marked in Defendant's system as "Failed Background Report," "Null" or "Other" and (4) who Defendant has been unable to confirm receipt of a pre-adverse action notice.

District courts are given broad discretion to determine whether class certification is

² Defendant does not oppose Plaintiff's request for class certification for settlement purposes only. Consistent with the Joint Stipulation of Settlement, Defendant reserves the right to challenge class certification, including all of the elements set forth below, if the Stipulation of Settlement is not preliminarily and finally approved and implemented or if judgment does not become final.

appropriate. *In re Whirlpool Corp. Front-Loading Washing Prods. Liab. Litig.*, 722 F.3d 838, 850 (6th Cir.2013). As explained below, certification of this Settlement Class satisfies Rule 23's requirements and is otherwise appropriate.

1. The Settlement Class is Ascertainable

“Before delving into the rigorous analysis required by Rule 23, a court should first consider whether a precisely defined class exists and whether the named plaintiffs are members of the proposed class.” *Thacker v. Chesapeake Appalachia, LLC*, 259 F.R.D. 262, 266 (E.D. Ky. 2009) (citing *Bentley v. Honeywell International Inc.*, 223 F.R.D. 471, 477 (S.D. Ohio 2004). “[C]lasses should be defined to specify a particular group,” so the court can “ascertain its membership in some objective manner.” *Kinder v. Northwestern Bank*, 278 F.R.D. 176, 182 (W.D. Mich. 2011); *In re Skelaxin (Metaxalone) Antitrust Litigation*, 299 F.R.D. 555, 567 (E.D. Tenn. 2014) (“[T]he class definition must be sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member of the proposed class.”) (Internal citations omitted).

Here, Defendant maintained a uniform background screening process and maintained detailed records of applicants for employment. The requirements for membership in the Disclosure Class are clearly delineated based on objective criteria: Consumers upon whom Defendant obtained a consumer report for employment purposes between June 7, 2019, and August 8, 2022, each of whom received the same FCRA disclosure. The same holds true for the Pre-Adverse Action Subclass, which consists of those members of the Disclosure Class who Defendant's records indicate may not have been hired because of their consumer reports and who Defendant cannot confirm received pre-adverse action notice, including a copy of their consumer report.³

³ For applicants where there is no evidence pre-adverse action notice was provided, the Parties have agreed to apply an inference pre-adverse action notice was not provided for the purposes of settlement and settlement alone.

2. Rule 23(a) Is Satisfied

a. Numerosity

This requirement mandates that “the class is so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). The “sheer number of potential litigants in a class, especially if it is more than several hundred, can be the only factor needed to satisfy Rule 23(a)(1).” *Bacon v. Honda*, 370 F.3d 565, 570 (6th Cir. 2004). Although there is no fixed numerical threshold for determining impracticability of joinder, a “‘substantial’ number of members will suffice.” *Davidson v. Henkel Corp.*, 302 F.R.D. 427, 436 (E.D. Mich. 2014) (certifying a class of 49 plaintiffs); *Curry v. SBC Comm’ns, Inc.*, 250 F.R.D 301, 310 (E.D. Mich. 2008) (noting that 40 class members is sufficient to satisfy the numerosity requirement). Here, there are over 14,000 identified individuals in the Disclosure Class and approximately 111 people in the Pre-Adverse Action Subclass, easily exceeding the numerosity threshold.

b. Commonality

There must be “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). This means class claims must depend upon a contention that is capable of class wide resolution. *Dukes*, 564 U.S. at 347. “[T]he commonality test is met when there is at least one issue whose resolution will affect all or a significant number of the putative class members.” *Fallick v. Nationwide Mutual Insurance Co.*, 162 F.3d 410, 422 (6th Cir. 1998). The threshold for demonstrating the commonality requirement is not high, as “complete identity of issues is not required,” *Merenda v. VHS of Michigan Inc.*, 296 F.R.D. 528, 536 (E.D. Mich. 2013), and is satisfied when there is one question common to the class, the resolution of which will advance the litigation. *See Whirlpool Litig.*, 722 F.3d at 852–53.

Here, Plaintiff alleges Defendant obtained his consumer report for employment purposes but failed to provide him a lawful disclosure, obtain his lawful authorization, or provide him with pre-adverse action notice, including a copy of his consumer report, before denying him employment based in whole or in part on his consumer report. Thus, Plaintiff's claims and, in turn, the claims of the Disclosure Class can be resolved by determining: (1) whether Defendant obtained his consumer report for employment purposes, and (2) whether the disclosure provided to him by Defendant satisfied the FCRA's disclosure and authorization requirements. These questions are common to the entirety of the Disclosure Class. The questions common to the Pre-Adverse Action Subclass are (1) whether Defendant used his consumer report to take an adverse employment action against him, and (2) whether Defendant failed to first provide him with notice and a copy of the report before taking the adverse employment action. Accordingly, Rule 23(a)'s commonality requirement is satisfied.

c. Typicality

The class representative's claims must be typical. Fed. R. Civ. P. 23(a)(3). "A claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory." *Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 561 (6th Cir. 2007). "A representative's claim may be considered typical, despite the fact that evidence relevant to his or her claim varies from other class members, some class members would be subject to different defenses, and the members may have suffered varying levels of injury. *Kerns v. Caterpillar, Inc.*, 2007 WL 2044092, at *5 (M.D. Tenn. July 12, 2007) (citing *Bittinger v. Tecumseh Products Co.*, 123 F.3d 877, 885 (6th Cir. 1997)); *see also Reese v. CNH America, LLC*, 227 F.R.D. 483, 487-88 (E.D. Mich. 2005). By pursuing his own claim, Plaintiff advanced the interests of the putative class. *Date v. Sony Elecs., Inc.*, 2013 WL

3945981, at *3 (E.D. Mich. July 31, 2013) (“Because all Class Members’ claims arise from the same course of conduct . . . their claims are based on the same legal theory and the typicality requirement, which is not onerous, is met.”)

In this case, Plaintiff alleges that Defendant engaged in a sufficiently standardized course of conduct. Plaintiff alleges that the same policies, forms, practices, and procedures applied equally to Plaintiff and to the members of the Disclosure and Authorization Class and Pre-Adverse Action Subclass. Although Defendant indicated that it would vigorously contest liability and class certification absent a settlement, there is sufficient information here to support Plaintiff’s contention that, for settlement purposes only, Plaintiff’s claims arise from the same underlying facts giving rise to the claims of the Settlement Class. Thus, Rule 23(a)’s typicality requirement is satisfied.

d. Adequacy of the Class Representative

Under Rule 23(a)(4), a class representative must “fairly and adequately protect the interests of the class.” As such, “(1) the representative must have common interests with unnamed members of the class, and (2) it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel.” *Int’l Union v. Ford Motor Co.*, 2006 WL 1984363, at *19 (E.D. Mich. July 13, 2006) (quoting *Senter v. General Motors Corp.*, 532 F.2d, 511, 525 (6th Cir. 1976)). Adequacy exists when the named plaintiff is a part of the class, possesses the same interest, suffered the same injury, and thus, seeks the same type of relief as the other class members. *See Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 562 (6th Cir. 2007) (quoting *Amchem*, 521 U.S. at 625–26).

Plaintiff is familiar with the conduct alleged, and he agreed from the onset of the litigation to represent the interests of the Settlement Class. Plaintiff is a member of the Disclosure Class

and Pre-Adverse Action Subclass, has the same interest in achieving maximum recovery, and there are no conflicting or antagonistic interests between him and the Class. In both his “individual” and “representative” role, Plaintiff has actively participated in the litigation. He has reviewed documents and provided invaluable insight regarding Defendant’s alleged practices. Without Plaintiff, this settlement would not have been possible. He has more than fulfilled his obligations as an adequate representative, thereby satisfying Rule 23(a)’s adequacy requirements.

**3. The Settlement Class Satisfies Rule 23(b),
Specifically Rule 23(b)(3)’s Predominance and Superiority**

a. Predominance

Rule 23(b)(3) requires that the questions of law or fact common to all members of the class predominate over questions pertaining to individual members. *In re American Med. Sys.*, 75 F.3d 1069, 1084 (6th Cir. 1996) (“[Rule 23](b)(3) parallels subdivision (a)(2) in that both require that common questions exist, but subdivision (b)(3) contains the more stringent requirement that common issues ‘predominate’ over individual issues.”) Said plainly, the predominance requirement tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623-24 (1997). When there is a single factual or legal question common to the class, the “predominance requirement is met if this common question is at the heart of the litigation.” *Powers v. Hamilton Cty. Pub. Def. Comm’n*, 501 F.3d 592, 619 (6th Cir. 2007). Common issues are at the heart of a case when there is generalized evidence that would prove or disprove an element of the action on a class-wide basis. *In re Cardizem CD Antitrust Litig.*, 200 F.R.D. 326, 339 (E.D. Mich. 2001); *see also Powers*, 501 F.3d at 619 (noting that “[c]ases alleging a single course of wrongful conduct are particularly well-suited to class certification”).

Here, the core facts common to the Class all stem from Defendant's use of consumer reports for employment purposes, and its practices when such reports contained information potentially disqualifying a person from employment or assignment. The process was sufficiently standardized for all Settlement Class Members. The predominating issue is whether Defendant's practices violated disclosure requirements set forth in 15 U.S.C. § 1681b(b)(2)(A)(i)-(ii) and the pre-adverse action notice requirement set forth in 15 U.S.C. § 1681b(b)(3)(A). These issues are the same as to every Settlement Class Member. There are no other questions requiring individual review or any other pertinent facts requiring an impermissible individualized analysis. Moreover, to the extent there are individual issues, questions of law and fact common to the class still predominate. For this reason, the Rule 23(b)(3) predominance requirement is satisfied.

b. Superiority

Rule 23(b)(3)'s superiority requirement is also satisfied. This requirement calls on the Court to determine whether a class action is superior to other methods for the fair and efficient adjudication of the controversy under Fed. R. Civ. P. 23(b)(3). *Windsor*, 521 U.S. at 615; *Swigart v. Fifth Third Bank*, 288 F.R.D. 177, 186 (S.D. Ohio 2012) ("A matter may be certified under Rule 23(b)(3) when common issues of fact and law predominate, and the class mechanism is superior to other methods of relief.") The factors to be considered in determining the superiority of the class mechanism are: (1) the interest in controlling individual prosecutions; (2) the existence of other related litigation; (3) the desirability of concentrating the litigation in the forum; and (4) manageability. *Olden v. LaFarge Corp.*, 383 F.3d 495, 507-08 (6th Cir. 2004). Class actions are particularly appropriate where multiple lawsuits would not be justified because of the small amount of money sought by the individual plaintiffs. *Carroll v. United Compucred Collections, Inc.*, 399 F.3d 620, 625-26 (6th Cir. 2005) (quoting *Windsor*, 521 U.S. at 617). With a class

settlement structure, a large group of claimants' claims can be adjudicated efficiently in one lawsuit.

Here, the amount in controversy for any individual claimant is relatively small, since the statutory damages available are between \$100.00 and \$1,000.00. *See* 15 U.S.C. § 1681n. Most individuals, and most attorneys, would have no interest in spending the time or dedicating the resources necessary to prosecute individual claims. As evidence thereof, none of the other hundreds of class members have similar claims pending against Defendant. Thus, "there is no indication that any class member wants to individually control his or her own separate action." *Calloway v. Caraco Pharm. Labs., Ltd.*, 287 F.R.D. 402, 408 (E.D. Mich. 2012). Consequently, absent a class settlement, it is doubtful there would be other avenue of relief for class members. *See, e.g., Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 345 (7th Cir. 1997). On these facts, Rule 23(b)(3)'s superiority requirement is thus satisfied, and Rule 23(b)(3)'s requirements, as a whole, are met.

4. Class Counsel Will Fairly and Adequately Represent the Class

Rule 23(g) requires that "a court that certifies a class must appoint class counsel." In doing so, the court "must consider:

- (i) the work counsel has done in identifying or investigating potential claims in the action;
- (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
- (iii) counsel's knowledge of the applicable law; and
- (iv) the resources that counsel will commit to representing the class."

Fed. R. Civ. P. 23(g)(A). "Class counsel must fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(2); *see also Meyers v. Dtna Trucks N.A., LLC*, 2014 WL 12531121,

at *6, n.4 (W.D. Tenn. Oct. 8, 2014) (noting that while adequacy of class counsel was once considered as part of the Rule 23(a)(4) analysis, it is now governed by Rule 23(g)); *accord Kinder*, 278 F.R.D. at 184, n.4.

These requirements are satisfied here. The class has been represented by Marc Reed Edelman. Mr. Edelman has been practicing law for twenty-seven years. Mr. Edelman identified the FCRA violations alleged in the Amended Complaint and has leveraged his experience to obtain a favorable class-wide resolution. Since 2016, Mr. Edelman has been designated as Class Counsel in over 20 FCRA class action lawsuits throughout the country, including the Western District of Tennessee. (Exhibit “B,” Edelman Decl.)

B. The Settlement Merits Preliminary Approval

Having demonstrated that certification of the Disclosure and Authorization Class and Pre-Adverse Action Subclass is warranted and appropriate, the Parties turn to preliminary approval of their settlement. As with certification, the Parties maintain that preliminary approval is warranted and appropriate. The Court incorporates a two-stage process to review a class action settlement - preliminary and final approval. Rule 23(e). Fed. R. Civ. P. 23(e)(1)–(2) (eff. Dec. 1, 2018); *see* Conte & Newberg, 4 *Newberg on Class Actions*, § 11.25, at 38–39 (4th ed. 2002). The first step is a “preliminary, pre-notification hearing to determine whether the proposed settlement is within the range of possible approval.” *In re Packaged Ice Antitrust Litig.*, 2010 WL 3070161, at *4 (E.D. Mich. Aug. 2, 2010). Before the Court can grant preliminary approval and direct notice to the classes, Plaintiff must “show that the court will likely be able to approve the proposal under Rule 23(e)(2).” Fed. R. Civ. P. 23(e)(2) (eff. Dec. 1, 2018). Approval under Rule 23(e)(2) requires that the settlement be fair, reasonable, and adequate taking into consideration the following factors: (1) whether the class representative and class counsel have

adequately represented the class; (2) whether the settlement was negotiated at arm's length; (3) whether the settlement treats class members equitably relative to each other; and (4) whether the relief provided for the class is adequate. Fed. R. Civ. P. 23(e)(2) (eff. Dec. 1, 2018).

Here, Plaintiff and Class Counsel have adequately represented the Class. By agreeing to serve as Class Representative, Plaintiff sacrificed his own self-interests. Instead of pursuing other potential employment-related claims against Defendant individually, Plaintiff agreed to serve as Class Representative in an action for statutory damages with no expectation of a recovery in excess of any class recovery. Concomitantly, Class Counsel identified the claims and leveraged his experience in FCRA class actions into a favorable outcome for the Class. Ultimately, Settlement Class Members will reap the rewards of Plaintiff's and Class Counsel's commitment and expertise, monetizing claims they didn't even know existed without exerting any effort except filing a claim form.

The Settlement was negotiated at arms-length with a nationally recognized FCRA class action mediator. *See Leonhardt v. ArvinMeritor, Inc.*, 581 F. Supp. 2d 818, 838 (E.D. Mich. 2008) (finding adversarial nature of the litigation supported the "arm's length" factor of settlement approval). While negotiations were at times contentious, both sides were represented by experienced FCRA class action attorneys aware of the risks and pitfalls inherent in prolonged class action litigation. *Sheick v. Auto. Component Carrier, LLC*, 2010 WL 3070130, at *13 (E.D. Mich. Aug. 2, 2010) (arm's-length negotiations conducted "by adversarial parties and experienced counsel" are indicative of a settlement's fairness, reasonableness, and adequacy).

To approve a settlement that would bind class members, a district court must conclude it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). Several factors guide this inquiry: (1) the likelihood of success on the merits weighed against the amount and form of the relief offered

in the settlement; (2) the risks, expense, and delay of further litigation; (3) the judgment of experienced counsel who have competently evaluated the strength of their proofs; (4) the amount of discovery completed and the character of the evidence uncovered; (5) whether the settlement is fair to the unnamed class members; (6) objections raised by class members; (7) whether the settlement is the product of arm's length negotiations as opposed to collusive bargaining; and (8) whether the settlement is consistent with the public interest. *See, e.g., Intl. Union, United Auto., Aerospace, and Agr. Implement Workers of Am. v. Gen. Motors Corp.*, 497 F.3d 615, 631 (6th Cir. 2007). As explained below, each factor, when applicable, weighs in favor preliminary approving the settlement at this time.

a. **The likelihood of success on the merits weighed against the amount and form of relief offered in the Settlement**

“The most important of the factors to be considered in reviewing a settlement is the probability of success on the merits. The likelihood of success, in turn, provides a gauge from which the benefits of the settlement must be measured.” *Poplar Creek Development Co. v. Chesapeake Appalachia, LLC*, 636 F.3d 235, 245 (6th Cir. 2011) (citations omitted). While the Court must “weigh the plaintiff’s likelihood of success on the merits against the amount and form of relief offered in the settlement,” the Court need not “decide the merits of the case or resolve unsettled legal questions.” *Johnson v. W2007 Grace Acq. I, Inc.*, 2015 WL 12001269, at *7 (W.D. Tenn. Dec. 4, 2015); *see also Todd v. Retail Concepts, Inc.*, 2008 WL 3981593, at *4 (M.D. Tenn. Aug. 22, 2008). The “ultimate question is whether the interests of the class as a whole are better served if the litigation is resolved by the settlement rather than pursued.” *IUE-CWA v. General Motors Corp.*, 238 F.R.D. 583, 595 (E.D. Mich., Nov. 1, 2006). That is, the court must balance the benefits of a certain and immediate recovery through settlement against the inherent risks of litigation.

See, e.g., Bennett v. Behring Corp., 737 F.2d 982, 986 (11th Cir. 1984); *Reed v. General Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983).

Here, recovery under the proposed settlement is favorable for the estimated 14,000 Class Members in light of the inherent uncertainty in any litigation and the risks specific to this case. During the course of litigation, and absent settlement, Defendant would have had opportunities to derail the claims with defenses to the Amended Class Action Complaint's allegations. Simply put, Plaintiff and the Settlement Class will face significant obstacles to obtaining a settlement under equal or better terms than those for which the Parties presently seek the Court's approval.

Presumably, Defendant will contest any efforts to certify a class and will challenge Plaintiff's and the absent class members standing at the class certification phase. If a class were to be certified, Defendant would most likely file an interlocutory appeal pursuant to Rule 23(f). If the interlocutory appeal proved unsuccessful, Defendant would most likely move for decertification or appeal the class certification decision. Any one of these challenges could significantly prolong the litigation at considerable expense to Plaintiff and potentially result in no recovery for Class Members. With the Settlement, these uncertainties and risks are avoided across all phases of litigation. Moreover, even if Plaintiff was to ultimately prevail on class certification, Defendant would still have the opportunity to move the Court for summary judgment.

Overcoming summary judgment and prevailing on liability at trial would not ensure class-wide recovery. Absent this settlement, to otherwise recover any statutory damages under the FCRA, Plaintiff and the Class Members must not only prove that Defendant failed to comply with the statutory requirements but did so willfully. *See* 15 U.S.C. § 1681n(a); *Garland v. Memphis-Shelby County Airport Authority*, 2011 WL 13090678, at *4 (W.D. Tenn. July 19, 2011) (recognizing proving willfulness places a heavy burden on a plaintiff). Although Plaintiff contends that the

violations were willful, Defendant denies this contention and will contest willfulness if the litigation proceeds. If Defendant was to prevail on willfulness, there would be no recovery for the class. *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); *Lewis v. Southwest Airlines Co.*, 2018 WL 400778, at *5 (N.D. Tex. Jan. 11, 2018) (summary judgment for defendant on issue of willfulness). Simply put, both Parties recognize and appreciate the expense and risks inherent in proceeding to trial.

A negotiated settlement that provides immediate relief is preferable to protracted litigation and an uncertain outcome. Weighed against the risks associated with litigation, the proposed settlement is fair, reasonable, and adequate. *To wit*, the proposed settlement compares favorably to the limited range of damages available under the FCRA that could potentially be recovered at trial contingent upon a finding of willfulness. Plaintiff seeks to recover compensation under 15 U.S.C. § 1681n(a)(1)(A), (2), and (3) for himself and the other Class Members consisting of (a) statutory damages of not less than \$100.00 and not more than \$1,000.00; (b) punitive damages, (c) attorney's fees and costs. However, as Section 1681n(a) of the FCRA indicates, proof of noncompliance with the technical requirements *per se* does not equate to a finding of willfulness. And, even if Plaintiff were to establish liability for willful noncompliance, the determination as to the size of the award is left to the discretion of the jury, which could possibly award no damages.

The settlement proposed secures an estimated gross monetary award to each Disclosure Class Member in the amount of approximately \$26.00 subject to reduction for attorneys' fees, notice and administration costs and class representative's general release compensation. The district court in *Hillson v. Kelly Services Inc.*, 2017 WL 3446596, at *3 (E.D. Mich. Aug. 11, 2017), summarized

the details of approved FCRA disclosure settlements, all of which are comparable to the Settlement in this case:

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 \$30.00 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 \$25.00 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 \$26.00); *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 \$33.00, \$40.00, and \$44.00).

Therefore, the Settlement presents Disclosure Class Members with the opportunity for a fair and immediate recovery consistent with prior recoveries in other FCRA disclosure class actions.

The same holds true for the Pre-Adverse Action Subclass members, who will receive gross recoveries equivalent to \$500.00 per subclass member, also subject to reduction for attorneys' fees, notice and administration costs and class representative's general release compensation. This recovery compares to similar FCRA class actions alleging violations of 15 U.S.C. § 1681b(b)(3)(A). See *Washington v. DialogDirect, Inc.*, Case No. 2:21-cv-10445-LVP-RSW (E.D.Mich. April, 2022)(approving class action settlement for alleged violations of pre-adverse action notice requirement with class members receiving gross recovery of \$296.00); *Wiley v. TA Operating LLC, d/b/a Travel Centers of America*, Case No. 1:21-cv-01093 (N.D. Ohio, Dec. 13, 2022)(Approving class action settlement for alleged violations of pre-adverse action notice requirement, with class members receiving \$640 gross recovery).

This factor, therefore, weighs in favor of the Court granting preliminary approval of the Settlement.

b. The potential risks, expense, and likely duration of the litigation

“[M]ost class actions are inherently complex and settlement avoids the costs, delays, and multitude of other problems associated with them.” *In re Southeastern Milk Antitrust Litig.*, 2012 WL 2236692, at *3 (E.D. Tenn. June 15, 2012) (citing *In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 985, 1013 (S.D. Ohio 2001)); *see also Gokare v. Fed. Express Corp.*, 2013 WL 12094870, at *4 (W.D. Tenn. Nov. 22, 2013) (granting final approval, court noted settlement “secures a substantial benefit for the Class in a highly complex action, undiminished by further expenses, and without delay, costs and uncertainty of protracted litigation”).

Here, as detailed above, there would be many pitfalls on the road to class-wide recovery. If the settlement is approved, Plaintiff and the Settlement Class have the opportunity to monetize their claims in the short term and eliminate all risk without incurring additional expenses. Accordingly, this factor weighs in favor of the Court granting preliminary approval of the Settlement.

c. Class Counsel endorses the Settlement

Class Counsel believes this settlement is in the best interest of the Class, and merits approval by the Court. (Exhibit “B,” Edelman Decl., ¶¶ 10–11). Class Counsel’s approval and endorsement of the settlement also weighs in favor of approval. *See Olden v. Gardner*, 294 F. App’x 210, 219 (6th Cir. 2008) (a court “should defer to the judgment of experienced counsel who has competently evaluated the strength of his proofs”); *Dallas v. Alcatel-Lucent USA, Inc.*, 2013 WL 2197624, at *9 (E.D. Mich. May 20, 2013) (“Plaintiffs’ counsel’s informed and reasoned

judgment and their weighing of the relative risks and benefits of protracted litigation are entitled to deference.”).

d. Discovery was sufficient

The Parties exchanged targeted discovery intended to provide Plaintiff with the information required to evaluate his claims. Consequently, Class Counsel unequivocally had sufficient information to determine the size of the class, the scope of the violations and the value of the case. Class Counsel concluded the Settlement to be a fair compromise.⁴ This is all that is required for this factor to support approval. *See In re Regions Morgan Keegan Securities, Derivative, and ERISA Litig.*, 2016 WL 8290089, at *5 (W.D. Tenn. Aug. 2, 2016). As such, this factor weighs in favor of granting this Motion.

e. The Settlement is fair to unnamed class members

With this factor, courts are to evaluate whether named plaintiffs receive “preferential treatment,” while the relief provided to the unnamed class members is “perfunctory.” *Vassalle v. Midland Funding LLC*, 708 F.3d 747, 755 (6th Cir. 2013). That is not the case here. As Plaintiff has disclosed to the Court, he is receiving \$5,000.00, which is neither excessive nor the product of improper negotiations. Unlike other Settlement Class members, Plaintiff is releasing all other potential claims he may have against Defendant and agreeing he will not apply for employment in the future. Settlement Class members are only releasing their FCRA claims. Moreover, relief provided to the unnamed class members is hardly perfunctory. It is identical to the class relief obtained by Plaintiff and compares favorably to the relief obtained in similar class actions. *See Office and Professional Employees*, 311 F.R.D. at 458 (noting factor “clearly is satisfied here, as

⁴ The class data and other information exchanged informally was independently verifiable and would have been obtained by Plaintiff during discovery. Defendant’s decision to voluntarily provide Plaintiff’s counsel with the information he requested unquestionably enabled the Parties to conserve resources and avoid burdening the Court with a litany of discovery disputes and motion practice.

the settlement provides no special benefits for the class representatives beyond what the unnamed Class Members will receive”).

f. The reaction of absent class members

Class Counsel is not aware of any reactions from unnamed Settlement Class Members. The fairness hearing and any objections will provide the Court with the means to evaluate the response of the Settlement Class.

g. The Settlement was the product of arm’s length negotiations

“Courts presume the absence of fraud or collusion in class action settlements unless there is evidence to the contrary.” *IUE-CWA*, 238 F.R.D. at 598. As noted above, the Settlement was obtained after a mediation session with an experienced FCRA class action mediator. This factor, therefore, weighs in favor of granting this Motion.

h. The public interest is served by the Settlement

There is an “overriding public interest in favor of settlement of class action lawsuits.” *Manners v. American General Life Insurance Co.*, 1999 WL 33581944, at *19 (M.D. Tenn. Aug. 11, 1999) (quoting *Whitford v. First Nationwide Bank*, 147 F.R.D. 135, 140 (W.D. Ky. 1992)). Here, the public interest is served by the Settlement, as the existence of the Settlement in the public record serves as a deterrent to other users of consumer reports for employment purposes and consumer reporting agencies.

C. The Proposed Class Notice Should be Approved

After approving a proposed class settlement, the Court “must direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). Further, “due process requires that notice to the class be ‘reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an

opportunity to present their objection.” *Vassalle*, 708 F.3d at 759 (quoting *UAW*, 497 F.3d at 629). “All that the notice must do is fairly apprise the prospective members of the class of the terms of the proposed settlement so that class members may come to their own conclusions about whether the settlement serves their interests.” *Id.*

The proposed Class Notice, attached to the Settlement Agreement (Exhibit “A”, Ex. “1”), is in accord with both Rule 23(e)(1) and due process. It plainly describes the nature of the Action; the definition of the Settlement Class and Subclass; the claims in the case; the details of the Settlement; Class Members’ right to object to the Settlement; the adequacy of representation; the attorneys’ fees, costs, and expenses to be requested by Class Counsel; the deadline for submitting objections; the binding effect of a judgment; and Class Members’ right to appear and be heard at a fairness hearing. *See, e.g., In re Regions Morgan Keegan Securities*, 2013 WL 12110279, at *4 (W.D. Tenn. Aug. 6, 2013) (notice sufficient where it “describes the nature of the class action, the proposed settlement terms, the proposed Plan of Allocation, and the requested attorney’s fees and expenses in detail” and it was “written to be understood by non-attorneys.”) The Notice, therefore, should be approved.

D. The Court Should Approve Pertinent Dates in Connection with the Final Approval Hearing

In connection with preliminary approval of the Settlement, the Court must set a final approval hearing date, dates for mailing notices, deadlines for objecting to the class agreement for submission of a petition for attorneys’ fees, and other related deadlines. Subject to the Court’s calendar, the Parties propose the following schedule:

Mailing of Class Notice	10 days after Defendant delivers the class list to the Settlement Administrator
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Motion for Attorney's Fees	At least 30 days before objection deadline
Deadline to file claims	45 days after date notice is mailed by settlement administrator
Objections to settlement and requests for exclusion from settlement	45 days after date notice is mailed by settlement administrator
Motion for final approval and response to objections to settlement	At least 14 days before final fairness hearing
Final approval and fairness hearing	TBD

III. CONCLUSION

The Settlement meets all requirements of Rule 23; the Settlement is fair, adequate, and reasonable and meets the criteria for approval; and the Proposed Class Notice satisfies the requirements of due process. Defendant does not object to the Settlement. Plaintiff, therefore, respectfully requests that the Court grant this Motion and award any additional relief the Court deems warranted under the circumstances.

Dated this 28th day of December, 2023.

/s/ Marc R. Edelman
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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2023, I electronically filed this Memorandum in Support of Plaintiff's Motion for Preliminary Approval of Class Settlement and Notice of Class Settlement with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the attorneys of record:

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Attorneys for Defendant

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

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

GREGORY STEWART, on behalf of)
himself and on behalf of all others)
similarly situated,)
)
Plaintiff,)
)
v.)
)
BAPTIST MEMORIAL HEALTH)
CARE CORPORATION,)
)
Defendant.)

No. 2:21-cv-02377-SHM-cgc

JOINT STIPULATION OF CLASS SETTLEMENT

Plaintiff, Gregory Stewart (“Plaintiff”), individually and on behalf of the putative class, and Defendant, Baptist Memorial Health Care Corporation (“Defendant”) (Plaintiff and Defendant, collectively, the “Parties”), enter into this Joint Stipulation of Class Settlement (“Stipulation,” “Settlement,” or “Stipulation of Settlement”) to settle the issues between them asserted in this action. This Stipulation is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (defined below), upon and subject to the terms and conditions of this Stipulation and subject to the Court’s approval.

I. RECITALS

1. On June 7, 2021, Plaintiff filed a class action complaint, styled *Stewart v. Baptist Memorial Health Care Corporation*, in the District Court for the Western District of Tennessee, Western Division (the “Action”). (Doc. No. 1.) On December 6, 2021, Plaintiff filed an Amended Class Action Complaint and Demand for Jury Trial. (Doc. No. 13-1.)

2. Plaintiff has asserted causes of action against Defendant for alleged violations of the Fair Credit Reporting Act (“FCRA”). Specifically, Plaintiff alleged claims for relief for Defendant’s purported violations of 15 U.S.C. §§ 1681b(b)(2)(A)(i)–(ii) alleging, *inter alia*, Defendant obtained and used consumer reports for employment purposes on Plaintiff and other class members without making a lawful disclosure. *Id.* Plaintiff has also asserted a claim for relief for Defendant’s purported violations of 15 U.S.C. § 1681b(b)(3)(A) alleging Defendant disqualified him and other class members from employment without providing the required notice of intent to take adverse action based on the results of their background reports. The Parties engaged in early exchanges of discovery and negotiations during the pleadings phase of this lawsuit, both with respect to Plaintiff’s original Class Action Complaint and his later Amended Class Action Complaint. Thereafter, the Parties engaged in additional informal exchanges of discovery in connection with the mediation of Plaintiff’s claims. On June 20, 2023, the Parties engaged in mediation with a neutral mediator with special expertise in this area. The neutral mediator helped the Parties negotiate a fair class-wide settlement.

3. The Parties have reached a compromise in principle on a class basis, contingent upon the negotiation and execution by the Parties of this Stipulation being preliminarily and finally approved by the Court. On August 31, 2023, the Parties executed a Memorandum of Understanding (“MOU”), which memorialized the material terms of the Settlement agreed to by the Parties on June 20, 2023. This Stipulation of Settlement is intended to formalize the Parties’ June 20, 2023, MOU.

4. Defendant denies that it has engaged in any wrongdoing, does not admit or concede any actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been or could have been alleged against it in the Action. Notwithstanding the foregoing,

Defendant has agreed to this Settlement Agreement because of the substantial expense of litigation, the length of time necessary to resolve the issues presented, the inconvenience involved, and the disruption to its business operations.

5. Plaintiff, the Settlement Class, and Class Counsel are aware that Defendant has significant defenses to the allegations in this Action upon which Defendant might prevail and that, as a result, Plaintiff and the Settlement Class may not receive any benefit or consideration for the claims that have been asserted against Defendant. Based upon the analysis and evaluation of several factors, Class Counsel recognizes the substantial risks of continued litigation and delays, including the likelihood that the claims, if not settled now, might not result in any recovery whatsoever for the Settlement Class.

6. Class Counsel have conducted a thorough study and investigation of the law and facts relating to the claims that have been asserted as well as a thorough study and investigation of the scope and identity of the Settlement Class, and have concluded, considering the benefits of this settlement, as defined below, and the risks and delays of further litigation, that this settlement is fair and reasonable and in the best interests of the Settlement Class.

7. Subject to the approval of the Court, the Parties wish to settle this Action, effect a compromise, and settle the claims released in Section V below.

8. The Parties therefore agree that the claims referenced herein shall be settled, compromised, and released, subject to the approval of the Court, upon and subject to the following terms and conditions:

II. DEFINITIONS¹

1. Action.

The above-entitled Action, styled *Stewart v. Baptist Memorial Health Care Corporation*, Case No. 2:21-cv-02377-SHM-cgc.

2. Claim Form.

The portion of the Disclosure Class Notice and Pre-Adverse Action Subclass Notice, substantially in the forms attached as **Exhibit 1** (the Disclosure Class Notice- Corrected) and **Exhibit 2** (the Adverse Action Subclass Notice), that must be signed and returned, or properly submitted online by the Response Date for the Settlement Class Member to receive his or her share of the Final Common Fund.

3. Class Counsel.

Marc R. Edelman of Morgan & Morgan, P.A.

4. Class Counsel Attorney's Fees and Costs.

Class Counsel's fees and costs in connection with the litigation and settlement of the Action, including, subject to Court approval, up to one-third (33.33%) of the Maximum Common Fund. Attorneys' Costs shall include all customary, reasonable and documented out-of-pocket expenses incurred by Plaintiff in the prosecution of this action, including Plaintiff's share of expenses related to the mediation in this Action and shall not exceed **Five Thousand Dollars (\$5,000.00)**, subject to court approval. Defendant shall not oppose the request for Attorneys' Expenses.

¹ Additional terms are defined throughout the Stipulation.

5. Class Notice(s).

The notices attached as **Exhibits 1 and 2**, subject to Court approval, and which the Settlement Administrator will mail, via first-class U.S. mail, to each Settlement Class Member to explain the terms of the settlement, including the procedure for objecting to the Stipulation of Settlement.

6. Class Settlement Administration Costs.

All costs for the Settlement Administrator to administer the class settlement, including with respect to the Class Notices, Settlement Payments, completing the Settlement Administration after the initial Settlement Payment checks are distributed and sending the additional notices to appropriate federal and state officials as required under the Class Action Fairness Act (“CAFA”). These costs will be paid from the Final Common Fund, subject to Court approval.

7. Class Representative or Plaintiff.

Plaintiff Gregory Stewart.

8. Court.

The United States District Court for the Western District of Tennessee, Western Division.

9. Covered Period.

The period from June 7, 2019, through August 8, 2022.

10. Days.

All references to “days” in this Stipulation of Settlement shall refer to calendar days, unless otherwise specified, provided that if a deadline provided for in the Stipulation of Settlement falls on a weekend or holiday, that deadline shall be the next day that is not weekend or holiday.

11. Defense Counsel.

Paul E. Prather, Chad J. Kaldor, and Kaitlyn A. Hansen of Littler Mendelson, P.C.

12. Disclosure Class.

All persons residing in the United States: (1) who applied for a position with Defendant during the Covered Period; and (2) about whom Defendant procured a consumer report during the Covered Period. The Parties understand that the Disclosure Class includes 14,041 individuals.

13. Disclosure Class Notice.

The notice that the Class Administrator shall send to members of the Disclosure Class, substantially in the form attached as **Exhibit 1**, subject to Court approval.

14. FCRA State/Local Equivalents.

Any statute or regulation or any state, commonwealth, U.S. territory, locality/municipality, the District of Columbia, or Puerto Rico, that has a similar purport or effect as the federal Fair Credit Reporting Act, including regulating the collection or reporting of background checks/consumer information and related actions.

15. Final Approval Hearing.

The Court's hearing following the Settlement Administrator's work to locate and send Class Notices to all Settlement Class Members, determine the amount payable to each Settlement Class Member, and perform other settlement-related administrative tasks, to approve final administration and payment of the settlement.

16. Final Approval Order.

The Court's Order granting final approval of this Stipulation of Settlement.

17. Final Common Fund.

The total amount Defendant shall be responsible to pay for the Settlement. The amount of the Final Common Fund to be paid by Defendant will vary depending on the outcome of the claims process. After the claims process has been completed, the Claims Administrator will calculate the

amount of the Final Common Fund, and, if the Court approves the Settlement and it becomes effective, Defendant will be obligated to pay that amount. Section III.3 includes more detailed information regarding the calculation and distribution of the Final Common Fund.

18. Final Effective Date.

The thirtieth (30th) day after the Final Judgment is entered, unless there are objections in which case the “Final Effective Date” means the date after the time to file any appeal (including any appeal relating to Class Counsel’s Attorneys’ Fees and any objections), request an extension of the time to appeal, or the final disposition of any appeal and final disposition of any further proceedings in the district court or appellate court has lapsed, whichever is later. If no objectors, then the Settlement shall be effective 7 days after the Final Judgment is entered.

The Parties intend that the Stipulation of Settlement shall not become effective until the Court’s Final Approval Order has become completely final and until there is no timely recourse by an appellant or objector who seeks to contest the settlement. The Parties may waive any applicable appeals periods by mutual agreement.

19. Final Judgment.

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 Stipulation. The “Judgment” shall become the “Final Judgment” on 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, and when no further appeals are possible, including review by the United States Supreme Court.

20. General Release.

The separate individual release agreement, which includes a full release of all claims Plaintiff may have against Defendant and which Plaintiff will sign in exchange for **Five Thousand Dollars (\$5,000.00)** (the “General Release Consideration”). This amount, if approved by the Court, shall be paid from the Final Common Fund and shall be in addition to Plaintiff’s share of the Final Common Fund.

21. Maximum Common Fund.

The maximum amount that Defendant will pay under this Stipulation under any circumstance whatsoever, which is **Four Hundred Twenty Thousand Five Hundred and Sixty-Six Dollars (\$420,566.00)**. The Maximum Common Fund includes all possible payments to the Settlement Class Members, Settlement Administration Expenses, Attorney’s Fees and Expenses, and the General Release by Plaintiff.

22. Parties.

Plaintiff and Defendant.

23. Pre-Adverse Action Subclass.

All persons residing in the United States: (1) who are members of the Disclosure Class; (2) who Defendant declined to hire; (3) who are marked in Defendant’s system as “Failed Background Report, “Null” or “Other” and (4) who Defendant has been unable to confirm receipt of a pre-adverse action notice. The Parties understand and intend that the Pre-Adverse Action Subclass includes 111 individuals.

24. Pre-Adverse Action Subclass Notice.

The notice that the Class Administrator shall send to members of the Pre-Adverse Action Subclass, substantially in the form attached as **Exhibit 2**, subject to Court approval.

25. Preliminary Approval Order.

The Court's Order granting preliminary approval of this Stipulation of Settlement.

26. Released Claims.

All claims of any and every kind arising, in whole or in part, from or in any way related to Defendant's procurement and/or use of consumer reports or investigative consumer reports for employment purposes during the Covered Period, including all claims brought or that could have been brought under the Fair Credit Reporting Act for statutory, actual and punitive damages, all FCRA State/Local Equivalents, express or implied breach of contract, tort, equity, unfair competition, or any other type of claim based on any federal, state or municipal statute, law, ordinance or regulation. Released Claims also include a waiver of California Civil Code § 1542 and like laws in other jurisdictions, and thus releases all known and unknown claims arising from or related to the facts and claims alleged or that could have been alleged in the Complaint.

27. Released Parties.

The "Released Parties" include all of the following: (i) Defendant, (ii) Defendant's past, present, and future parents, subsidiaries, affiliates, divisions, joint ventures, licensees, franchisees, and any other legal entities, whether foreign or domestic, that are owned or controlled by Defendant, and (iii) the past, present and future shareholders, officers, directors, members, agents, employees, consultants, representatives, fiduciaries, insurers (including current and former agents), reinsurers, attorneys, legal representatives, predecessors, successors, and assigns of Defendant and the entities listed in (ii). The Released Parties, other than Defendant itself, are intended third party beneficiaries of the parties' Settlement.

28. Response Deadline.

The deadline by which members of the Settlement Class must postmark their claim using the appropriate Claim Form (**Exhibits 1 and 2**) and/or a written notice of opt-out or objection to

the preliminarily approved settlement, as applicable. This deadline shall be thirty (30) days after the date the Settlement Administrator mails the Notice to Settlement Class Members.

29. Settlement Administrator.

The Settlement Administrator will be American Legal Claims Services.

30. Settlement Class.

The combined Disclosure Class and Pre-Adverse Action Subclass once they are permanently certified on the Final Effective Date.

31. Settlement Class Member.

Any individual member of the Disclosure Class and/or Pre-Adverse Action Subclass.

32. Settlement Payment.

The individualized award to each Settlement Class Member. For members of the “Disclosure Class” as well as the “Pre-Adverse Action Subclass,” the Settlement Payment is derived as a pro rata share to be determined in accordance with the methodology outlined in Section III.3 to determine the final amount payable by Defendant.

III. RELIEF AND BENEFITS

1. Certification of the Settlement Class.

For purposes of effectuating this Stipulation and Settlement only, the Parties agree jointly to request that the Court certify the Disclosure Class and Pre-Adverse Action Subclass. On the Final Effective Date, the Disclosure Class and Pre-Adverse Action Subclass shall become the Settlement Class, unless the Final Judgment does not become final. In the event the Stipulation of Settlement is not preliminarily and finally approved and implemented, or the Final Judgment does not become final, the Disclosure and Pre-Adverse Action Subclasses are dissolved without prejudice or inference regarding the appropriateness of class certification and thereafter the issue

of class certification will be decided *de novo*, and Defendant is not precluded from challenging class certification.

The Parties have reached a pre-certification compromise in principle on a class basis, pursuant to the allegations in the Complaint, contingent upon the negotiation and execution by the Parties of this final agreement and this final agreement being approved by the Court. Defendant denies it has engaged in any wrongdoing, does not admit or concede any actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been or could have been alleged against it in the Action, denies that the claims asserted by Plaintiff are suitable for class treatment other than for settlement purposes, and denies that it has any liability whatsoever, but has agreed to this Stipulation of Settlement because of the substantial expense of litigation, the length of time necessary to resolve the issues presented, the inconvenience involved, and the disruption to its business operations of continued litigation of this dispute. Nothing in this Stipulation of Settlement shall be construed as an admission by Defendant or any of the Released Parties that this Action or any similar case is amenable to class certification. Furthermore, nothing in this Stipulation of Settlement shall prevent Defendant from seeking decertification of a certified class in the future if the Court does not issue a Final Approval Order and/or there is no Final Judgment.

2. Allocation of Monetary Benefits to the Settlement Class.

The Parties agree that the Maximum Common Fund is the maximum possible amount Defendant may be required to pay in connection with this Stipulation of Settlement. Defendant shall have no obligation under any circumstances whatsoever to pay any amount in excess of the Maximum Common Fund and shall have no obligation to advance the Final Common Fund or any other amount to the Settlement Administrator prior to the Final Effective Date.

In exchange for the release and waivers of claims described below, the maximum gross amount of **Three Hundred Sixty-Five Thousand and Sixty-Six Dollars (\$365,066.00)** shall be allocated from the Maximum Common Fund for payments to the Disclosure Class. Members of the Disclosure Class must complete and submit a timely, valid Claim Form (**Exhibit 1, p. 7**) to receive a payment. After required deductions are made for Court-approved Class Counsel Attorneys' Fees and Costs, Class Settlement Administration Costs, and the General Release Consideration, a net portion of this amount shall be distributed on a pro rata basis to members of the Disclosure Class who submitted a completed, timely, and valid Claim Form.

In exchange for the release and waivers of claims described below, the maximum gross amount of **Fifty-Five Thousand and Five Hundred Dollars (\$55,500.00)** shall be allocated from the Maximum Common Fund for payments to the Adverse Action Class. Members of the Adverse Action Class must complete and submit a timely, valid Claim Form (**Exhibit 2, p. 7**) to receive a payment. After required deductions are made for Court-approved Class Counsel Attorneys' Fees and Costs and Class Settlement Administration Costs, a net portion of this amount shall be distributed on a pro rata basis to members of the Pre-Adverse Action Subclass who submitted a completed, timely, and valid Claim Form.

3. Calculation of the Final Common Fund.

The Settlement Administrator shall determine the Final Common Fund as follows on or after the Final Effective Date:

- a. Multiply the number of complete, timely, and valid Claim Forms from members of the Disclosure Class by \$26 (the "Gross Disclosure Class Payment)." Reduce the Gross Disclosure Class Payment by an amount that covers the pro rata share of the

Class Counsel Attorneys' Fees and Costs, Class Settlement Administration Costs, and the General Release Consideration (the "Net Disclosure Class Payment").

- b. Multiply the number of complete, timely, and valid Claim Forms from members of the Pre-Adverse Action Class by \$500 (the "Gross Pre-Adverse Action Class Payment)." Reduce the Gross Pre-Adverse Action Class Payment by an amount that covers the pro rata share of the Class Counsel Attorneys' Fees and Costs and Class Settlement Administration Costs (the "Net Pre-Adverse Action Class Payment").
- c. Add the following amounts to determine the Final Common Fund: (a) the Net Disclosure Class Payment; (b) the Net Pre-Adverse Action Class Payment; (c) Class Counsel Attorneys' Fees and Costs; (e) Class Settlement Administration Costs; and (f) the General Release Consideration.

To further illustrate the foregoing, if there are 5,000 complete, timely, and valid Claim Forms submitted by members of the Disclosure Class and 50 complete, timely, and valid Claim Forms submitted by Pre-Adverse Action Class Members, the Net Disclosure Class Payment would be \$76,310.00 and the Net Pre-Adverse Action Class Payment would be \$14,675.00. Adding those numbers to estimated Class Settlement Administration Costs (\$25,000.00) Class Counsel Attorneys' Fees (\$138,787.00), Class Counsel Costs (\$5,000.00), and General Release Consideration (\$5,000.00) – all of which are subject to court approval, the Final Common Fund payable by Defendant would be \$264,772.00.

Within fourteen (14) days after receiving the Settlement Administrator's calculation of the Final Common Fund, Defendant shall deposit such amount in an account that is established and maintained by the Settlement Administrator.

4. Taxes.

The Parties agree the payments to each Settlement Class Member are not wages, that each Settlement Class Member will be solely responsible for correctly characterizing this payment for tax purposes, and for paying any taxes owed on this payment, and that the Settlement Administrator on Defendant's behalf will issue to each Settlement Class Member an IRS Form 1099 for this payment. The Parties also agree that any approved General Release Consideration to Plaintiff is not wages, Plaintiff will be solely responsible for correctly characterizing this payment for tax purposes and for paying any taxes owed on this payment, and that the Settlement Administrator on Defendant's behalf will issue to Plaintiff an IRS Form 1099 for this payment.

5. Plaintiff's General Release Consideration.

Plaintiff's General Release Consideration, if approved by the Court, shall be paid from the Final Common Fund and shall be in addition to Plaintiff's share of the Final Common Fund. The Settlement Administrator shall pay any approved General Release Consideration within seven (7) days after the later of the date Defendant deposits the Final Common Fund or the date Plaintiff signs the General Release.

6. Class Counsel Attorney's Fees and Costs.

Defendant agrees that Class Counsel may apply to the Court for an award of attorney's fees up to 33.33% of the Maximum Common Fund (\$138,787.00). Additionally, Defendant agrees Class Counsel may apply separately for reimbursement from the Final Common Fund for the cost of mediation and other incurred costs.

Class Counsel will file the application for approval of Class Counsel's Attorney's Fees and Costs no later than thirty (30) days after the Court issues a Preliminary Approval Order.

The Settlement Administrator shall pay any approved Class Counsel Attorney's Fees and Costs no later than seven (7) days after Defendant deposits the Final Common Fund.

7. Payments to the Settlement Administrator.

The payment from the Final Common Fund for any approved Class Settlement Administration Costs shall be made to the Settlement Administrator no later than seven (7) days after Defendant deposits the Final Common Fund.

IV. ADMINISTRATION, NOTICE, OBJECTIONS, AND SETTLEMENT APPROVAL

1. Preliminary Approval

After execution of this Stipulation, Plaintiff shall apply, and Defendant will not object, to the Court for a Preliminary Approval Order regarding the settlement set forth in this Stipulation. It is contemplated that this application will be filed contemporaneously with the Stipulation. Plaintiff shall submit to the Court the stipulation, together with its Exhibits, and shall apply for entry of an Order (“Notice Order”), requesting *inter alia*, (a) preliminary approval of the Stipulation of Settlement, (b) preliminary certification of the Disclosure and Authorization Class and Pre-Adverse Action Subclass, (c) approval for the distribution of the Class Notices and Claim Form substantially in the form and content of Exhibit 1 (Disclosure and Authorization Claim Form) and Exhibit 2 (Pre-Adverse Action Subclass Notice), and (d) a time and date for the fairness hearing. Should the Court reject or materially alter the Parties’ agreed-upon Notice Order or Class Notices and Claim Form, then Defendant will have the option to void the settlement if the Parties are unable, after good faith negotiations, to agree on a form of Notice Order or Class Notices and Claim Form acceptable to the Court.

2. Obligations of the Settlement Administrator

The Settlement Administrator will contract with Class Counsel. The contract between the Settlement Administrator and Class Counsel shall name Defendant as an intended third-party beneficiary. Accordingly, Class Counsel and Defendant will be responsible for the performance of Settlement Administrator, including its compliance with the terms of this Stipulation of Settlement and other applicable requirements.

The Settlement Administrator shall perform the following duties:

- a. Send the respective Class Notices by U.S. Mail to each Settlement Class Member for whom Defendant has a last known mailing address;

- b. Skip trace and re-mail all returned, undelivered postal mail within 7 calendar days of receiving notice that the mailing was undeliverable;
- c. Establish a website posting information about the Settlement and allowing for submission of electronic claims;
- d. Establish a live call center and an IVR call center providing pre-recorded information regarding relevant topics;
- e. Receive and review Claim Forms submitted by Settlement Class Members and communicating with Settlement Class Members to resolve curable deficiencies with their Claim Forms;
- f. Receive objections, if any, submitted by Settlement Class Members;
- g. Establish a fund for the deposit of the Final Common Fund and deposit those funds into such account upon receipt;
- h. Prepare and timely circulate a declaration of responses;
- i. Prepare and timely circulate a declaration of compliance;
- j. Identify any Settlement checks that are not timely cashed in accordance with the terms of this Stipulation and provide such information to the Parties;
- k. Confirm to the Parties the payments to be remitted by the Settlement Administrator and mail or electronically deposit Settlement checks to the Settlement Class Members, as well as the checks for Attorneys' Fees, Attorneys' Expenses, and the General Release Consideration to Named Plaintiff;
- l. Provide written confirmation to the Parties when the Class Notices have been sent pursuant to this Stipulation;
- m. Attempt to resolve any disagreement with Settlement Class Members, including requesting any information or assistance from Defendant or Class Counsel that the Settlement Administrator believes may assist in resolving the disagreement. Defendant's records shall be presumed to be correct, which may be rebutted by evidence, including any documentary evidence, submitted by the Settlement Class Member;
- n. Issue all required tax forms (e.g., 1099s) and provide all required tax reporting;
- o. Serve all notices of the proposed settlement that meets the requirements of CAFA, as set forth in this Stipulation; and

- p. Perform all such other tasks required by this Stipulation of Settlement, and the Parties mutually agree or as the Court orders.

The Settlement Administrator must consent, in writing, to serve and shall abide by the obligations of the Stipulation and the Orders issued by the Court and must warrant that it knows of no reason why it cannot impartially administer the procedures set forth in this Stipulation.

Further, because the names of Settlement Class Members and other personal information about them will be provided to the Settlement Administrator only, for purposes of providing cash benefits and processing opt out requests, the Settlement Administrator will execute a confidentiality and non-disclosure agreement with Defendant and Class Counsel and will ensure that any information provided to the Settlement Administrator by Settlement Class Members will be secure and used solely for the purpose of effecting this Stipulation of Settlement.

3. Website, Toll-Free Phone Number, and E-mail Address.

The Settlement Administrator shall establish and maintain a Settlement website that shall be easily accessible through commonly used internet service providers for the on-line display of information regarding the Action and Stipulation and the submission of Claim Forms. The Settlement Website shall be designed to permit Settlement Class Members to readily and easily submit Claim Forms and obtain information about their rights and options under the Stipulation. The Settlement Administrator shall be solely responsible for receiving and processing the Claim Forms and for promptly delivering blank Claim Forms to Settlement Class Members upon request.

Before the dissemination of the Class Notices, the Settlement Administrator shall also establish a toll-free telephone number, through which Settlement Class Members may obtain information about the Action and the Stipulation of Settlement. In addition, before dissemination of the Class Notice, the Settlement Administrator shall establish an e-mail address for Settlement Class Members to submit inquiries regarding the Stipulation of Settlement.

4. Notice to Settlement Class Members.

Not later than fifteen (15) calendar days after the Court has issued the Preliminary Approval Order, Defendant shall disclose the names and last known addresses of members of the Disclosure Class and Pre-Adverse Action Subclass to the Settlement Administrator.

No later than ten (10) calendar days after Defendant delivers the class list to the Settlement Administrator, the Settlement Administrator will mail the appropriate Class Notices (attached as **Exhibits 1 and 2**) to the Settlement Class Members via first-class U.S. Mail, postage prepaid and return service requested to such Settlement Class Member's last known mailing address, as updated by using the U.S. Postal Service's database of verifiable mailing addresses (the CASS database) and the National Change-of-Address database. The Notice shall bear the Settlement Administrator's mailing address as the return-mail address. The Notice will include an indication it is a "Court Approved Settlement Notice authorized by the U.S. District Court for the Western District of Tennessee" and may also include a bar code. Claim Forms (included in **Exhibits 1 and 2**) will be included as part of the mailing.

5. Class Notices Returned as Undeliverable.

For all Class Notices returned to the Settlement Administrator without forwarding addresses, the Settlement Administrator will use publicly available databases as practicable to update those Settlement Class Members' addresses and will cause the Notice to be re-mailed by the Settlement Administrator to such Settlement Class Members who can be located.

6. Claim Form Procedures.

To receive a portion of the Final Common Fund, all Settlement Class Members must submit a complete, timely, and valid claim on the appropriate Claim Form (attached as **Exhibit 1, p. 7 and Exhibit 2, p. 7**) by the Response Deadline. Claim Forms may be submitted through a claims filing portal on the settlement website, by fax, email, or by mail. For submissions by mail, the date of the postmark on the return mailing envelope will be the exclusive means to determine whether a Claim Form has been timely submitted. For submissions by fax, email, or through the website, the date and timestamps on the fax, email or claims portal will be the exclusive means to determine whether a Claim Form has been timely submitted.

Claim Forms that do not meet the requirements set forth in the Stipulation and in the Claim Form instructions shall be rejected, though the Settlement Administrator will give notice to the Settlement Class Member of the deficiency and 7 calendar days to respond to such deficiency before the Claim Form can be finally rejected. Where a good faith basis exists, the Settlement Administrator may reject a Settlement Class Member's Claim Form for, among other reasons, the following:

- a. The failure to fully complete and/or personally sign the Claim Form;
- b. The submission of an illegible Claim Form;
- c. The person submitting the Claim Form is not a Settlement Class Member;

- d. The Claim Form is fraudulent;
- e. The Claim Form is duplicative of another Claim Form;
- f. The person submitting the Claim Form requests that payment be made to a person or entity other than the Settlement Class Member for whom the Claim Form is submitted;
- g. The failure to submit a Claim Form by the Response Deadline; and/or
- h. The Claim Form otherwise does not meet the requirements of the Stipulation.

The Settlement Administrator shall gather, review, prepare, and address the Claim Forms received as follows:

- i. Claim Forms that have been properly submitted shall be designated as “Approved Claims.” The Settlement Administrator shall examine the Claim Form before designating the Claim as an Approved Claim, to determine that the information on the Claim Form is reasonably complete and contains sufficient information to enable a payment.
- j. No Settlement Class Member may submit more than one Claim Form. The Settlement Administrator shall identify any Claim Forms that appear on behalf of the same Settlement Class Members (“Duplicative Claim Forms”). If necessary, the Settlement Administrator shall determine whether there is any duplication of Claim Forms by contacting the Settlement Class Member(s) or their counsel.
- k. The Settlement Administrator shall designate any such Duplicative Claim Forms as rejected, and the initial Claim Form as accepted. The Settlement Administrator shall have 7 calendar days from the Response Deadline, or, in the case of a deficient Claim Form, 7 calendar days from the deadline for the Settlement Class member to respond to the deficiency, to exercise the right of rejection. The Settlement Administrator shall notify the Settlement Class Member using the contact information provided in the Claim Form of the rejection. Class Counsel and Defense Counsel shall be provided with copies of all such notifications to members of the Pre-Adverse Action Subclass.
- l. The Settlement Administrator shall exercise all usual and customary steps to prevent fraud and abuse, and take any reasonable steps to prevent fraud and abuse in the claims process. The Settlement Administrator may, in its discretion, deny, in whole or in part, any Claim Form to prevent actual or possible fraud or abuse.
- m. By agreement, the Parties can instruct the Settlement Administrator to take whatever steps it deems appropriate to further the purposes of the Stipulation if the Settlement Administrator identifies actual or possible fraud or abuse relating to the

submission of Claim Forms, including, but not limited to, rejecting a Claim Form to prevent actual or possible fraud or abuse.

- n. A Claim Form that is rejected, for any reason, will be deemed to have never been submitted.

Any member of the Settlement Class who submits a timely, valid Claim Form in compliance with all terms and conditions of this Stipulation of Settlement shall remain a member of the Settlement Class and shall be bound by any Orders of the Court about the Settlement or the Settlement Class. All individuals who receive notice shall be bound by any Orders of the Court about the Stipulation of Settlement or the Settlement Class, even if the individual fail to submit a Claim Form.

7. No Publicity.

The Parties agree there will be no publicity to this Stipulation of Settlement that would identify Defendant, except as agreed-upon for sake of class notice, by Class Counsel.

8. Exclusion from the Settlement Class.

All members of the Settlement Class who do not submit a timely, valid Claim Form will be excluded from the Settlement Class. There is no affirmative obligation for Settlement Class Members to opt out of the settlement.

9. Objections.

Any Settlement Class Member who wishes to object to the settlement must return by U.S. mail to the Settlement Administrator a timely written statement of objection no later than forty-five (45) days after the date the Settlement Administrator mails the Notice to such Settlement Class Member. The Notice of Objection must state: (1) the case name and number; (2) the name, address, telephone number, and email address (if any) of the Settlement Class Member making the objection; (3) a statement of the objection(s) being asserted; (4) a detailed description of the facts and any legal authorities underlying each objection; (5) a notice of intent to appear at the final

Fairness Hearing, if the Settlement Class Member making the objection intends to appear; (6) a list of any witnesses the Settlement Class Member making the objection may call to testify at the Final Approval Hearing, whether in person, by deposition, or affidavit; and (7) a list of any exhibits, and copies of the same, which that such objector may offer at the Final Approval Hearing. Any objection must be personally signed by the objector.

No Settlement Class Member shall be entitled to contest in any way the approval of the terms and conditions of this Stipulation of Settlement or the Court's Final Approval Order except by filing and serving written objections in accordance with the provisions of this Stipulation of Settlement, if approved by the Court. Any member of the Settlement Class who fails to make objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objections, whether by appeal or otherwise, to the settlement.

The Settlement Administrator shall provide any objections and backup information to Defendant's Counsel and Class Counsel, who shall file same with the Court at least seven (7) days before the Final Approval Hearing or as otherwise ordered by the Court.

10. Recordkeeping and Reports.

The Settlement Administrator shall keep a clear and careful record of all communications with Settlement Class Members, all Claim Forms, all expenses, and all tasks performed in administering the procedures set forth in this Stipulation. The Settlement Administrator shall receive objections from Settlement Class Members and inform Class Counsel and Defense Counsel of the objections within a reasonable time after the Settlement Administrator's receipt of such objections.

The Settlement Administrator shall make all reasonable efforts to administer the Class Notices and Claim Forms efficiently and to avoid unnecessary fees and expenses. The Settlement

Administrator shall provide a detailed written accounting of all fees and expenses on a regular basis to Class Counsel and Defense Counsel and shall respond promptly to inquiries by Class Counsel and Defense Counsel concerning the administration and notice fees and expenses.

The Parties are entitled to observe and monitor the performance of the Settlement Administrator to assure compliance with this Stipulation. The Settlement Administrator shall promptly respond to inquiries from Settlement Class Members and provide a complete response following an inquiry and request for information made by Defendant, Defense Counsel, or Class Counsel. In addition, the Settlement Administrator shall have authority to resolve, in good faith, any disputes regarding the validity or timeliness of Claim Forms pursuant to the terms set forth in the Stipulation.

Within 10 calendar days after the later of the final Response Deadline or the resolution of all deficient Claim Forms, the Settlement Administrator shall provide Class Counsel and Defense Counsel a declaration confirming that the Class Notices and related forms were mailed to all Settlement Classes Members, the dates the Class Notices were sent, the number of undeliverable notices, the number of valid Claim Forms submitted, the number of objections, and any additional information Class Counsel and Defense Counsel deem appropriate to provide to the Court.

11. Preliminary Settlement Approval.

As soon as practicable after the Parties execute this Stipulation of Settlement, Class Counsel and Defendant's counsel will jointly present this Stipulation of Settlement to the Court for preliminary settlement approval and will request by joint motion that the Court enter a Preliminary Approval Order.

12. Final Approval Hearing and Final Approval Order and Judgment.

The Parties agree to cooperate to work to schedule a Final Approval Hearing as soon as practicable.

13. Distribution of the Final Common Fund.

Initial payments to Settlement Class Members will be mailed by the Settlement Administrator by check and delivered by first-class U.S. mail to the address provided by Settlement Class Members on the Class Notices or as updated after submission of the Claim Forms. Settlement Payments will be distributed to each Settlement Class Member who timely submits a timely, valid Claim Form in compliance with all terms and conditions of this Stipulation of Settlement. The mailings with the checks shall be postmarked within ten (10) business days of the receipt of the Final Common Fund from Defendant. All initial checks will expire ninety (90) days after they are issued and will state the expiration date on their faces. If any such payment is returned by the U.S. Postal Service as undeliverable, or is uncashed or not negotiated before it expires, neither Defendant nor the Settlement Administrator nor Class Counsel shall have any further obligations to Plaintiff or any Settlement Class Member, except that:

- i. For any check returned by the U.S. Postal Service with a forwarding address before the check's expiration date, the Settlement Administrator will re-mail the check to the forwarding address;
 - ii. If a Settlement Class Member contacts the Settlement Administrator or Class Counsel to request a replacement check before the initial check is negotiated, the Settlement Administrator will comply with that request by cancelling the initial check and issuing a replacement check.
- b. The Parties agree that all Settlement Class Members waive and abandon any ownership interest in any such undeliverable, returned, uncashed, or non-negotiated

checks and further agree that no obligation has been generated or proven with respect to such undeliverable, returned, uncashed, or non-negotiated checks.

After the initial ninety (90) day period for negotiating checks (which total uncashed first check remainder will be calculated by the Settlement Administrator no more than thirty (30) days following the ninety (90) day check expiration date) any unclaimed funds from the Final Common Fund and any uncashed settlement compensation shall automatically revert back to Defendant.

V. RELEASE OF CLAIMS

1. Release of Claims by the Settlement Class Members.

On the Final Effective Date, all Settlement Class Members who have submitted a Claim Form, and all those acting or purporting to act on their behalf including, but not limited to, their successors, assigns, legatees, heirs, and personal representatives, fully and forever release, waive, acquit, and discharge the Released Parties to the fullest extent permitted by law from any and all Released Claims. Such Settlement Class Members also release and forever waive any right to pursue in any forum any Released Claims on a class or collective action basis of any kind, including any mass action.

2. Prior Releases and Waivers of Claims.

Defendant agrees that the Settlement Class Members' or Plaintiff's receipt of funds under this Stipulation of Settlement is not a violation of any prior promises, contracts, agreements, waivers or covenants between Defendant and the Settlement Class Members or Plaintiff.

VI. OTHER PROVISIONS

1. No Adverse Representation.

Because Class Counsel will necessarily present the settlement to the Court as fair and reasonable, Class Counsel shall take no action inconsistent with so presenting the settlement,

including representing any party with interests adverse to preliminary or final approval of this Stipulation of Settlement.

2. Class Counsel Assurances.

Class Counsel affirmatively represents that Class Counsel's employment law group presently has no other clients with actual or threatened FCRA claims against Defendant or any of the other Released Parties. The spirit and intent of this paragraph is to help assure the Released Parties that there are no other FCRA claims pending, planned or known to exist against them and that by resolving this action, they are resolving all claims known by Class Counsel.

3. No Rehire.

In exchange for any General Release consideration received, Plaintiff agrees he will not seek employment with Defendant and shall be designated by Defendant as "ineligible" for any future employment.

4. Settlement Modification.

The Parties may agree by stipulation executed by counsel to modify the exhibits to this Agreement to effectuate the purpose of this Agreement or to conform to guidance from the Court about the contents of such exhibits without the need to further amend this Agreement. A stipulation modifying the settlement will be filed with the Court and subject to the Court's approval.

5. Communications with Settlement Class Members.

The Parties agree that Class Counsel may communicate directly with members of the Settlement Class to ensure as much participation in the settlement as possible.

6. No Waiver of Privilege.

Nothing in this Agreement is intended to limit or waive the confidentiality of attorney-client privileged communications between Class Counsel and their current clients and Settlement Class Members, nor is anything in this Agreement intended to limit the ability of Class Counsel to make truthful representations to judicial authorities about either its appointment as class counsel or the settlement of this Action. Likewise, nothing in this Agreement is intended to limit Defendant's or its agents' communications with their counsel or their ability to respond to judicial or other government authorities.

7. Agreement Not Evidence.

Neither this Stipulation of Settlement nor any related documents, negotiations, statements, or Court proceedings may be construed as, received as, used as, or deemed to be evidence or an admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including but not limited to Defendant and the Released Parties, or as a waiver by Defendant of any applicable defense to the merits of the claims asserted or to Plaintiff's ability to maintain this Action as a class action, except that this Stipulation of Settlement is admissible at hearings necessary to obtain and implement Court approval of the Parties' settlement or in hearings to enforce the terms of this Stipulation of Settlement or any related order of the Court.

8. No Waiver of Rights.

A Party's failure to exercise any rights under this Stipulation of Settlement shall not constitute waiver of that Party's right to exercise those rights later, except as expressly provided in this Stipulation of Settlement. No delay by any Party in exercising any power or right under this Stipulation of Settlement will operate as a waiver of that power or right, nor will any single or partial exercise of any power or right under this Stipulation of Settlement preclude other or further exercises of that or any other power or right, except as expressly provided. The waiver by one

Party of any breach of this Stipulation of Settlement will not be deemed to be a waiver of any prior or subsequent breach.

9. Authority.

The signatories below represent that they are fully authorized to enter into this Stipulation of Settlement.

10. Best Reasonable Efforts and Mutual Full Cooperation.

The Parties agree to fully cooperate with one other to accomplish the terms of this Stipulation of Settlement, including but not limited to, executing such documents and taking such other actions as may be reasonably necessary to implement the terms of this Stipulation of Settlement, including all efforts contemplated by this Stipulation of Settlement and any other efforts that may become necessary or ordered by the Court, or otherwise, to ensure that checks are mailed to Settlement Class Members as soon as practicable under the terms of this Stipulation of Settlement. As soon as practicable after execution of this Stipulation of Settlement, Class Counsel will, with the assistance and cooperation of Defendant and its counsel, take all necessary steps reasonably necessary to secure the Court's preliminary and final approval of the Parties' settlement.

11. Entire Agreement.

Except for any agreements that are specifically referenced in this Stipulation as remaining in effect, this Stipulation of Settlement, with its exhibits, constitutes the full and entire agreement among the Parties concerning the subject matter and supersedes all prior representations, agreements, promises, or warranties, written, oral, or otherwise. No Party shall be liable or bound to any other Party for any prior representation, agreement, promise, or warranty, oral or otherwise, except for those that are expressly set forth in or attached to this Stipulation of Settlement.

12. Binding.

This Stipulation of Settlement will be binding upon and will inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

13. No Prior Assignments.

The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or rights that are released or discharged in this settlement.

14. Construction.

The Parties agree that the terms and conditions of this Stipulation of Settlement are the result of lengthy, arms-length negotiations between the Parties and that this Stipulation of Settlement will not be construed in favor of or against any Party because of the extent to which any Party or the Party's counsel participated in the drafting of this Stipulation of Settlement.

15. Settlement Governed by Tennessee Law.

This Stipulation of Settlement shall be governed and construed in accordance with the internal laws (as opposed to the conflicts of law provisions) of the State of Tennessee.

16. Survival of Agreements.

All agreements made and orders entered during the course of the litigation of the Action relating to confidentiality of information shall survive this Stipulation of Settlement.

17. Construction of Captions and Interpretations.

Paragraph titles, captions, or headings in this Stipulation of Settlement are inserted as a matter of convenience and for reference and do not define, limit, extend, or describe the scope of

this Stipulation of Settlement or any provision in it. Each term of this Stipulation of Settlement is contractual and is not merely a recital.

18. Use of Facsimile Signatures.

This Stipulation of Settlement may be executed with facsimile signatures and in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. The date of execution shall be the latest date on which any Party signs this Stipulation of Settlement.

19. Notices.

Unless otherwise specifically provided in this Stipulation of Settlement, any notices, demands or other communications required hereunder or after entry of the Court's Final Approval Order and Judgment shall be in writing and addressed as follows:

If to Plaintiff:

Marc Reed Edelman
MORGAN & MORGAN, P.A.
201 N. Franklin Street, #700
Tampa, FL 33602-5157
Telephone: 813-223-5505
Facsimile: 813-257-0572
Email: medelman@forthepeople.com

Attorney for Plaintiff

If to Defendant:

Paul E. Prather
Chad J. Kaldor
Kaitlyn A. Hansen
LITTLER MENDELSON, P.C
3725 Champion Hills Drive, Suite 3000
Memphis, TN 38125
Telephone: (901) 795-6695
Email: pprather@littler.com
ckaldor@littler.com
khansen@littler.com

Attorneys for Defendant

If mailed, notice will be deemed given as of the third (3rd) business day after mailing. If sent by overnight delivery or delivered person, notice will be deemed given on the date of delivery.

The Parties agree that, because the Settlement Class Members are so numerous, it is impossible and impracticable to have each Settlement Class Member execute this Stipulation of Settlement. Therefore, the Notice will advise all Settlement Class Members of the binding nature of the release and will have the same force and effect as if this Stipulation of Settlement were executed by each Settlement Class Member to the extent applicable law so provides.

20. Exhibits.

- 1 – Proposed Form Mail Notice with Claim Form (Disclosure Class-Corrected)
- 2 – Proposed Form Mail Notice with Claim Form (Pre-Adverse Action Subclass)
- 3 – Joint Stipulation and Consent Order

IN WITNESS THEREOF, and intending to be legally bound, the Parties hereto have caused this Stipulation of Settlement to be executed by their duly authorized representative.

s/Gregory Duckett
Gregory Duckett
General Counsel

Date: 12-28-2023

Baptist Memorial Health Care Corporation

s/Marc R. Edelman
Marc R. Edelman
MORGAN & MORGAN, P.A.
201 N. Franklin St., Suite 700
Telephone: 813.577.4761
Facsimile: 813.559.4870
medelman@forthepeople.com

Date: 12-28-2023

Attorney for Plaintiff

/s/Paul Prather

Date: 12-28-2023

Paul E. Prather

Chad Kaldor

Kaitlyn A. Hansen

LITTLER MENDELSON, P.C.

3725 Champion Hills Drive, Suite 3000

Memphis, TN 38125

Email: pprather@littler.com;

ckaldor@littler.com;

khansen@littler.com

Attorneys for Defendant Baptist Memorial Health Care Corporation

Exhibit 1

double postcard (6 x 4.25 inch) template

outside top/front

COURT ORDERED NOTICE

Gregory Stewart

v.

Baptist Memorial Health Care Corporation

Case No.: 2:21-cv-02377

(W.D. TENN.)

Class Action Notice

A settlement has been reached in a class action lawsuit claiming Baptist Memorial Health Care Corporations ("Defendant") FCRA disclosure and authorization was deficient in certain respects, Plaintiff alleges that Defendant provided him and other class members with a background check disclosure and authorization that violated the FCRA. Defendant denies the allegations but has agreed to the settlement to avoid the uncertainties and expenses of continuing the case. The total Settlement Fund will be in the sum of \$365,066.00. There are more than 14,000 potential Settlement Class Members. More information your options can be found on the settlement website:

www.*****.com

Gregory Stewart v. Baptist Memorial Health Care Corporation
c/o Settlement Administrator

Address

PRSR FIRST CLASS
U.S. POSTAGE
PAID
MAILED FROM
ZIP CODE 32216
PERMIT NO 584

8131-ΦX-008638

Postal Service: Please do not mark barcode <<noticeid>> - <<keyline>>

«fname» «lname»
«addrline1» «addrline2»
«addrline3»
«city» «state» «zip»
«country»

fold

fold

**Gregory Stewart v. Baptist Memorial Health Care Corporation
Class Action Settlement Claim Form**

IF you wish to receive payment anticipated to be \$26.00 before deductions for attorney's fees, costs, and administration, you MUST either submit your claim online at www.*****.com by *****, or mail, or email this completed postcard to *****, POSTMARKED OR SUBMITTED NO LATER THAN *****. (Do not submit both an online claim and claim by mail.)

First Name: _____ Last Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

By signing below, I affirm that I was confused by Baptist's Fair Credit Reporting Act disclosure and authorization form during my application process and would not have signed the authorization had I known it entitled Baptist to obtain my consumer report for employment purposes. I understand by submitting this claim form that I am releasing Defendant and each of the Released Parties from any FCRA claims arising out of the background check conducted on me when I applied for employment. I want to receive a portion of the settlement fund, anticipated to be \$26.00 before deductions for the costs of notice, administration and Class Counsel's attorneys' fees and Plaintiff's general release compensation have been deducted.

Signature: _____ Date: _____

Administrator Use Only - Do Not Write Below This Line

462

NID: «noticeid»
v1.0

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outside bottom/back

inside front

Am I a Class Member? Defendant’s records indicate you are a member of the class defined as follows: Residents of the United State (1) who applied for a position with Defendant; and (2) about whom Defendant procured a consumer report between June 7, 2019, through August 8, 2022 (Referenced herein as the “Settlement Class”).

What Will the Settlement Mean for Me? If the Court approves the settlement, you will receive a payment by check only if you timely return a valid claim form.

What Do I Need to Do to Receive a Payment? To receive a settlement payment, you need to return the attached claim form by *****. The form should be returned to ***** (by US Mail) or to ***** (via email) or filed through the Settlement Website at *****. Mailing information is on Settlement Website.

Who Represents Me? The Court appointed lawyer Marc Edelman from Morgan & Morgan, P.A. to represent the Settlement Class. As Class Counsel, they will seek to be paid legal fees 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 Defendant concerning the claims at issue in this lawsuit, 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 *****. 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 *****. Objections may not be made through the settlement website and must be mailed in accord with the procedure set forth in the long form notice.

When Will the Court Consider the Proposed Settlement? The Court will hold the Final Approval Hearing on *****, at the *****.

How Do I Get More Information? For more information, contact the *****, at (***) ***-****, via e-mail at *****, or visit *****.

Your Personal Notice ID: «noticeid»
Your Confidential PIN: «pin»

fold

fold

Please use this section to update your address
«noticeid» «keyline»
NAME _____
ADDRESS _____
CITY, STATE, ZIP _____

PLACE
STAMP
HERE

**STEWART V. BAPTIST MEMORIAL
HEALTH CARE CORPORATION
ADDRESS

Exhibit 2

double postcard (6 x 4.25 inch) template

outside top/front

COURT ORDERED NOTICE

Gregory Stewart

v.

Baptist Memorial Health Care Corporation.

Case No.: 2:21-cv-02377

Class Action Notice

A settlement has been reached in a class action lawsuit claiming Baptist Memorial Health Care Corporations ("Defendant") failed to provide applicants with compliant FCRA disclosures and notice and a copy of their background check before taking an adverse employment action based on the background check. Defendant denies that it violated any law or regulation but has agreed to the settlement to avoid the uncertainties and expenses of continuing the case. The total Settlement Fund will be in the sum of \$55,500.00. You have been identified as one of the 111 potential Adverse Action Subclass Members. More information your options can be found on the settlement website *****.

Gregory Stewart v. Baptist Memorial Health Care Corporation
c/o Settlement Administrator
Address

PRSR FIRST CLASS
U.S. POSTAGE
PAID
MAILED FROM
ZIP CODE 32216
PERMIT NO 584

8131-ΦX-008638

Postal Service: Please do not mark barcode <<noticeid>> - <<keyline>>

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<<addrline1>> <<addrline2>>
<<addrline3>>
<<city>> <<state>> <<zip>>
<<country>>

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**Gregory Stewart v. Baptist Memorial Health Care Corporation
Class Action Settlement Claim Form**

If you wish to receive payment of \$500.00 before the costs of notice, administration and Class Counsel's attorneys' fees have been deducted, you MUST either submit your claim online at www.*****.com by ***** , or mail, or email this completed postcard to ***** POSTMARKED NO LATER THAN ***** . (Do not submit both an online claim and claim by mail.)

First Name: _____ Last Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

By signing below, I affirm that I did not withdraw my application for employment at Baptist or accept another position while my application at Baptist was pending. I understand by submitting this claim form that I am releasing Defendant and each of the Released Parties from any and all claims arising out of background check conducted on me when I applied for employment and was subjected to an adverse employment action based on my background check. I want to receive a portion of the settlement fund designated for Adverse Action Subclass Members.

Signature: _____ Date: _____

Administrator Use Only – Do Not Write Below This Line

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