

EXHIBIT 1

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

MARY HEATHER MCAFEE, on)
behalf of herself and all similarly)
situated individuals,)
)
 Plaintiff,)
)
 v.)
)
 CIC MORTGAGE CREDIT, INC.,)

Case No. 3:22cv00772 (RCY)

Defendant.

SETTLEMENT AGREEMENT & RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is made and entered into by the Parties, in the above-captioned matter, pending in the United States District Court for the Eastern District of Virginia, and is subject to Court approval pursuant to Rule 23 of the Federal Rules of Civil Procedure.

RECITALS

WHEREAS, on December 14, 2022, Plaintiff Mary Heather McAfee (“Plaintiff”) brought her complaint (“Complaint”) against CIC Mortgage Credit, Inc. (“Defendant” or “CIC”), alleging that Defendant had negligently and willfully violated the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* (“FCRA”) by failing to follow reasonable procedures to assure maximum possible accuracy of the consumer reports it furnishes. Specifically, Plaintiff alleged that Defendant inaccurately included in her consumer report a notation that she was “deceased” when in fact she is alive. Plaintiff made this claim under 15 U.S.C. § 1681e(b) on behalf of a class of similarly situated consumers. Plaintiff additionally alleged on an individual basis that Defendant had failed to provide a complete copy of her consumer file upon request, in violation of 15 U.S.C. § 1681g(a).

WHEREAS, Defendant denies each and every one of the allegations of wrongful conduct and damages made in the Complaint, has asserted numerous defenses to Plaintiff's claims, disclaims any wrongdoing or liability whatsoever, and denies that this matter satisfies the requirements to be tried as a class action under Rule 23 of the Federal Rules of Civil Procedure.

WHEREAS, this Settlement Agreement has been reached after the Parties exchanged discovery, documents, testimony, and information relevant to Plaintiff's claims, and it is the product of sustained, arms' length settlement negotiations, and a formal settlement conference with the Court.

WHEREAS, Plaintiff and Defendant recognize that the outcome of this matter is uncertain, and that a final resolution through the litigation process would require protracted adversarial litigation, and appeals, substantial risk and expense, the distraction and diversion of Defendant's personnel and resources, and Plaintiff and Defendant have agreed to resolve this matter as a settlement class action according to the terms of this Settlement Agreement.

WHEREAS, the Parties believe that this Settlement Agreement is fair, reasonable, and adequate in resolving the litigation because it (1) provides for certification of the Settlement Class, even though the Court has not yet determined whether Plaintiff's claims could properly be brought as a class action, and Defendant maintains that certification of any class for trial purposes would not be proper under Fed. R. Civ. P. 23; (2) provides for monetary payments to the Settlement Class Members (defined below) who return Claim Forms; and (3) provides this relief to the Settlement Class in exchange for releases tailored to the specific claims made in this case.

NOW THEREFORE, without any admission or concession on the part of any Party of lack of merit to any claim or defense put forth in this Litigation, it is hereby stipulated and agreed by the undersigned that this matter and all claims of the Settlement Class be settled, compromised,

and dismissed on the merits and with prejudice, subject to Court approval, on the terms and conditions set forth herein.

The recitals above are true and accurate and are incorporated as part of this Settlement Agreement.

DEFINITIONS

For the purposes of this Settlement Agreement, including the Recitals above, the following terms have the following meanings:

- 1.1. “Agreement” or “Settlement” means this Settlement Agreement.
- 1.2. “Claimants” means those Settlement Class Members who submit valid and timely Claim Forms according to the process set forth herein.
- 1.3. “Class Counsel” means Berger Montague PC, The Law Offices of Dale W. Pittman, and Kelly Guzzo PLC.
- 1.4. “Claim Deadline” means the date the Court establishes as the deadline by which Claimants must submit a valid Claim Form to the Settlement Administrator. The Parties shall jointly request that this date be sixty (60) days after the initial dissemination of notice.
- 1.5. “Class List” or “List” mean the list of Settlement Class Members, including individuals who may ultimately opt-out, that will be generated by Defendant as described below.
- 1.6. “Class Notice” means the postcard notice and the associated Claim Form, attached hereto as **Exhibit A**, subject to Court approval, which the Settlement Administrator will mail, via U.S. mail, to each Settlement Class Member on the Class List.
- 1.7. “Claim Form” means the claim form accompanying the postcard notice, attached hereto as **Exhibit A**, subject to Court approval, which the Settlement Administrator will mail, via U.S. mail, to each Settlement Class Member on the Class List.

- 1.8. “Complaint” means the Class Action Complaint filed on December 14, 2022.
- 1.9. “Court” means the United States District for the Eastern District of Virginia where this litigation is pending.
- 1.10. “Defendant” means CIC Mortgage Credit, Inc.
- 1.11. “Effective Date” means the date that the Final Judgment becomes final for all purposes because either (i) the Court has entered the Final Approval Order and there were no objections; (ii) an objection was filed, the Court has entered the Final Approval Order notwithstanding any objection, no appeal has been filed in accordance with Fed. R. App. P. 4(a), and the time within which an appeal may be noticed and filed has lapsed; or (iii) if a timely appeal has been filed, the appeal is finally resolved, with no possibility of further appellate or other review, resulting in final judicial approval of this Settlement.
- 1.12. “Final Judgment and Order” or “Final Judgment” means the Court’s order granting final approval of this Settlement.
- 1.13. “Litigation” means the case styled as *Mary Heather McAfee v. CIC Mortgage Credit, Inc.*, No. 3:22-cv-00772-RCY (E.D. Va.).
- 1.14. “Long Form Notice” means the notice attached hereto as **Exhibit B**, which will be posted on the Settlement Website.
- 1.15. “Plaintiff” or “Class Representative” means Mary Heather McAfee.
- 1.16. “Settlement Amount” means \$385,000.00, which is the total amount from which the Plaintiff, Class Counsel, the Settlement Administrator, and the Settlement Class Members will be paid with respect to the settlement obtained on behalf of the Settlement Class. The Settlement Amount includes payments pertaining to settlement administration costs, any Court-approved awards of attorneys’ fees and costs, any checks to the Claimants, and the Service Award. In no

event shall Defendant be required to pay any additional sum for the settlement of the class claims in this matter other than the \$385,000.00 Settlement Amount.

1.17. “Settlement Fund” means the fund that the Settlement Administrator will establish to receive the Settlement Amount. The Settlement Administrator will maintain the fund as a Qualified Settlement Fund for federal tax purposes pursuant to Treas. Reg. § 1.468B-1. The Settlement Administrator, on behalf of the Settlement Class, shall be responsible for all administrative, accounting and tax compliance activities in connection with the Settlement Fund, including any filing necessary to obtain Qualified Settlement Fund status pursuant to Treas. Reg. § 1.468B-1. Defendant shall provide to the Settlement Administrator any documentation reasonably requested to facilitate the obtaining of Qualified Settlement Fund status. The Settlement Fund will either not accrue interest or, if interest accrues, all interest must be paid into the Settlement Fund itself.

1.18. “Net Settlement Fund” means the amount of money remaining after the Settlement Amount is reduced by the following amounts, as approved by the Court: (a) the Service Award, (b) Court approved reasonable attorneys’ fees and costs, and (c) the costs of the Settlement Administrator.

1.19. “Opt-Out & Objections Deadline” means the date the Court establishes as the deadline by which any Settlement Class Members must mail and postmark a written notice of their intent to opt out of the Settlement, and by which objections to the preliminarily approved Settlement must be postmarked and mailed, or otherwise filed with the Court, with copies provided to Parties’ counsel. The Parties shall jointly request that this date be sixty (60) days from the initial dissemination of notice.

1.20. “Parties” means Plaintiff, Mary Heather McAfee, and Defendant, CIC Mortgage Credit, Inc.

1.21. “Preliminary Approval” means the Court’s order substantially similar to the form attached hereto as **Exhibit C**, certifying the proposed Settlement Class, for settlement purposes only, preliminarily approving the proposed Settlement as fair, reasonable and adequate, approving and directing the distribution of notices, appointing Settlement Administrator, and appointing Class Counsel.

1.22. “Released Parties” means the Defendant and its predecessors, successors, and assigns; the present and former, direct and indirect, parents, subsidiaries, sister corporations, divisions, corporate affiliates, insurers, or associates of any of the above; and any person involved in any respect with regard to the Defendant’s conduct alleged in the Litigation, and representatives, of any of the above. “Released Parties” does not encompass any consumer reporting agency other than Defendant, nor does it encompass any vendor or data source of Defendant. “Released Parties” explicitly does not include MeridianLink, Experian, Equifax or TransUnion.

1.23. “Service Award” means the one-time payment to the Plaintiff, for the time and resources that she has put into representing the Settlement Class, as set forth in Paragraph 4.4.

1.24. “Settlement Administrator” means the third-party settlement administrator who will mail the Class Notice and Claim Form, send the notice required by the Class Action Fairness Act (28 U.S.C. § 1715) (if Defendant elects to use the Administrator for that purpose), establish the Settlement Website, maintain the Class List, receive and track opt-outs, objections, and Claim Forms, and if finally approved, mail payments to Claimants.

1.25. “Settlement Class” means the class proposed to be certified for settlement purposes only as part of this Agreement, defined as: all natural persons who were the subject: (1) of a consumer report furnished by the Defendant to a third party between December 14, 2017 and the date of the entry of the Preliminary Approval Order, (2) where the report, or any associated error messages,

contained a status indicating that the consumer was deceased from Equifax, Experian, or Trans Union, (3) where the consumer was not in fact deceased at the time the report was issued. The Settlement Class excludes any individuals who submit a valid exclusion request by the Opt-Out & Objections Deadline.

1.26. “Settlement Class Members” means members of the Settlement Class.

1.27. Settlement Website means the internet website to be established by the Settlement Administrator, as discussed in Paragraph 3.2.3.

PRELIMINARY APPROVAL

2.1. **Preliminary Approval Order.** As soon as reasonably practicable, Plaintiff shall file with the Court a motion for Preliminary Approval of the proposed Settlement. The motion must seek entry of an order (in a form substantially similar to Exhibit C) that would, for settlement purposes only:

- a) preliminarily approve this Settlement Agreement;
- b) certify a conditional settlement class under Federal Rule of Civil Procedure, Rule 23(b)(3), composed of the Settlement Class Members;
- c) appoint Plaintiff and Class Counsel to represent the Settlement Class;
- d) approve the proposed Class Notice plan; and
- e) appoint the Settlement Administrator.

2.2. **Class Certification for Settlement Purposes Only.** Defendant contends that this Litigation, and the respective class alleged therein, could not be certified as a class action under Federal Rules of Civil Procedure, Rule 23, for trial purposes. Nothing in this Settlement Agreement may be construed as an admission by Defendant that this Litigation or any similar case is amenable to class certification for trial purposes. Furthermore, nothing in this Settlement

Agreement prevents Defendant from opposing class certification or seeking de-certification of the Settlement Class if final approval of this Settlement Agreement is not obtained, or not upheld on appeal, including review by the United States Supreme Court, for any reason, or if any of the conditions exist that permit Defendant to terminate this Settlement Agreement in accordance with the terms below.

SETTLEMENT CLASS

3.1. **Class Definition.** For purposes of settlement only, and upon the express terms and conditions set forth in this Settlement Agreement, the Parties agree to seek certification of the Settlement Class as defined in paragraph 1.25 above. The Settlement Class does not include Defendant's officers, directors, and employees, Parties' counsel, any judge overseeing or considering the approval of the Settlement, together with members of their immediate family and any judicial staff. There are an estimated 4,140 Settlement Class Members through June 9, 2023, although Defendant is in the process of updating this data consistent with the time period in the class definition above.

3.2. **Notice Plan.**

3.2.1. **Class List.** Within twenty-eight (28) days after entry of the Preliminary Approval Order, Defendant shall provide the Class List to the Settlement Administrator, which will include the name and mailing address that was provided to Defendant for the Settlement Class Member at the time of the credit pull at issue. The Settlement Administrator shall update these addresses via the USPS National Change of Address system, or any other appropriate database regularly used

by the Settlement Administrator for updating mailing addresses, prior to mailing the Class Notice and Claim Form.

3.2.2. Class Notice. The Settlement Administrator shall be solely responsible for providing notice to the Settlement Class. The Settlement Administrator shall mail via U.S. mail, postage paid, the Class Notice and Claim Form, both attached as Exhibit A, subject to the Court's approval, to all Settlement Class Members on the Class List within twenty-one (21) days of receipt of the List. If it is feasible and cost effective, the Settlement Administrator can also email the Class Notice and Claim Form to Settlement Class Members. If delivery of the Class Notice and Claim form to Settlement Class Members via email is not feasible or cost effective, then delivery shall be effectuated solely by U.S. mail as set forth herein. For up to forty-five (45) days following the initial mailing of the Class Notice and Claim Form, the Settlement Administrator shall re-mail the Class Notice and Claim Form via U.S. Mail, postage prepaid, to those Settlement Class Members whose mailings were returned as undeliverable to the extent an alternative mailing address can be reasonably located using one of the two methods set forth below. The Settlement Administrator shall first attempt to re-mail the mailings to the extent that it received an address change notification from the U.S. Postal Service. If an address change notification form is not provided by the U.S. Postal Service, the Settlement Administrator may attempt to obtain an updated address using reasonable and appropriate methods to locate an updated address. After the forty-five (45) re-mailing period, the Settlement Administrator shall send to Plaintiff and Defendant a list of each Class Notice or Claim Form returned as undeliverable. No later than fourteen (14) days before the final fairness hearing in this Litigation, the Settlement Administrator shall file proof of the mailing of the Class Notice and Claim Form with the Court.

The Class Notice and Claim Form explain to the Settlement Class Members their rights to make a claim, or opt out of, or object to the Settlement, and the deadlines by which to exercise those rights. They also summarize the benefits provided, and the claims to be released if the Class Member does not opt out. The mailed Class Notice and Claim Form will also direct Settlement Class Members to the Settlement Website for further information.

3.2.3. Settlement Website. The Settlement Administrator shall create and maintain the Settlement Website to be activated no later than five (5) days prior to the mailing of the Class Notice and Claim Form described above. The Settlement Administrator's responsibilities include securing an appropriate URL to which the Parties mutually agree. The Settlement Website will host important settlement documents, such as the Complaint, the Long Form Notice (substantially in the form attached as Exhibit B), the Settlement Agreement, and the Preliminary Approval Order. In addition, the Settlement Website will include procedural information regarding the status of the Court-approval process, such as an announcement regarding when the Final Approval Hearing is scheduled, when the Final Judgment and Order has been entered, when the Effective Date is expected or has been reached, and when payments will likely be mailed.

At the discretion of the Settlement Administrator, the Settlement Website may also allow Settlement Class Members to submit an online Claim Form.

The Settlement Administrator will terminate the Settlement Website either: (1) one hundred and eighty (180) days after the Effective Date; or (2) thirty (30) days after the date on which the Settlement is terminated or otherwise not approved by a court.

3.2.4. Claim Forms. Settlement Class Members may submit a claim for monetary relief using the Claim Form attached to the postcard Class Notice (Exhibit A), or through the online form on the Settlement Website.

A Claim Form is only valid if the Settlement Class Member provides all of the information requested on the Claim Form, the Settlement Class Member has certified that he or she was the subject of a CIC report that included a deceased notation despite the Settlement Class Member being alive, and the Settlement Class Member sends the Claim Form in such a manner to the Settlement Administrator that it is received by, or postmarked by, the Claim Deadline.

The Plaintiff is deemed to have submitted a claim and does not need to submit a Claim Form.

The Settlement Administrator shall receive and process all Claim Forms. The Settlement Administrator shall disallow any claim when the Claim Form is not submitted timely or is not completed in accordance with the requirements in the Settlement Agreement or the Preliminary Approval Order. If the Settlement Administrator cannot evaluate the validity of a Claim Form using information already available to the administrator, the Settlement Administrator may reach out to CIC to request the last four digits of the Social Security Number associated with the Settlement Class Member submitting the Claim Form, which CIC will provide to the Settlement Administrator if it is reasonably available and accessible from its own internal records.

If the Claim is disallowed for any reason, then the Settlement Administrator, within seven (7) days after the decision to disallow, shall notify the person who submitted the form by first class mail, with an electronic copy to Class Counsel and Defendant's Counsel: (a) that the claim has been disallowed in whole or in part; and, (b) the reasons for such disallowance. The Settlement Administrator shall include a clean copy of a Claim Form with the mailing. A person who submitted the form may, within fourteen (14) days after the date of mailing of the notice of disallowance, resubmit a Claim Form, which shall be reviewed by the Settlement Administrator and either finally allowed or finally disallowed by the Settlement Administrator as above within

seven (7) days after receipt of the resubmitted Claim Form. The Settlement Administrator shall notify the person who submitted the form, Class Counsel, and Defendant's Counsel with respect to any such decision on a resubmitted Claim Form.

3.2.5. Costs and Expenses. Within twenty-one (21) days after Preliminary Approval, Defendant will advance twenty-thousand dollars (\$20,000) to the Settlement Administrator to effectuate the Settlement Class Notice Plan. Defendant shall receive a credit for this payment when it comes time to fund the Settlement Fund and all costs and expenses associated with the Settlement Class Notice Plan shall be paid out of the Settlement Fund. Under no circumstances will Defendant have any payment obligations pursuant to this Settlement Agreement that exceed three hundred and eighty-five thousand dollars (\$385,000.00) for the settlement on behalf of the Class.

3.2.6. Class Action Fairness Act ("CAFA") Notice. Defendant shall serve notice of the settlement that meets the requirements of CAFA, 28 U.S.C. § 1715, on the appropriate federal and state officials not later than ten (10) days after the filing of this Settlement Agreement with the Court. Before the Court's Final Approval Hearing, Defendant shall file with the Court a certification of the date upon which the CAFA Notice was served.

3.2.7. Opt-Outs. All individuals on the Class List may opt out of the Settlement Class by submitting a valid request for exclusion. All opt-outs must be submitted by mail, in writing, addressed to the Settlement Administrator. The postmark deadline for requests for exclusion is sixty (60) days from the initial mailing of Class Notice and Claim Form. To be valid, the written request must state: "I do not want to be part of the Settlement Class in *McAfee v. CIC*," or contain words to that effect. It must be signed and include the name of the individual on the Class List making the request, along with name, address, and phone number.

Notwithstanding the foregoing, no person within the Settlement Class, or any person acting on behalf of or in concert or participation with that person, may submit a request for exclusion of any other person on the Class List. Requests for exclusion submitted *en masse* will be invalid.

The Settlement Administrator shall provide copies of opt-outs received to the Parties no later than three (3) days after they are received by the Settlement Administrator. No later than fourteen (14) days before the Final Approval Hearing, the Settlement Administrator shall provide to Class Counsel, who shall file it with the Court, a declaration verifying that notice has been provided to the Settlement Class as set forth herein and listing all of the valid opt-outs received.

All individuals on the Class List who timely submit a valid opt-out will exclude themselves from the Settlement Class and preserve their ability to independently pursue, at their own expense, any individual, non-class, non-representative claims he or she claims to have against Defendant. Any such individual on the Class List who so opts out will not be bound by further orders or judgments in the Litigation as they relate to the Settlement Class. In the event of ambiguity as to whether someone has requested to be excluded, the individual shall be deemed not to have requested exclusion pursuant to this Section. No person who has opted out of the Settlement Class may object to any part of this Settlement Agreement.

3.2.8. Objections. All Settlement Class Members, who do not opt-out in accordance with the terms above, and who intend to object to the Settlement, must file the objection with the Court, and serve copies on counsel for the Parties, no later than sixty (60) days following the initial mailing of Class Notice and Claim Form. The objection must include the following: (1) the Settlement Class Member's full name, address and current telephone number; (2) if the individual is represented by counsel, the name and telephone number of counsel, if counsel intends to submit a request for fees and all factual and legal support for that request; (3) all objections and the basis

for any such objections stated with specificity, including a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (4) the identity of any witnesses the objector may call to testify; (5) a listing of all exhibits the objector intends to introduce into evidence at the Final Approval Hearing, as well as true and correct copies of such exhibits; (6) a statement of whether the objector intends to appear at the Final Approval Hearing, either with or without counsel; and (7) the objector's signature and a notation that it is for "*McAfee v. CIC Mortgage Credit, Inc.*, Civil Action No. 3:22-cv-00772 (E.D. Va.)."

Any Settlement Class Member who fails to timely file and serve a written objection pursuant to this Paragraph may not object to the approval of the Settlement or this Settlement Agreement and will be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means.

SETTLEMENT CONSIDERATION

4.1. **Monetary Relief.** Defendant or its insurer shall deposit the remaining Settlement Amount into the Settlement Fund within fourteen (14) days of the Effective Date. As set out in Paragraph 4.4, the Settlement Administrator will distribute the Settlement Fund *pro rata* to all Claimants, upon final approval of the Settlement, after deductions for Court-approved attorneys' fees and costs, the Service Award, and the Settlement Administrator's expenses. Defendant may not be ordered or required to pay any other award or any other fees, costs, or expenses aside from the Settlement Amount for the settlement on behalf of the Class.

4.2. **Settlement Class Release.** Upon the Effective Date, each Settlement Class Member, on behalf of themselves and their respective spouses, heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors, assigns, and all those acting or purporting to act on their behalf, acknowledge full satisfaction of, and shall be conclusively deemed to have

fully, finally, and forever settled, released, and discharged all the Released Parties of and from all claims, rights, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys' fees of any nature whatsoever arising before the Effective Date whether known or unknown, matured or unmatured, foreseen or unforeseen, suspected or unsuspected, accrued or unaccrued, which the Settlement Class Member ever had or now has, related to or arising out of the inclusion of a deceased indicator or deceased notation on a consumer report or associated error message indicating a deceased notation was the reason the consumer report was not delivered to the applicable end user, including but not limited to claims under 15 U.S.C. § 1681e(b), state statutory analogs, and common law analogs, for statutory, actual, and punitive damages ("Released Claims"). Subject to the Court's approval, the Settlement Class Members are bound by this Settlement Agreement and their claims at issue in the case will be dismissed with prejudice and released as against the Released Parties, even if they never received actual notice of the Settlement prior to the hearing for final approval of the Settlement.

The Release does not include claims that the Settlement Class Members have or may have against MeridianLink, Equifax, Experian and Trans Union.

Settlement Class Members acknowledge that they are aware that they may hereafter discover facts in addition to or different from those that they or Class Counsel now know or believe to be true with respect to the subject matter of this Litigation, but it is their intention to, and they do upon the Effective Date of this Settlement Agreement, fully, finally, and forever settle and release any and all Released Claims, without regard to the subsequent discovery or existence of such different additional facts, whether known or unknown. Settlement Class Members and Class

Counsel understand and acknowledge the significance of this waiver and/or of any other applicable federal or state law relating to limitations on releases with respect to the Released Claims.

Upon the Effective Date, no default by any person in the performance of any covenant or obligation under this Settlement Agreement or any order entered in connection with such will affect the dismissal of the Litigation, the res judicata effect of the Final Judgment and Order, the foregoing releases, or any other provision of the Final Judgment and Order. All other legal and equitable remedies for violation of a court order or breach of this Settlement Agreement remain available to all Parties.

4.3. Attorneys' Fees, Service Awards, Costs, and Other Expenses. No later than fourteen (14) days prior to the Opt-Out & Objections Deadline, Class Counsel shall make an application to the Court for an award of attorneys' fees, costs, and other expenses for their representation of the Settlement Class. This application will be posted to the Settlement Website within one day of filing with the Court.

Class Counsel shall not request an amount greater than \$128,333.33 in attorneys' fees and costs, to be paid from the Settlement Fund. Defendant shall not oppose or object to the application by Class Counsel for attorneys' fees and costs. The award Class Counsel seeks will include all reasonable fees, costs, and other expenses for all attorneys (and their employees, consultants, experts, and other agents) who performed work in connection with the Litigation of the claims on behalf of the Settlement Class Members. Any award for attorneys' fees and costs that the Court awards will come out of the Settlement Fund.

No later than fourteen (14) days prior to the Opt-Out & Objections Deadline, Plaintiff shall make an application to the Court for approval of a Service Award of \$15,000 to be paid from the Settlement Fund. Defendant shall not oppose a Service Award of \$15,000 for Plaintiff to be paid

from the Settlement Fund. Any award for the Service Award the Court awards will come out of the Settlement Fund.

To the extent the Court approves an award of attorneys' fees or Service Award in an amount less than the requested amounts, the difference will be left in the Settlement Fund to be used for the benefit of the Claimants. The application for attorneys' fees, and Service Award, and any and all matters related thereto, are not part of the Settlement Agreement, and the Court shall consider them separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement Agreement. Plaintiff and Class Counsel acknowledge that this Settlement Agreement is not conditioned on the Court's approval of attorneys' fees or Service Award in the requested amounts or in any amount whatsoever. The Court's ruling on the application or applications for such amounts will not operate to terminate or cancel the Settlement Agreement.

4.4. Payment Schedule. Within twenty-one (21) days of the receipt of the Settlement Amount from Defendant, the Settlement Administrator shall distribute any Court-approved attorneys' fees and costs, Service Award, and shall reimburse its approved administration expenses. The Settlement Administrator, on the same date, will then allocate the Net Settlement Fund and mail equal payments out of the Net Settlement Fund to the Claimants via U.S. mail. The payment notices accompanying the payment check will notify the recipients that the checks must be cashed within ninety (90) days from the date on the payment notice and that the enclosed check will not be valid after that date. If any checks issued to Claimants remain uncashed after the stale date referenced above – and the collective amount of those checks allows for a second distribution of at least twenty-five dollars (\$25) to any Claimant after the additional administration costs are deducted – then the Settlement Administrator shall distribute the funds associated with those uncashed checks on a *pro rata* basis to those Claimants who cashed a check from the previous

distribution. The payment notices accompanying these checks will notify the recipients that the checks must be cashed within ninety (90) days from the date on the payment notice and that the enclosed check will not be valid after that date.

The Settlement Administrator shall direct any funds that remain in the Settlement Fund after the stale date of this second distribution, or if this second distribution never occurs because of insufficient funds after the first distribution, Virginia Poverty Law Center as *cy pres* recipient.

ENTRY OF FINAL JUDGMENT AND ORDER

5.1. The Parties shall jointly seek entry by the Court of a Final Judgment and Order in the form of **Exhibit D** hereto, which includes the following provisions (among others):

- a) granting final approval of this Settlement Agreement, and directing its implementation pursuant to its terms and conditions;
- b) ruling on Class Counsel's applications for attorneys' fees, costs, and other expenses;
- d) discharging and releasing the Released Parties, and each of them, from the Settlement Class Released Claims;
- e) permanently barring and enjoining all Settlement Class Members from instituting, maintaining, or prosecuting, either directly or indirectly, any lawsuit that asserts Released Claims;
- f) directing that the Litigation be dismissed with prejudice and without costs;
- g) stating pursuant to Federal Rules of Civil Procedure, Rule 54(b) that there is no just reason for delay and directing that the Final Judgment and Order is a final, appealable order; and
- h) reserving to the Court continuing and exclusive jurisdiction over the Parties with respect to the Settlement Agreement and the Final Judgment and Order as provided below.

MISCELLANEOUS PROVISIONS

6.1. **Termination.** Defendant's willingness to settle this Litigation on a class-action basis and to agree to the accompanying certification of the Settlement Class is dependent upon achieving finality in this Litigation and the desire to avoid the expense of this and other litigation. Consequently, Defendant may terminate this Settlement Agreement, declare it null and void, and have no further obligations under this Settlement Agreement to Plaintiff or Settlement Class Members if any of the following conditions subsequent occurs: a) the Parties fail to obtain and maintain preliminary approval of the proposed Settlement; b) more than fifty (50) individuals on the Class List opt-out of the proposed Settlement; c) the Court fails to enter a final order consistent with the provisions of this Settlement Agreement; d) the settlement of the Settlement Class is not upheld on appeal, including review by the United States Supreme Court; e) the Effective Date does not occur for any reason, including but not limited to the entry of an order by any court that would require either material modification or termination of the Settlement Agreement; or (f) Plaintiff or Class Counsel commit a material breach of the Settlement Agreement before entry of the Final Judgment and Order.

The failure of the Court or any appellate court to approve in full the request by Class Counsel for attorneys' fees, costs, and other expenses would not be grounds for Plaintiff, the Settlement Class, or Class Counsel to cancel or terminate this Settlement Agreement. The failure of the Court or any appellate court to approve in full the request of Plaintiff for his Service Award would not be grounds to terminate this Settlement Agreement.

If the Settlement Agreement is not finally approved, is not upheld on appeal, or is otherwise terminated for any reason before the Effective Date, then the Court shall decertify the Settlement Class; the Settlement Agreement and all negotiations, proceedings, and documents prepared, and statements made in connection therewith, will be without prejudice to any Party and may not be

deemed or construed to be an admission or confession by any Party of any fact, matter, or proposition of law; and all Parties would stand in the same procedural position as if the Settlement Agreement had not been negotiated, made, or filed with the Court.

6.2. **Best Efforts to Obtain Court Approval.** Plaintiff and Defendant, and the Parties' counsel, agree to use their best efforts to obtain Court approval of this Settlement Agreement.

6.3. **Court's Jurisdiction.** The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement. The Court also shall retain exclusive jurisdiction: (1) over any subsequent claim against Defendant related to a Settlement Class Member's Released Claims; and (2) over any determination of whether a subsequent lawsuit is released by the Settlement Agreement. Any such subsequent lawsuit against Defendant necessarily raises the threshold issue of whether the plaintiff in such suit is a member of the Settlement Class in this Litigation such that his or her subsequent suit is prohibited under the terms of this Settlement Agreement.

6.4. **Settlement Notices.** Except for the Notice Plan, as provided for above, all other notices or formal communications under this Settlement Agreement must be in writing and given: (1) by hand delivery; (2) by registered or certified mail, return receipt requested, postage pre-paid; or (3) by overnight courier to counsel for the Party to whom notice is directed at the following addresses:

For Plaintiff and the Settlement Class:

Kristi Cahoon Kelly
KELLY GUZZO, PLC
3925 Chain Bridge Road, Suite 202
Fairfax, VA 22030

E. Michelle Drake
Joseph Hashmall
BERGER MONTAGUE PC
1229 Tyler Street NE, Suite 205
Minneapolis, MN 55413

For Defendant:

Christi A. Lawson
FOLEY & LARDNER LLP
301 East Pine Street, Suite 1200
Orlando, FL 32801-2386

John J. Atallah
FOLEY & LARDNER LLP
555 South Flower Street, Suite 3300
Los Angeles, CA 90071-2418

Counsel may designate a change of the person to receive notice or a change of address, from time to time, by giving notice to all Parties in the manner described in this Section.

6.5. **Construction.** None of the Parties to this Settlement Agreement are the primary drafter of this Settlement Agreement or any provision hereof for the purpose of any rule of interpretation or construction that might cause any provision to be construed against the drafter.

Except as otherwise stated herein, each substantive term of this Agreement is a material term that the Parties have relied upon in making this Agreement. If the Court does not approve any substantive term, or if the Court effects a material change to the Agreement then the entire Agreement will be, at the Parties' discretion, void and unenforceable. Where this Agreement states that a term is not material, then the Court's refusal to approve that term leaves all the other terms of the Agreement in effect. Before declaring any provision of this Agreement invalid, the Parties intend that the Court first attempt to construe the provision valid to the fullest extent possible so as to render all provisions of this Agreement enforceable.

This Agreement includes the terms set forth in each attached exhibit. Each exhibit to this Agreement is an integral part of it.

The headings within this Agreement appear for the convenience of reference only and do not affect the construction or interpretation of any part of this Agreement.

This Settlement Agreement may not be modified except by a writing executed by all the Parties.

6.6. **Execution in Counterparts.** Plaintiff, Class Counsel, Defendant, and Defendant's counsel may execute this Settlement Agreement in counterparts, and the execution of counterparts shall have the same effect as if all Parties had signed the same instrument.

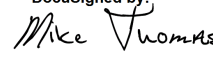
A Party may sign and deliver this Agreement by signing on the designated signature block and transmitting that signature page via facsimile or as an attachment to an email to counsel for the other Party. Any such signature shall be deemed an original for purposes of this Agreement and will be binding upon the Party who transmits the signature page.

This Settlement Agreement shall not be deemed executed until signed by Plaintiff, by all Class Counsel, and by counsel for and representatives of Defendant. The signatories hereto represent that they are fully authorized to bind the Parties to all terms of this Agreement. The Parties agree that the Settlement Class Members are so numerous that it is impossible or impractical to have each Class Member execute this Agreement. This Agreement may be executed on behalf of the Settlement Class Members by the Class Representative.

[Signatures on Following Page]



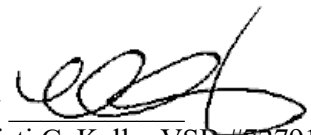
Mary Heather McAfee

DocuSigned by:

By: _____
1B79B02291E34BE...
On behalf of CIC Mortgage Credit, Inc.

Title: COO

Date: 30SEPT2023

Date: 10/3/2023

By 
Kristi C. Kelly, VSB #72791
Andrew J. Guzzo, VSB #82170
Casey S. Nash, VSB #84261
Pat McNichol, VSB #92699
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Email: aguzzo@kellyguzzo.com
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Email: pat@kellyguzzo.com

DocuSigned by:

By: _____
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lchampaign@foley.com

*Counsel for Defendant CIC Mortgage Credit
Inc..*

Exhibit A

COURT ORDERED
NOTICE

*McAfee v. CIC
Mortgage Credit, Inc.*

Class Action Notice
and Claim Form

**Claim Filing
Deadline: XX/XX/XX**

McAfee v. CIC Mortgage Credit
c/o Settlement Administrator

XXXX
XXXX

FIRST CLASS
MAIL
US POSTAGE
PAID
Permit# __



Postal Service: Please do not mark barcode

Notice ID: <<noticeid>>
PIN: <<pin>>

<<fname>> <<lname>>
<<addrline1>>
<<addrline2>>
<<city>>, <<state>> <<zip>>
<<country>>

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Case No. 22-cv-00772 (RCY)

McAfee v. CIC Mortgage Credit
c/o Settlement Administrator

XXX
XXXXX



<<fname>> <<lname>>
<<addrline1>> <<addrline2>>
<<City>>, <<St>> <<Zip>>
<<Country>>

Notice ID: <<noticeid>>
PIN: <<pin>>

Name/Address Changes:

**To receive a payment, you must sign below and postmark your claim by
DATE.**

You may also make a claim and/or request your report online at www.xxxx.com on or before **DATE**.

**By signing below, I certify that I was the subject of a CIC report that
indicated I was deceased, even though I am alive.**

Signature: _____

Name: _____

Phone Number: _____

Email: _____

Your check will be sent to the same address as this postcard. To change the mailing address for your check, write the new address above or go to www.xxxx.com.

A settlement has been reached in the class action lawsuit (the "Litigation") against CIC Mortgage Credit, Inc. ("CIC") for alleged violations of the Fair Credit Reporting Act ("FCRA"). Plaintiff claims that CIC violated the FCRA for failing to maintain reasonable procedures to ensure maximum possible accuracy by passing along information from credit bureaus that indicated a consumer was deceased when the consumer was alive. CIC vigorously denies that it violated any law but has agreed to settle to avoid the uncertainties and expenses associated with continuing the Litigation. This Notice summarizes the proposed Settlement. The complete Settlement terms and conditions are available in the Settlement Agreement at www.xxxxx.com. You may also contact the Settlement Administrator at [redacted] or the lawyers representing the Settlement Class at [PHONE](tel:[redacted]) or [EMAIL](mailto:[redacted]).

Am I a Class Member? CIC's records indicate that you may be a member of the Class. The Class includes all consumers whom CIC's records reflect (1) were the subject of a consumer report furnished by the Defendant to a third party between December 14, 2017 and June 9, 2023, (2) where the report, or any associated error messages, contained a status indicating that the consumer was deceased from Equifax, Experian, or Trans Union, (3) where the consumer was not in fact deceased at the time the report was issued. .

What Can I Get? If the Court approves the Settlement, you submit a completed Claim Form within the deadline, and you do not opt out, you will receive a cash payment. The total settlement fund is \$385,000. The amount each claimant may receive will vary depending on the amount of attorneys' fees, Class Representative award, administration costs, and the final number of participating Class Members, but is estimated to be \$525.00.

How Do I Get a Payment? You must submit a timely and properly completed Claim Form postmarked no later than **xxxx**. You may use the Claim Form attached to this Notice or complete one online at www.xxxxx.com.

What Are My Other Options? (1) Do Nothing. If you are a Class Member and you do nothing in response to this Notice, you will receive no monetary recovery and will lose both your right to sue CIC over matters related to this suit and to object to the Settlement of this suit. (2) Exclude Yourself. You may exclude yourself from the Class by mailing a written notice to the Settlement Administrator postmarked by **xxxx**, that includes the statement you want to be excluded from the Class in *McAfee v. CIC*, and includes your name, address, and phone number. If you exclude yourself, you will not receive a settlement payment, but you retain any rights you may have to sue CIC over the legal issues in this Litigation. (3) Object. If you do not exclude yourself, you and/or your lawyer have the right to appear before the Court and object to the Settlement. Your written, signed objection must be filed with the Court and sent to the attorneys for the parties, no later than **xxxx**. Specific instructions on how to object to or exclude yourself from the Settlement are available at www.xxxxx.com.

Who Represents Me? The Court has appointed a team of lawyers from Berger Montague PC, Kelly Guzzo PLC, and The Law Office of Dale W. Pittman to serve as Class Counsel. They will petition to be paid legal fees and expenses from the settlement fund in an amount not to exceed \$128,333.33, and Class Representative Service Payment not to exceed \$15,000 for the Named Plaintiff.

When Will the Court Consider the Settlement? The Court will hold a final approval hearing on **DATE, at TIME, at [redacted]**. At that hearing, the Court will hear any objections concerning the fairness of the Settlement, decide whether to approve the requested attorneys' fees, Class Representative award, and administration costs, and determine whether the Settlement should be approved.

How Do I Get More Information? For more information, including the long form Notice, Settlement Agreement, and Complaint, go to [www.\[redacted\].com](http://www.[redacted].com).

Business Reply Mail
Artwork

Exhibit B



United States District Court for Eastern District of Virginia

McAfee v. CIC Mortgage Credit, Inc.

Case No. 3:22-cv-00772-RCY

Class Action Settlement Notice

Authorized by the U.S. District Court

A proposed class action settlement may affect your rights.

You are not being sued.

This notice explains the Settlement, the Settlement Class, and your legal rights and options.

Please read the entire notice carefully.

You should:

1. Read this notice.
2. If you do not want to remain in the Class, submit an exclusion request by [DATE].
3. If you want to receive a monetary payment, submit a claim form by [DATE].

Important things to know:

- If you remain in the Settlement Class and return a timely and valid Claim Form, and the Court approves the Settlement, you will receive a monetary payment.
- If you take no action, you will still be bound the Settlement and its releases.
- You can learn more at: [www.\[\].com](http://www.[].com).

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About This Notice

Why did I get a notice?

If you received a postcard notice in the mail, you have been identified as a potential member of the Settlement Class in this lawsuit. Specifically, Defendant’s records indicate that you were the subject of a consumer report furnished by Defendant to a third party between December 14, 2017, and June 9, 2023, and the report indicated that you were deceased when you were in fact alive at the time of the report. As a Settlement Class Member, you are eligible to receive a payment as part of this class action Settlement.

What is a class action lawsuit?

A class action is a lawsuit in which one or more people sue on behalf of a larger group, called the Class.

This notice describes your rights. Please review it carefully.

What do I do next?

Your Legal Rights & Options:

DO NOTHING	If you do nothing, you will not receive a settlement payment but you will be bound by the Court’s decisions regarding the Settlement. You will not be able to pursue any potential claims against the Defendant that have been released as part of the Settlement. Review the full release at www.[redacted].com .
SUBMIT A CLAIM FORM	In order to receive a settlement payment, you must stay in the Settlement Class and return a valid Claim Form by [date] . Then, once the Settlement is approved, you will be sent a check.
EXCLUDE YOURSELF FROM THE SETTLEMENT	You can opt out of the Settlement if you want to maintain any legal rights you may have against Defendant. But if you opt out, you will not receive a settlement payment if the Court grants final approval. To opt out from the Settlement, you must send a written request addressed to the Settlement Administrator and state that you wish to be excluded from the Settlement and include the information discussed in more detail in this Notice. The opt-out deadline is [date] .
OBJECT TO THE SETTLEMENT	You have the right to write to the Court to object to the Settlement if you believe it is unfair. You would remain a part of the Class and be bound by the Court’s decisions regarding the Settlement. The objection deadline is [date] .

Read on to understand the specifics of the Settlement and what each choice would mean for you. The Court still has to decide whether to grant final approval of the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved.

What are the most important dates?

The Court has scheduled a final approval hearing for [date]. If there are no appeals, checks will be sent approximately 70 days after the Court finally approves the Settlement. Your deadline to opt out of the Settlement, or to object to the Settlement, is [date]. To receive a monetary payment, you must complete and return a valid Claim Form by [date].

Learning About the Lawsuit and the Settlement

What is this Lawsuit About?

Plaintiff Mary Heather McAfee (“Plaintiff”) filed a class action lawsuit in federal court against CIC Mortgage Credit, Inc. (“Defendant” or “CIC”) alleging that Defendant violated the Fair Credit Reporting Act (“FCRA”) by including notations in consumer reports it prepared, and any associated error messages, that indicated the subject of the report was deceased, when they were in fact alive. The law requires that a consumer reporting agency, like Defendant, follow reasonable procedures to assure maximum possible accuracy. Plaintiff alleged that Defendant violated the law by inaccurately reporting living consumers as deceased.

Defendant denies that it did anything wrong or that it violated any laws. Defendant maintains that it follows reasonable procedures to assure maximum possible accuracy in the information it reports on all consumer reports. The Court has not decided that Defendant violated the FCRA. Nor has the Court made any determination that this lawsuit should proceed as a class action, as opposed to an individual claim brought by Plaintiff. This Notice should not be interpreted as an expression of the Court’s opinion on which side is right or wrong. If the parties had not reached a settlement, Defendant would have vigorously defended the lawsuit and asked for a ruling in its favor.

Within the Settlement, you are a member of the “Settlement Class.” The Settlement Class is all natural persons who were the subject: (1) of a consumer report furnished by the Defendant to a third party between December 14, 2017 and the June 9, 2023, (2) where the report, or any associated error messages, contained a status from Equifax, Experian, or Trans Union indicating that the consumer was deceased, (3) when the consumer was not in fact deceased at the time the report was issued.

What Can I Get Out of the Settlement?

A \$385,000 Settlement Fund will be used to make cash payments to the Class and to pay, if approved by the Court, a service award to the Class Representative and Class Counsel’s attorneys’ fees and costs in the amount of one-third of the Fund (\$128,333.33), and to reimburse the Settlement Administrator for its expenses.

If the Settlement is approved in full, each Settlement Class Member who returns a timely and valid Claim Form will receive a settlement payment.

Depending on the final number of Settlement Class Members who return Claim Forms, and after deduction of the requested amounts to be approved by the Court to be paid from the Settlement Fund for fees, costs, and a service award, it is estimated that each eligible Settlement Class Member will receive approximately \$525.00.

Who Are the Attorneys Representing the Class and How Will They be Paid?

The Court has approved lawyers to represent the Settlement Class (“Class Counsel”). If you prefer to hire your own attorney to represent you in this case, you may do so at your own expense. The attorneys who have been appointed by the Court to represent the Settlement Class are:

E. Michelle Drake
Joseph C. Hashmall
Berger Montague PC
1229 Tyler Street NE, Suite 205
Minneapolis, MN 55413

Kristi C. Kelly
Andrew Guzzo
Casey Nash
Pat McNichol
Kelly Guzzo PLC
3925 Chain Bridge, Suite 202
Fairfax, VA 22030

Dale W. Pittman
The Law Office of Dale W. Pittman
112 A West Tabb Street
Petersburg, VA 23803

You will not be charged for these lawyers. Subject to Court approval, Class Counsel will seek attorneys’ fees and costs in the amount of one-third of the Settlement Fund (\$128,333.33). Class Counsel may also seek a service award in an amount not to exceed \$15,000 to be paid to Plaintiff for her services in representing the Settlement Class. The attorneys’ fees, costs, service award, and settlement administration expenses will be paid from the Settlement Fund if approved by the Court.

Deciding What You Want to Do

What Are My Options?

You have four options. You can (1) do nothing, (2) return a Claim Form, (3) exclude yourself (in other words, “opt out”) from the Settlement, or (4) object to the Settlement.

This chart shows the consequences of selecting each option:

	Do nothing	Return a Claim Form	Opt Out of the Class	Object to the Settlement
Am I bound by the terms of the Class if I...	Yes	Yes	No	Yes
Will I be able to receive money in the Settlement if I ...	No	Yes	No	Yes

Your options and rights are explained in the following sections, along with the steps you must take if you wish to opt out or object.

Staying in the Class

What Are the Consequences of Doing Nothing?

If you do nothing, you will remain in the Settlement Class and be bound by the Court’s orders, but you will not receive a monetary payment.

You will not be able to pursue claims against Defendant that are covered by the Settlement’s release. All the Court’s decisions regarding the Settlement will apply to you and you will be bound by any judgment entered.

What Happens if I Return a Claim Form?

If you return a completed Claim Form by [date], you will remain in the Settlement Class and be bound by the Court’s orders, and you will receive a monetary settlement payment following approval by the Court of the Settlement.

You will not be able to pursue claims against Defendant that are covered by the Settlement’s release. All of the Court’s decisions regarding the Settlement will apply to you and you will be bound by any judgment entered.

Opting Out

What Happens if I Opt Out of The Class?

If you exclude yourself from the Class, you will not receive any money from the Settlement. You will not be bound by any of the Court’s orders regarding the Class, or any judgment or release entered regarding the Class. You will retain any legal rights you may have against Defendant. You will be responsible for the fees and costs of any services provided by your own lawyer.

Questions? Please visit [www.\[xx\].com](http://www.[xx].com) for more information.
 Para una notificacion en Espanol, llamar o visitar nuestro sitio web.

How Do I Opt Out?

If you wish to be excluded (or “opt out” of the class), you must mail a written request for exclusion addressed to the Settlement Administrator at [address]. Your request for exclusion must be in writing, signed by you, and postmarked on or before [date]. The request must state: “I do not want to be part of the Settlement Class in *McAfee v. CIC*.” The request must also be dated and include your name, address, and telephone number. If you have a new address, please also inform the Administrator of the new address so they can update the appropriate records. If you exclude yourself, you are not eligible to receive a payment.

Objecting to the Settlement

What Happens if I Object to the Settlement?

If you object according to the steps below, the Court will consider your objection. If it overrules your objection, you will be bound by the Court’s decision, and you will remain a part of the Class, but unless you also return a valid and timely Claim Form, you will not receive a monetary payment.

How Do I Object to the Settlement?

You may object to all or part of the Settlement if you think it is not fair, reasonable and/or adequate. To object, you must file with the Court, and send copies to the parties’ counsel, a written explanation of the reasons you think that the Court should not approve the Settlement. Be sure to sign the letter and include your name, address, and current phone number, and the basis of your objection including any documentation, and include a notation that it is for “*McAfee v. CIC Mortgage Credit, Inc.*, No. 3:22-cv-00772 (E.D. Va.)” The deadline to file an objection is [date]. If you are represented by counsel in your objection, include that attorney’s information.

Additional Information

When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a final approval hearing on [redacted], at [redacted].m. before the Honorable Roderick C. Young, in the United States District Court for the Eastern District of Virginia, Robinson-Merhige U.S. Courthouse, 701 East Broad Street, Richmond, Virginia 23219. At the final approval hearing, the Court will consider whether the proposed Settlement is fair, reasonable, and adequate. The Court will also hear objections to the Settlement, if any. We do not know how long the Court will take to make its decision after the hearing. In addition, the hearing may be continued at any time by the Court without further notice to you. You should check the website [www.\[xx\].com](http://www.[xx].com) after [redacted], to confirm the hearing date, the court approval process, and the Effective Date of the Settlement.

You do not have to appear at the final approval hearing to be eligible to receive a monetary payout. If the Court approves the Settlement, the Court’s judgment as to the Settlement Class will be binding on all Settlement Class Members who do not validly exclude themselves.

Where Can I Get Additional Information?

This notice is only a summary of the proposed settlement. You can review more details about the proposed settlement and access additional documents, including the Complaint and the full Settlement Agreement, at the Settlement Website ([www.\[xx\].com](http://www.[xx].com)).

Exhibit C

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

MARY HEATHER MCAFEE, *on*)
behalf of herself and all similarly)
situated individuals,)
)
Plaintiff,)
)
v.)
)
CIC MORTGAGE CREDIT, INC.,)
)
Defendant.)

Case No. 3:22-cv-00772-RCY

**ORDER PRELIMINARILY APPROVING
SETTLEMENT AND DIRECTING NOTICE TO CLASS**

The Court, having reviewed the Settlement Agreement entered by the Parties, hereby orders that:

1. The Court has considered the proposed settlement of the Fair Credit Reporting Act (“FCRA”) claims asserted in the above-captioned action, of the proposed Settlement Class defined as:¹ all natural persons who were the subject: (1) of a consumer report furnished by the Defendant to a third party between December 14, 2017 and June 9, 2023, (2) where the report, or any associated error messages, contained a status from Equifax, Experian, or Trans Union indicating that the consumer was deceased, (3) when the consumer was not in fact deceased at the time the report was issued.

2. The Settlement Agreement filed by the Parties appears, upon preliminary review, to be fair, reasonable, and adequate to the Settlement Class. Accordingly, the proposed settlement therein is preliminary approved, pending a Final Approval Hearing, as provided for herein.

¹ Defined terms used in this Order have the same meaning provided in the Settlement Agreement.

3. The prerequisites to a class action under Fed. R. Civ. P. 23(a) have been preliminarily satisfied, for settlement purposes only, in that:

- a. The Settlement Class consists of 4,140 members;
- b. The claims of the Named Plaintiff are typical of those of the other members of the Settlement Class;
- c. There are questions of fact and law that are common to all members of the Settlement Class; and
- d. The Named Plaintiff will fairly and adequately protect the interests of the Settlement Class and has retained Class Counsel experienced in consumer class action litigation who have, and will continue to, adequately represent the Settlement Class.

4. For settlement purposes only, the Court finds that this action is preliminarily maintainable as a class action under Fed. R. Civ. P. 23(b)(3) because (1) a class action is a fair and efficient adjudication of this controversy; and (2) questions of fact and law common to the members of the Settlement Class predominate over any questions affecting only individual members.

5. If the Settlement Agreement is not finally approved, is not upheld on appeal, or is otherwise terminated for any reason before the Effective Date, the Settlement Class shall be decertified, the Settlement Agreement and all negotiations, proceedings, and documents prepared, and statements made in connection therewith, shall be without prejudice to any Party and shall not be deemed or construed to be an admission or confession by any Party of any fact, matter, or proposition of law; and all Parties shall stand in the same procedural position as if the Settlement

Agreement had not been negotiated, made, or filed with the Court. In that event, this Order shall not have any precedential effect with respect to a litigated class certification motion.

6. The Court appoints Mary Heather McAfee as Class Representative. The Court also appoints Kristi C. Kelly, Andrew Guzzo, Casey Nash, and Pat McNichol of Kelly Guzzo PLC; E. Michelle Drake and Joseph C. Hashmall of Berger Montague PC; and Dale W. Pittman of The Law Offices of Dale W. Pittman, as counsel for the Class (“Class Counsel”). The Court also approves American Legal Claims as the Settlement Administrator.

7. The Court will hold a Final Approval Hearing pursuant to Fed. R. Civ. P. 23(e) on _____, 2024, at ____ .m. (*at least 120 days after entry of this Order*) at the United States District Court for the Eastern District of Virginia, Robinson-Merhige United States Courthouse, 701 East Broad Street, Richmond, Virginia 23219, for the following purposes:

- a. To determine whether the proposed settlement is fair, reasonable, and adequate and should be granted final approval by the Court;
- b. To determine whether a final judgment should be entered dismissing the claims of the Settlement Class with prejudice, as required by the Settlement Agreement;
- c. To consider the application of Class Counsel for an award of attorneys’ fees, costs, and for a service award to the Class Representative; and
- d. To rule upon other such matters as the Court may deem appropriate.

8. Defendant is to provide the Class List, and the Settlement Administrator is to implement the Notice Plan, in accordance with the Settlement Agreement’s terms and timelines. Pursuant to the Settlement Agreement, the Administrator will provide a declaration to be filed with the Court attesting to the implementation of the Notice Plan prior to the Final Approval Hearing. To the extent the Parties or Settlement Administrator determine that ministerial changes to the

Notice Plan are necessary before disseminating notice to the Settlement Class Members, they may make such changes without further application to the Court.

9. The Court finds the Notice Plan to fully satisfy the requirements of Fed. R. Civ. P. 23 and due process, constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

10. If a Settlement Class Member chooses to opt out of the Class, such Class Member is required to submit a written request for exclusion to the Settlement Administrator by mail, postmarked on or before the date specified in the Class Notice, which shall be no later than sixty (60) days following the initial mailing of the Class Notice and Claim Form. The request must state “I do not want to be part of the Settlement Class in *McAfee v. CIC*,” or words to that effect, and must be signed, dated, and include the individual’s name, address, and phone number. A Settlement Class Member who timely submits an opt-out using the procedure identified above shall be excluded from the Settlement Class for any and all purposes. Following the deadline, the Settlement Administrator shall prepare a declaration listing all of the valid opt-outs received and shall provide the declaration and list to Class Counsel, who will then report the names appearing on this list to the Court before the Final Approval Hearing.

11. A Settlement Class Member who does not timely submit a request for exclusion shall be bound by all subsequent proceedings, orders, and judgments in this action.

12. Any Settlement Class Member who wishes for any objection to be considered, must file a written notice of objection to be postmarked within sixty (60) days after the date of initial mailing of the Class Notice and Claim Form. The objection must include the following: (1) the Settlement Class Member’s full name, address and current telephone number; (2) if the individual is represented by counsel, the name and telephone number of counsel; (3) all objections and the

basis for any such objections stated with specificity, including a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (4) the identity of any witnesses the objector may call to testify; (5) a listing of all exhibits the objector intends to introduce into evidence at the Final Approval Hearing, as well as true and correct copies of such exhibits; (6) a statement of whether the objector intends to appear at the Final Approval Hearing, either with or without counsel; and (7) the objector's signature and a notation that it is for "*McAfee v. CIC Mortgage Credit, Inc.*, Civil Action No. 3:22-cv-00772 (RCY)."

13. Any Settlement Class Member who fails to timely file and serve a written objection pursuant to the terms of this Order and the Settlement Agreement shall not be permitted to object to the approval of the settlement or the Settlement Agreement and shall be foreclosed from seeking any review of the settlement or the terms of the Settlement Agreement by appeal or other means.

14. All briefs, memoranda, petitions and affidavits to be filed in support for an individual award to the Class Representative and for an award of attorney's fees and costs shall be filed not later than fourteen (14) days before the Opt-Out & Objections Deadline.

15. All briefs, memoranda, petitions and affidavits to be filed in support of final approval of the settlement shall be filed not later than fourteen (14) days before the Final Approval Hearing.

16. Neither this Order nor the Settlement Agreement shall be construed or used as an admission or concession by or against the Defendant or any of the Released Parties of any fault, omission, liability, or wrongdoing, or the validity of any of the Released Claims. This Order is not a finding of the validity or invalidity of any claims in this lawsuit or a determination of any wrongdoing by the Defendant or any of the Released Parties. The preliminary approval of the Settlement Agreement does not constitute any opinion, position, or determination of this Court,

one way or the other, as to the merits of the claims and defenses of Plaintiff, the Settlement Class Members, or the Defendant.

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

It is so ORDERED.

Date: _____

Hon. Roderick C. Young
United States District Judge

Exhibit D

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

MARY HEATHER MCAFEE, <i>on</i>)	
<i>behalf of herself and all similarly</i>)	
<i>situated individuals,</i>)	
)	
<i>Plaintiff,</i>)	Case No. 3:22-cv-00772-RCY
)	
v.)	
)	
CIC MORTGAGE CREDIT, INC.,)	
)	
<i>Defendant.</i>)	

FINAL APPROVAL ORDER

This matter, having come before the Court on Plaintiff's Motion for Final Approval of the proposed class action settlement with Defendant CIC Mortgage Credit, Inc., the Court having considered all papers filed and arguments made with respect to the settlement, and having provisionally certified a Settlement Class, and the Court, being fully advised finds that:

1. On _____, the Court held a Final Approval Hearing, at which time the parties were afforded the opportunity to be heard in support of or in opposition to the settlement.
2. Certification for settlement purposes of the Settlement Class, as defined by the Settlement Agreement and the Preliminary Approval Order, is appropriate pursuant to Rule 23(a), and (b) of the Federal Rules of Civil Procedure. Defined terms used in this Order are the same as those defined in the Settlement Agreement.
3. Notice to the Settlement Class required by Fed. R. Civ. P. 23(e) has been provided in accordance with the Settlement Agreement and the Preliminary Approval Order. Such Notice has been given in an adequate and sufficient manner, constitutes the best notice practicable under the circumstances, and satisfies Fed. R. Civ. P. 23(e) and due process.

4. Defendant has timely filed notification of this settlement with the appropriate officials pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715. The Court has reviewed Defendant’s notice and accompanying materials and finds that Defendant’s notice complies with the application requirements of CAFA.

5. The Settlement Agreement was arrived at as a result of arm’s-length negotiations conducted in good faith by counsel for the Parties, and is supported by the Parties.

6. The settlement, as set forth in the Settlement Agreement, is fair, reasonable, and adequate to the members of the Settlement Class, in light of the complexity, expense, and duration of litigation, and the risks involved in establishing liability, damages, and in maintaining the class action through trial and appeal.

7. The relief provided in the settlement constitutes fair value given in exchange for the release of claims.

8. The list of individuals attached to the Settlement Administrator’s Declaration filed _____ are determined to have validly excluded themselves from the Settlement Class in accordance with the provisions of the Settlement and the Preliminary Approval Order.

9. There were **no** timely objections to the Settlement.

10. The Parties and each Settlement Class Member have irrevocably submitted to the exclusive jurisdiction of this Court for any suit, action, proceeding, or dispute arising out of the Settlement Agreement.

11. It is in the best interests of the Parties and the Settlement Class Members and consistent with principles of judicial economy that any dispute between any Settlement Class Member (including any dispute as to whether any person is a Settlement Class Member) and any

Released Party, which in any way relates to the applicability or scope of the Settlement Agreement or the Final Approval Order, should be presented exclusively to this Court for resolution.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

12. This action is a class action against Defendant CIC Mortgage Credit, Inc. on behalf of a class of consumers that has been defined as follows: all natural persons whom CIC Mortgage Credit, Inc.'s records reflect were the subject: (1) of a consumer report furnished by the Defendant to a third party between December 14, 2017 and June 9, 2023, (2) where the report, or any associated error messages, contained a status from Equifax, Experian, or Trans Union indicating that the consumer was deceased, (3) when the consumer was not in fact deceased at the time the report was issued. The Settlement Class does not include Defendant's officers, directors, and employees; Defendant's attorneys; Plaintiff's attorneys; any Judge overseeing or considering the approval of the Settlement together with members of their immediate family and any judicial staff, and those who validly excluded themselves from the Settlement Class as noted above.

13. The Settlement Agreement submitted by the Parties for the Settlement Class is finally approved pursuant to Rule 23(e) of the Federal Rules of Civil Procedure as fair, reasonable, and adequate and in the best interests of the Settlement Class. The Settlement Agreement shall therefore be deemed incorporated herein and the proposed settlement is finally approved and shall be consummated in accordance with the terms and provisions thereof, except as amended or clarified by any subsequent order issued by this Court.

14. This action is hereby dismissed on the merits, with prejudice and without costs.

15. As agreed by the Parties in the Settlement Agreement, upon the Effective Date, the Released Parties shall be released and discharged in accordance with the Settlement Agreement.

16. Each Settlement Class Member is permanently barred and enjoined from instituting, maintaining, or prosecuting, either directly or indirectly, any lawsuit that asserts Released Claims against the Released Parties.

17. Without affecting the finality of this judgment, the Court hereby reserves and retains jurisdiction over this settlement, including the administration and consummation of the settlement. In addition, without affecting the finality of this judgment, the Court retains exclusive jurisdiction over Defendant and each member of the Settlement Class for any suit, action, proceeding or dispute arising out of or relating to this Order, the Settlement Agreement or the applicability of the Settlement Agreement. Without limiting the generality of the foregoing, any dispute concerning the Settlement Agreement, including, but not limited to, any suit, action, arbitration or other proceeding by a Settlement Class Member in which the provisions of the Settlement Agreement are asserted as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection, shall constitute a suit, action or proceeding arising out of or relating to this Order. Solely for purposes of such suit, action or proceeding, to the fullest extent possible under applicable law, the parties hereto and all members of the Settlement Class are hereby deemed to have irrevocably waived and agreed not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of this Court, or that this Court is, in any way, an improper venue or an inconvenient forum.

18. Upon consideration of Class Counsel's application for fees and costs, the Court awards \$ [REDACTED] as reasonable attorneys' fees and reimbursement for reasonable out-of-pocket expenses, to be paid from the Settlement Fund.

19. Upon consideration of the application for an individual service award, Named Plaintiff Mary Heather McAfee is awarded the sum of \$15,000 to be paid from the Settlement Fund, in consideration for the service she has performed for and on behalf of the Settlement Class.

20. The Settlement Administrator is approved for reimbursement of up to \$_____ in its out-of-pocket expenses in the administration of the settlement, to be paid from the Settlement Fund.

21. The Parties' distribution plan of payments to the Claimants, in *pro rata* allocations of the Settlement Fund, following the above approved deductions, is approved for implementation. Should funds remain after all distributions are made, and the check negotiation period provided for in the Settlement Agreement has passed, the Parties' chosen *cy pres*, Virginia Poverty Law Center, is approved for receiving such balance.

22. The Court finds, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, that there is no just reason for delay, and directs the Clerk to enter final judgment.

It is so ORDERED.

Date: _____

Hon. Roderick C. Young
United States District Judge