IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

LEANDRE WILEY, on behalf of himself and on behalf of all others similarly situated, Plaintiff, v. **TA OPERATING LLC d/b/a Travel Centers of America,** Defendant.	Case No. 1:21-cv-01093-DAP Judge Dan A. Polster

ORDER GRANTING
PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AND NOTICE OT SETTLEMENT CLASS

THIS MATTER came before the Court on Plaintiff's Unopposed Motion for Preliminary Approval of Settlement and Notice to Settlement Class. [Doc. 17]. Having considered the Settlement, all papers and proceedings held herein, having reviewed the record in this action and receiving clarification from counsel, the Court finds:

1. **History of the Action**

On May 24, 2022, Plaintiff filed his Unopposed Motion for Preliminary Approval of Settlement and Notice to Settlement Class and Memorandum in Support. [Doc. 18]. In accordance with the Joint Settlement Notice attached therewith, Plaintiff seeks certification, for settlement purposes, of a class defined as:

> All U.S. resident individuals on whom Defendant obtained a consumer report for employment purposes between May 26, 2019 and July 22, 2021 and Defendant's records reflect that the consumer report contained an item of information coded as potentially disqualifying for employment with Defendant**.**

2. **The Settlement Class Meets the Requirements of Rule 23(a)**

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

The Court finds the Settlement Class is ascertainable based on objective criteria – namely, between May 26, 2019 and July 22, 2021, Defendant procured each class member's consumer report, and such report led to an adverse employment action consisting of a failure to employ or re-assign, wrongful termination, or wrongful dismissal.

The Court finds numerosity is satisfied, as there are approximately 550 Class members.

The Court finds questions commonality is satisfied. Plaintiff's claims, and

the claims of the Class can be resolved by determining 1) whether Defendant procured a consumer report for employment purposes, 2) whether such report led to an adverse employment action, 3) whether Defendant failed to first provide notice and a copy of the report before taking adverse action. These questions are common to both Plaintiff and the Settlement Class.

The Court finds typicality is satisfied, as the same policies, practices and procedures applied to Plaintiff and to the members of the Settlement Class.

The Court finds Plaintiff to be an adequate class representative. Plaintiff is a part of the Settlement 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. The record reflects Plaintiff has participated in the action, and has no conflicts with the Settlement Class.

3. **The Settlement Satisfies the Requirements of Rule 23(b)(3)**

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."). The Court finds the core facts

common to the Settlement Class all stem from Defendant's use of consumer reports for employment purposes, and its practices when such reports contained public record information rendering Settlement Class Members ineligible for employment. The process was sufficiently standardized for all Class Members. The predominating issue is whether Defendant's practices violated the pre-adverse action notice requirement set forth in 15 U.S.C. § 1681b(b)(3(A). This issue is 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

The Court finds Rule 23(b)(3)'s superiority requirement is also satisfied, as this Settlement efficiently resolves the claims of approximately 550 consumers. Moreover, 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. Any member who believes they have suffered additional damages has the right to opt out of the Settlement to pursue their claims on an individual basis.

4. **The Court Preliminarily Approves the Settlement**

The Court incorporates a two stage process to review a class action

settlement - preliminary and final approval. 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).

Before approving a settlement that would bind class members, a district court must conclude that 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).

"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). The Court has evaluated the probability of success relative to the benefits of the Settlement. The Court finds the interests of the class as a whole are better served if the litigation is resolved now. If the final Class size is 550 as estimated, the gross award will be approximately $295.00 per person, nearly 30% of the maximum statutory damages available.

"[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*, 2012 WL 2236692, at *3 (citing *In re Telectronics Pacing Sys., Inc.*, 137 F.Supp.2d 985, 1013 (S.D. Ohio 2001)). See also *Gokare v. Fed. Express Corp.*, 2:11-CV-2131-JTF-CGC, 2013 WL 12094870, *4 (W.D. Tenn. Nov. 22, 2013). The Court finds the Settlement, which eliminates future costs, delays and risk, to be in the best interest of the Class.

Class Counsel supports the Settlement. The Court finds Class Counsel's support of the Settlement weighs in favor of approving the Settlement.

The Court has reviewed Class Counsel's declaration in support of the Settlement. The Court finds Class Counsel had conducted sufficient discovery and obtained sufficient information to determine the value of the case and conclude the Settlement to be a fair compromise.

The Court is not aware of any objections or concerns from unnamed Class Members, which weighs in favor of preliminary approval.

The Court finds this Settlement to be a product of arm's length negotiations. Settlement was reached after three mediation sessions with a known and respected FCRA mediator, Mr. Carlos Burruezo, Esq. The Court finds no evidence of fraud or collusion.

The Court finds the Settlement is in the public interest. By way of this litigation, Plaintiff and Class Counsel have effectuated changes in Defendant's policies and procedures, from which future consumers employees and applicants shall benefit. The Court finds the Settlement to be in the public interest.

The Court finds the $3,000.00 compensation provided to Plaintiff for executing a general release and serving the class, to be reasonable, as Plaintiff Wiley has sacrificed his individual claims against Defendant, agreed not to seek-remployment and brought the action that ultimately resulted in class wide relief.

5. **Class Counsel will Fairly and Adequately Represent the Class**

The Court finds Marc R. Edelman, Esq. and his firm, Morgan & Morgan

P.A. will adequately represent the Settlement Class. Mr. Edelman has been practicing law for over 25 years, identified the FCRA violation alleged, and obtained a very favorable outcome for the Settlement Class. Additionally, Mr. Edelman has been named as Class Counsel in at least seventeen similar FCRA class action lawsuits.

For the reasons detailed herein, the Court finds the Settlement should be preliminarily approved.

6. **The Proposed Notice Meets the Requirements of Rules 23(c)(2)(B) and (e)(1)**

The Court finds the Notice of Proposed Class Action Settlement (Attached as Exhibit "A") meets the requirements of Federal Rules of Civil Procedure and comports with due process by clearly notifying class members of their rights to claim their share of the settlement, object to the settlement or opt out of the settlement to pursue individual claims, as well as a reasonable timeframe within which to exercise those rights. Thus, the Court approves the Parties' proposed language of the Notice and schedule set forth below:

Mailing of Class Notice	14 days after entry of preliminary approval order
Motion for Attorney's Fees	At least 30 days before objection deadline

Deadline to file claims	60 days after date notice is mailed by settlement administrator
Objections to settlement and requests for exclusion from settlement	60 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

Finally, the Court sets this case for hearing for final approval of the settlement on November 30, 2022, at 12:00 p.m. noon via Zoom and instructs the Parties to include this hearing date, time and location in the Notice to be sent pursuant to the notice plan.

DONE AND ORDERED at Cleveland, Ohio August 25, 2022.

JUDGE DAN A. POLSTER
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record