

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

BOBBY LEE MILES, JR. on his
own behalf and all similarly situated,

PLAINTIFF(S)

V.

ONIN STAFFING, LLC,

DEFENDANT.

CIVIL ACTION NO. 3:21-cv-0275

Judge Waverly D. Crenshaw, Jr./
Magistrate Judge Alistair Newbern

CLASS ACTION SETTLEMENT AGREEMENT

Plaintiff Bobby Lee Miles, Jr. (“Plaintiff”), individually and on behalf of the proposed Settlement Class, and Defendant Onin Staffing, LLC (“Defendant” and, together with Plaintiff, the “Parties”) hereby enter into this Class Action Settlement Agreement (“Settlement Agreement”), pursuant to Fed. R. Civ. P. 23. This Settlement Agreement is intended by the Parties to fully and finally compromise, resolve, release, discharge and settle the Released Claims as against all Released Parties, subject to the terms and conditions set forth below and final approval of the Court.

RECITALS

A. All terms with initial capitalization shall have the meanings set forth in this Settlement Agreement;

B. WHEREAS, on April 5, 2021, Plaintiff filed a class action Complaint styled, *Bobby Lee Miles, Jr., v. Onin Staffing, LLC*, in the United States District Court Middle District of Tennessee, Nashville Division, bearing Case No. 3:21-cv-00275(the “Action”);

C. WHEREAS, in the original Complaint, Plaintiff asserted a cause of action against Defendant for alleged violations of the Fair Credit Reporting Act (“FCRA”). In his Amended Complaint, Plaintiff alleged Defendant violated 15 U.S.C. § 1681b(b)(3)(A)(i) by taking an adverse employment action against Plaintiff and members of the putative class, based in whole or in part on the results of their consumer reports, without first providing notice and a copy of their report, causing harm to Plaintiff and the putative class members;

D. WHEREAS, on May 12, 2021, Defendant filed a Partial Motion to Dismiss, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, and a Memorandum of Law in Support. On May 26, 2021, Plaintiff filed an Amended Class Action Complaint in the Action. Thereafter, on June 14, 2021, Defendant filed a Rule 12(b)(1) Motion to Dismiss the Plaintiff’s Amended Complaint, along with a Memorandum of Law in support of the Motion to Dismiss, requesting the entry of an Order dismissing the claims asserted in Plaintiff’s Amended Complaint. Plaintiff filed a Response to Defendant’s Motion to Dismiss on July 21, 2021. Then, on August 9, 2021, Defendant filed a Reply in support of its Motion to Dismiss;

E. WHEREAS, the Parties conducted extensive arm’s length negotiations with the assistance of a third-party neutral, Carlos Burruezo, Esq., with respect to a resolution of the claims asserted in the Action, including mediation sessions occurring on December 22, 2021, February 4, 2022, and March 21, 2022, and further negotiations with the assistance of the mediator following the sessions;

F. WHEREAS, as a result of those efforts, on or about March 24, 2022, the Parties reached a compromise settlement in principle on a class-wide basis;

G. WHEREAS, the Parties recognize that the continued prosecution of the Action would be protracted, expensive, and the results uncertain;

H. WHEREAS, this Settlement Agreement shall not be construed or deemed to be evidence of or an admission, presumption or concession on the part of Defendant of any fault, liability, or wrongdoing as to any fact or claim asserted in the Action, or any other actions or proceedings, and shall not be interpreted, construed, offered or received in evidence or otherwise used against Defendant in any other action or proceeding;

I. WHEREAS, 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, but has agreed to this 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;

J. WHEREAS, 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 Class may not receive any benefit or consideration for the claims asserted against Defendant;

K. WHEREAS, based upon their analysis and evaluation of several factors, Class Counsel recognize 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 Class;

L. WHEREAS, Class Counsel have conducted a thorough study and investigation of the law and facts relating to the claims asserted as well as a thorough study and investigation of the scope and identity of the 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 Class;

M. WHEREAS, subject to the approval of the Court, the Parties wish to settle this Action, effect a compromise, and settle the claims released in Section II, below;

NOW THEREFORE, the Parties hereby STIPULATE and AGREE as follows:

I. DEFINITIONS

1.1. “Action” means the lawsuit styled, *Bobby Lee Miles, Jr., v. Onin Staffing LLC*, filed in the United States District Court for the Middle District of Tennessee, Nashville Division, bearing Case No. 3:21-cv-00275.

1.2. “Agreement,” “Settlement Agreement,” or “Settlement” means the recitals, terms and conditions of this Class Action Settlement Agreement.

1.3. “Background Report” means, solely for purposes of this Settlement Agreement, a background report obtained by Defendant in connection with its employment screening process and shall be considered to fall within FCRA’s definition of a “consumer report.” By doing so, Defendant does not admit or waive any future argument that the background reports do not constitute a “consumer report” under the FCRA.

1.4. “Claims Deadline” means the date by which a Claim Form must be postmarked or received to be timely.

1.5. “Claim Form” means the document substantially in the form attached hereto as **Exhibit “1”** that will be mailed to each Class member’s last known address, which must

be completed, signed and returned, or properly submitted online, by the Claims Deadline in order for the member of the Class to receive his or her *pro rata* share of the Net Settlement Fund. In order to be considered a valid Claim Form, each member of the Class must, at minimum: (1) confirm their current contact information or otherwise provide their revised contact information and mailing address for payment, if changed from the one on file with the Settlement Administrator; (2) confirm they did not voluntarily resign from any employment with Defendant; and (3) confirm they believe in good faith that they were harmed by an adverse employment action consisting of the failure to employ, wrongful termination of employment, wrongful dismissal, or wrongful reassignment because they were not hired, were reassigned or terminated because of their Background Report results and believe they did not receive a copy of their Background Report and written notice of their adverse action rights before they were not hired, were reassigned or terminated.

1.6. “Class” means all applicants and employees in the United States who were subject to an adverse employment action during the Covered Period based, in whole or in part, on their Background Report but to whom Defendant did not first provide an adverse action notice and a copy of their Background Report and were harmed by an adverse employment action consisting of the failure to employ, wrongful termination of employment, wrongful dismissal, or wrongful reassignment as a result of their Background Report. Defendant estimates there are four hundred and fifty (450) members of the Class. If the final size of the Class exceeds five hundred and forty (540), Defendant will increase the Settlement Fund by an amount proportionate to the number of members above the 540 threshold.

1.7. “Class Counsel” means Marc R. Edelman of Morgan & Morgan, P.A.

1.8. “Class Settlement Administration Costs” means the sums paid from the Settlement Fund, subject to Court approval, and which are inclusive of the costs of the sending the Notice of Class Action Settlement, sending the notices required under the Class Action Fairness Act (“CAFA Notice”), and administering the claims process.

1.9. “Class Representative” or “Plaintiff” means Bobby Lee Miles, Jr.

1.10. “Cost and Fee Award” means an award of attorney’s fees up to thirty-three percent (33%) of the Settlement Fund, subject to Court approval, and reimbursement of actual out-of-pocket expenses awarded by the Court.

1.11. “Court” means the United States District Court for the Middle District of Tennessee, Nashville Division.

1.12. “Covered Period” means the time period from April 4, 2017 through March 23, 2022.

1.13. “Days” means calendar days, unless otherwise specified, provided that if a deadline provided for in this Settlement Agreement falls on a weekend or holiday, that deadline shall be the next day that is not weekend or holiday.

1.14. “Excluded Class Member” means any individual who timely exercises his or her right to be excluded from the Class.

1.15. “Exhibits” means Exhibits “1” and “2” to this Settlement Agreement.

1.16. “FCRA” means the Fair Credit Reporting Act, codified at 15 U.S.C. §1681 *et seq.*, which governs (among other things) the use of Background Reports when they are performed by outside agencies, rather than by the employer itself. The FCRA is designed to protect, among other things, the privacy of individuals whose information is gathered and included in a Background Report.

1.17. “FCRA State/Local Equivalents” means any statute or regulation of any state, U.S. territory, locality/municipality, the District of Columbia, or Puerto Rico that has a similar purpose or effect as the federal Fair Credit Reporting Act, including regulating the use of Background Reports for employment-related purposes.

1.18. “Final Approval Hearing” means a hearing scheduled by the Court to determine the final fairness of the Settlement embodied in this Settlement Agreement and whether to finally certify the Class for purposes of judgment.

1.19. “Final Approval Order” means the Final Judgment and Order of Dismissal, as entered by the Court, granting final approval of this Settlement Agreement.

1.20. “General Release and Service Payment” means a sum not to exceed \$4,500.00 payable to Plaintiff as consideration for his agreement to execute of a General Release of Claims and his service to the Class, which sum shall be paid from the Settlement Fund, subject to Court approval.

1.21. “Net Settlement Fund” means the amount of money remaining after the Settlement Fund is reduced by the following amounts:

- a. General Release and Service Payment to Plaintiff, if approved by the Court;
- b. The Class Settlement Administration Costs approved by the Court;
- c. Reimbursement to Class Counsel for the cost of mediation and other incurred costs approved by the Court; and
- d. Payment to Class Counsel for attorney’s fees in an amount up to thirty-three percent of the Settlement Fund approved by the Court.

1.22. “Notice of Class Action Settlement” or “Notice” means the form of written

notice attached hereto as **Exhibit “2”** which, subject to approval by the Court, will be issued by the Settlement Administrator via first-class U.S. mail, to each member of the Class to explain the terms of the Settlement, including the procedure for objecting to or opting-out of this Settlement Agreement.

1.23. “Objection/Exclusion Deadline” means the date by which a written objection to the Settlement or an exclusion request must be filed with the Court or postmarked to be timely, which shall be a date no later than sixty (60) days after the Settlement Administrator’s mailing of the Notice.

1.24. “Parties” means collectively the Plaintiff and Defendant.

1.25. “Preliminary Approval Order” means the Court’s order determining it will be likely to certify the Class at final approval, approving and directing issuance of the Notice, and setting the Final Approval Hearing.

1.26. “Released Claims” means all claims of any kind including claims for damages, injunctive relief, and any possible attorney’s fees or costs arising out of or relating to any alleged conduct of the Released Parties relating to an adverse employment action based, in whole or in part, on a Background Report including, but not limited to, the ability to bring a class action, mass action, representative or other similar joint or collective claims against the Released Parties under the Fair Credit Reporting Act, FCRA State/Local Equivalents, and any other law related to an adverse employment action or the use of or obtaining a Background Report. The period of the Released Claims extends to the limits of the Covered Period.

1.27. “Released Parties” means Defendant and all of Defendant’s parents, affiliates, predecessors, successors, assigns, current and former employees, shareholders, officers, directors, members, managers, agents, subcontractors, attorneys, insurers, subsidiaries, divisions, parent companies, holding companies or affiliated corporations, partnerships, limited liability companies or other organizations, and their insurers. Specifically excluded from the definition of Released Parties is Intelifi or any other consumer reporting agency.

1.28. “Releasing Parties” means Plaintiff and the Settlement Class Members, regardless of whether such Settlement Class Members submit a Claim Form, and all of their present, former, and future heirs, executors, administrators, representatives, agents, attorneys, predecessors-in-interest, successors, assigns, and legatees.

1.29. “Defendant’s Reversion” means any unclaimed funds from the Settlement Fund, and any uncashed settlement compensation after the expiration of the ninety (90) day period for negotiating checks used to distribute the Net Settlement Fund shall automatically revert back to Defendant.

1.30. “Settlement Administrator” means the third-party class action administrator as appointed by the Court in the Preliminary Approval Order.

1.31. “Class Settlement Administration Costs” means the aggregate costs incurred to complete the Notice of Class Action Settlement, to complete the CAFA Notice, and the amount required to complete administration of the Settlement after the Settlement Payment checks are distributed, with such total costs not to exceed Fifteen Thousand Dollars (\$15,000.00) .

1.32. “Settlement Class Members” or “Settlement Class” means all members of the Class who timely submit a Claim Form, except the following: (a) Defendant and any and all

of its predecessors, successors, assigns, parents, subsidiaries, affiliates, directors, officers, employees, agents, representatives, and attorneys, and any and all of the parents', subsidiaries', and affiliates' present and former predecessors, successors, assigns, directors, officers, employees, agents, representatives, and attorneys; (b) any judicial officer presiding over the Action, or any member of his or her immediate family or of his or her judicial staff; and (c) any Excluded Class Member.

1.33. "Settlement Effective Date" or "Effective Date" means the seventh day after all the following events and conditions have occurred:

- a. All Parties, Class Counsel, and Defendant's counsel have executed this Settlement Agreement and Plaintiff has executed the General Release of Claims described in Section IV below;
- b. The Court has entered a Final Approval Order; approving this Settlement Agreement;
- c. The Court has ruled on Class Counsel's application for attorney's fees, costs and other expenses;
- d. The Final Approval Order has become final in that the time for appeal or writ has expired or, if any appeal and/or petition for review is taken and the Settlement is affirmed, the time period during which further petition for hearing, appeal, or writ of certiorari can be taken has expired. If the Final Approval Order is set aside, materially modified, or overturned by the Court or on appeal, and is not fully reinstated on further appeal, the judgment shall not be a Final Judgment. The Parties intend that this Settlement Agreement shall not become effective until the Court's Final

Approval Order has become completely final and until any appellant or objector who seeks to contest the Settlement has no timely recourse; and

- e. If any court disapproves or sets aside the Parties' Settlement or refuses to enter or give effect to a Final Approval Order or holds that any terms of the Parties' Settlement should be modified in any material way, then the Parties may either jointly agree to accept the Settlement as judicially modified or work in good faith to modify the Settlement consistent with the Court's directive. If the Parties do not agree, either Party may appeal that ruling to the extent possible, or, in the alternative, terminate this Settlement Agreement. If the Settlement is terminated pursuant to this provision, or if an appeal is filed and if the Parties' Settlement or the Final Approval Order are not in effect after the termination of all proceedings arising out of that appeal, then unless the Parties jointly agree otherwise, this Settlement Agreement shall become null and void, with the Parties returning to the status *quo ante*.

1.34. "Settlement Fund" means the gross fund of Three Hundred and Fifty Thousand Dollars (\$350,000.00) inclusive of all potential payments to members of the Class, the General Release and Service Payment to Plaintiff, the Class Settlement Administration Costs, as well as attorneys' fees and costs (including, but not limited to, mediation costs incurred) approved by the Court. Any portion of General Release and Service Payment to Plaintiff which is not approved by the Court shall to revert to the Settlement Fund. Any unclaimed portion of the Settlement Fund shall not be required to be funded by Defendant and/or shall revert to Defendant. Any sums remaining in the

Settlement Fund is subject to Defendant's Reversion. Unless the size of the Class exceeds 540 members, the maximum amount that Defendant will pay to the Settlement Fund under any circumstance whatsoever is Three Hundred and Fifty Thousand Dollars (\$350,000.00).

1.35. "Settlement Payment" means the individualized award equal to a *pro rata* share of the Net Settlement Fund distributed by way of a check to each Settlement Class Member who timely submits a Claim Form in compliance with the terms and conditions of this Settlement Agreement. . The Settlement Payment will be calculated by dividing the Net Settlement Fund by the number of members of the Class. For sake of example only, if the Net Settlement Fund is \$200,000.00 and there are Four Hundred (400) members of the Class, each member of the Class is potentially eligible to receive \$500.00, subject to timely submission of a Claim Form and compliance with the terms and conditions of this Settlement Agreement. Any funds unclaimed by members of the Class shall not be required to be funded by Defendant and any uncashed checks that had been sent to Settlement Class Members and not cashed within ninety (90) days of the check's date shall revert to Defendant.

II. RELIEF AND BENEFITS

2.1 Monetary Benefits to Settlement Class Members.

In exchange for the releases and waivers of claims described below, Defendant will pay each Settlement Class Member who timely submits a Claim Form his or her *pro rata* share of the Net Settlement Fund. If there are no timely objectors, Settlement Payments shall be made within seven (7) days of the Final Approval Order. Any unclaimed funds from the Settlement Fund and any uncashed Settlement Payments after the expiration of ninety (90) days for negotiating checks used in distributing the Net Settlement Fund shall automatically revert to Defendant.

The Net Settlement Fund will be distributed to the Settlement Class Members using the timeline set forth below:

- a. The Settlement Payment will be mailed by the Settlement Administrator and delivered by first-class U.S. mail, postmarked within seven (7) days of the Effective Date. All initial checks will expire ninety (90) days after their issuance date 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.

2.2 Taxes.

The Parties agree the Settlement Payment is not wages, each Settlement Class Member will be solely responsible for correctly characterizing the Settlement Payment for tax purposes, and for paying any taxes owed on this payment. The Parties also agree that the General Release and Service Payment to Plaintiff is not wages and Plaintiff will be solely responsible for correctly characterizing the General Release and Service 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.

2.3 Class Representative General Release and Service Payment.

Defendant agrees to pay Plaintiff \$4,500.00 in exchange for his executing a General Release of Claims and his service to Class, subject to Court approval.

The Settlement Administrator shall pay any approved General Release Payment no later than seven (7) days after the Effective Date.

2.4 Class Counsel Attorney's Fees and Costs.

Defendant agrees that Class Counsel may petition to the Court for an award of attorney's fees up to 33% of the Settlement Fund (equaling \$115,500.00). Additionally, Defendant agrees Class Counsel may apply separately for reimbursement from the Settlement Fund for the cost of mediation and other incurred costs. Class Counsel is only entitled to payment of the attorney's fees and costs approved by the Court. To the extent that Class Counsel's petition is not granted in full by the Court, the remainder of sought attorney's fees shall revert to the Settlement Fund.

Class Counsel will file the application for approval of Class Counsel Attorney's Fees and Costs no later than thirty (30) days after the hearing on the Motion for Preliminary Approval.

The Settlement Administrator shall pay any approved Class Counsel Attorney's Fees and Costs from the Settlement Fund no later than seven (7) days after the Effective Date.

2.5 Payments to the Settlement Administrator.

The Settlement Administrator shall pay any approved Class Settlement Administration Costs no later than five (5) days after the Effective Date. If the Settlement Administrator so requires, Defendant shall pay the upfront costs of postage to the Settlement Administrator for Notice to the Class subject to later reimbursement from the Settlement Fund consistent with the terms contained herein.

III. NOTICE, OPT-OUT, OBJECTIONS AND SETTLEMENT APPROVAL

3.1 Settlement Administrator to Contract with Class Counsel.

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, so Defendant has rights against the Settlement Administrator for breach of contract.

3.2 Notice to Members of the Class

Not later than seven (7) days after the Court has issued the Preliminary Approval Order, Defendant shall provide the names and last known address of the Class members to Class Counsel and the Settlement Administrator.

No later than fourteen (14) days after the Court has issued the Preliminary Approval Order, the Settlement Administrator will mail the Notice (attached as **Exhibit "2"**) to all members of the Class via first-class U.S. Mail, postage prepaid and return service requested to

such 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 indicate it is a "Court Approved Settlement Notice authorized by the United States District Court for the Middle District of Tennessee, Nashville Division" and will include a pin code and/or unique identifier.

A Claim Form (**Exhibit "1"**) will also be included as part of the mailing.

Not later than seven (7) days after the Court has issued the Preliminary Approval Order, the Settlement Administrator shall post a website containing information about the Settlement, including all relevant dates, pleadings, and claims portal.

3.3 Settlement Administrator to Comply with CAFA.

The Settlement Administrator shall comply with all pertinent provisions and requirements contained in CAFA. The Settlement Administrator shall cause a notice that meets the requirements of CAFA, to be served on the appropriate federal and state officials, as specified in 28 U.S.C. § 1715(a), no later than ten (10) days after the filing of this Settlement Agreement with the Court. Because the names of the members of the Class and other personal information about them will be provided to the Settlement Administrator, for purposes of processing Claim Forms and 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 members of the Class will be secure and used solely for the purpose of effecting this Settlement.

3.4 Notices Returned as Undeliverable.

For all Notices returned to the Settlement Administrator without forwarding addresses, the Settlement Administrator will use publicly available databases in its efforts to update those

addresses and will cause the Notice to be re-mailed to those members of the Class whose new addresses can be determined.

3.5 Toll-Free Telephone Line.

The Settlement Administrator will establish and staff a toll-free telephone line that members of the Class can use to contact the Settlement Administrator with questions about the Settlement or to change their addresses.

3.6 Claim Form Procedures.

To receive a *pro rata* portion of the Net Settlement Fund, all members of the Class must submit a timely Claim Form (attached as **Exhibit “1”**) by the Claims Deadline. Claim Forms may be submitted through a claims filing portal on the settlement website, by mail or e-mail. The transmission date of the email or 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. Members of the Class shall (1) confirm their current contact information or otherwise provide their revised contact information and mailing address for payment, if changed from the one on file with the Settlement Administrator; (2) confirm they did not voluntarily resign from any employment with Defendant; and (3) confirm they believe in good faith that they were harmed by an adverse employment action consisting of the failure to employ, wrongful termination of employment, wrongful dismissal, or wrongful reassignment because they were not hired, were reassigned or terminated because of their Background Report results and believe they did not receive a copy of their Background Report and written notice of their adverse action rights before they were not hired, were reassigned or terminated. However, it is not the intention of the Parties to exclude members of the Class from participating in the Settlement for technical reasons that do not interfere with the orderly administration of the Settlement. Therefore, the

Settlement Administrator will compile a list of claims rejected for failure to cure an unsigned Claim Form.

If a Class member's Claim Form or Request for Exclusion is defective as to the requirements listed herein, that Class member will be given an opportunity to cure the defect(s). The Settlement Administrator will mail the Class member a cure letter ("Cure Letter") within three (3) business days of receiving the defective submission to advise the Class member that his or her submission is defective and that the defect must be cured to render the Claim Form or Request for Exclusion valid. The Class member will have until the later of (a) the Claims Deadline, or (b) fifteen (15) calendar days from the date of the Cure Letter, to postmark, fax, or electronically submit a revised Claim Form or Request for Exclusion. If a member of the Class responds to a Cure Letter by filing a defective claim, then the Claims Administrator will have no further obligation to give notice of a need to cure. If the revised Claim Form is not postmarked within the later of (a) the Claims Deadline, or (b) fifteen (15) calendar days from the date of the Cure Letter, it will be deemed untimely.

3.7 No Publicity.

The Parties agree that neither Plaintiff nor Plaintiff's counsel shall issue a media, press, or website statement (including but not limited to sharing the Settlement with websites) with regard to the Settlement.

3.8 Right to Opt-Out.

All members of the Class will have the right to be excluded from, *i.e.*, to "opt-out" of, the Settlement. On or before the Claims Deadline, each member of the Class who elects to opt-out of the Settlement must send, by first-class U.S. mail, written notice addressed to the Settlement Administrator indicating his or her name and address and stating that he or she desires to opt-out of this Settlement or otherwise does not want to participate in the Settlement. Any opt-out notice

must be personally signed by the Class member. Members of the Class must opt-out individually. So-called “mass” or “class” opt-outs, whether filed by third-parties on behalf of a “mass” or “class” of members of the Class or multiple members of the Class where no personal statement has been signed by each and every individual member of the Class, are not allowed. Any member of the Class who does not timely (as measured by the postmark on that individual’s written notice) opt-out of the Settlement by written notice directed to the Settlement Administrator and containing the requisite information shall become a Settlement Class Member and shall be bound by any Orders of the Court about the Settlement and the Settlement Class. Any Settlement Class Member who submits a Claim Form and elects to opt-out is deemed to have invalidly opted-out and remains a Settlement Class Member and shall be bound by any Orders of the Court about the Settlement and the Settlement Class Members. If more than twenty-five (25) members of the Class validly, timely, and individually opt-out of the Class, Defendant may, in its sole discretion, exercise the right to void this Settlement, in which case this Settlement Agreement will be vacated, rescinded, cancelled, and annulled, and the Parties will return to the status *quo ante* as if they had not entered into this Settlement Agreement.

3.8 Objections to Settlement.

Any member of the Class 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 sixty (60) days after the date the Settlement Administrator mails the Notice of Class Action Settlement (“Notice of Objection”). Any member of the Class who submits a timely request for exclusion or opt-out may not file a Notice of Objection to the Settlement and shall be deemed to have waived any rights or benefits under this Settlement Agreement. The Notice of Objection must state (1) the case name and number of the Action; (2) the name, address, telephone number, and email address (if any) of the member of the Class 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 Approval Hearing, if the Class member making the objection intends to appear; (6) a list of any witnesses the member of the Class 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 such member of the Class may offer at the Final Approval Hearing. Any Notice of Objection must be personally signed by the member of the Class.

No member of the Class shall be entitled to contest in any way the approval of the terms and conditions of this Settlement Agreement or the Court's Final Approval Order except by filing and serving a Notice of Objection in accordance with the provisions of this Settlement Agreement. Any member of the 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 and all Notice of Objections and related backup information to Defendant's Counsel and Class Counsel, who shall file the same with the Court at least seven (7) days before the Final Approval Hearing or as otherwise ordered by the Court.

3.9 Preliminary Settlement Approval.

As soon as practicable after the Parties execute this Settlement Agreement, Class Counsel will present this Settlement Agreement to the Court for preliminary settlement approval and will request by way of a motion that the Court enter a Preliminary Approval Order.

3.10 Final Approval Hearing

Subject to the entry of a Preliminary Approval Order, the Parties agree to cooperate in the scheduling of a Final Approval Hearing as soon as practicable.

IV. RELEASE OF CLAIMS

4.1 Release of Claims by Settlement Class Members.

On the Effective Date, all Settlement Class Members who have not timely and properly opted out of the Settlement, 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 Defendant and the Released Parties to the fullest extent permitted by law from any and all Released Claims.

4.2 Prior Releases and Waivers of Claims.

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

4.3 Plaintiff's General Release of Claims.

Plaintiff shall execute a separate General Release of Claims to include provisions to the effect that: (1) Plaintiff agrees not to re-apply to or be rehired by Released Parties; (2) there is no admission of liability by the Released Parties; (3) Plaintiff agrees not to solicit additional claims against the Released Parties and is unaware of any other third-parties who have told Plaintiff they have background report related claims against the Released Parties; (4) Plaintiff agrees not to disparage the Released Parties and not to publicize the General Release of Claims to third-parties short of a statement that his claims against the Released Parties are resolved; (5) Plaintiff releases all interests he may have in bringing class, collective, or mass action claims other than his interest in representing the Settlement Class Members for purposes of this Settlement; and (6) Plaintiff has not filed, and will not file, any additional claims, causes of action, or assert any wrongdoing pertaining to the Released Parties in any other forum.

4.4 Release of Future Unknown Claims.

All releases provided for in this Settlement Agreement shall include releases of unknown claims pursuant to Cal. Civil Code. § 1542 and any comparable provision of state or local law.

V. OTHER PROVISIONS

5.1 Compromise Class Settlement.

The Parties have reached a pre-certification compromise in principle on a class basis, pursuant to the allegations in the Complaint, contingent upon the Parties' execution of this Settlement Agreement, the entry of a Final Approval Order by the Court, and the satisfaction of other conditions contained in this Settlement Agreement. 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 compromise 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 with the continued litigation of this Action. Nothing in this Settlement Agreement shall be construed as an admission by Defendant or any of the Released Parties that this Action or any similar lawsuit is amenable to class certification. Furthermore, nothing in this Settlement Agreement shall prevent Defendant from seeking decertification of a certified class in the future if the Court does not issue a Final Approval Order.

5.2 No Representation of Opt Outs.

Class Counsel agrees not to represent any members of the Class who opt-out from participation in this Settlement. Because Class Counsel will necessarily present this Settlement Agreement 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 Settlement Agreement.

5.3 Class Counsel Assurances.

Marc Edelman, Morgan & Morgan P.A. affirmatively represents that, to the best of his knowledge, Class Counsel's employment law group has no other clients with actual or threatened FCRA or FCRA State/Local Equivalents claims against any of the Released Parties. The spirit and intent of this paragraph is to help assure the Released Parties there are no other FCRA or FCRA State/Local Equivalents claims pending, planned or known to exist against them and that by resolving this Action, they are resolving all claims known by Class Counsel.

5.4 No Rehire.

The Parties agree that Plaintiff will not re-apply for employment with Defendant and further agree that Plaintiff is not eligible for rehire by Defendant.

5.5 Modification of Exhibits.

The Parties may agree by stipulation executed by counsel to modify **Exhibit "1"** and/or **"2"** to this Settlement 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 Settlement Agreement. Any stipulation modifying **Exhibit "1"** and/or **"2"** to this Settlement Agreement will be filed with the Court, with any modification subject to the Court's approval.

5.6 Communications with Settlement Class Members.

The Parties agree that, after the entry of the Preliminary Approval Order, Class Counsel

may communicate directly with Settlement Class Members to ensure as much participation in the Settlement as possible.

5.7 No Waiver of Privilege.

Nothing in this Settlement Agreement is intended to limit or waive the confidentiality of attorney-client privileged communications between Class Counsel, Plaintiff and the 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 their appointment as Class Counsel or the Settlement of this Action. Likewise, nothing in this Agreement is intended to limit or waive the confidentiality of attorney-client privileged communications between Defendant and its counsel or their ability to respond to judicial or other governmental authorities.

5.8 Agreement Not Evidence.

Neither this Settlement Agreement 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 individually or as a class action, except that this Settlement Agreement is admissible at hearings necessary to obtain and implement Court approval of the Parties' Settlement or in hearings to enforce the terms of this Settlement Agreement or any related order of the Court.

5.9 No Waiver of Rights.

A Party's failure to exercise any rights under this Settlement Agreement shall not constitute waiver of that Party's right to exercise those rights later, except as expressly provided

in this Settlement Agreement. No delay by any Party in exercising any power or right under this Settlement Agreement will operate as a waiver of that power or right, nor will any single or partial exercise of any power or right under this Settlement Agreement preclude other or further exercises of that or any other power or right, except as expressly provided herein. The waiver by one Party of any breach of this Settlement Agreement will not be deemed to be a waiver of any prior or subsequent breach.

5.10 Authority.

The signatories below represent they are fully authorized to enter into this Settlement Agreement.

5.11 Best Reasonable Efforts and Mutual Full Cooperation.

The Parties agree to fully cooperate with one other to accomplish the terms of this Settlement Agreement, including but not limited to, executing such documents and taking such other actions as may be reasonably necessary to implement the terms of this Settlement, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary or ordered by the Court, or otherwise, to ensure that Settlement Payment checks are mailed to Settlement Class Members as soon as practicable under the terms of this Settlement. No Party shall undertake any measures adverse to accomplishing the objectives contemplated by the Settlement. As soon as practicable after execution of this Settlement Agreement, 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.

5.12 Entire Agreement.

This Settlement Agreement, with **Exhibits “1” and “2,”** 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 this Settlement Agreement.

5.13 Binding.

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

5.14 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 Agreement.

5.15 Construction.

The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, arms-length negotiations between the Parties and that this Settlement Agreement 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 Settlement Agreement.

5.16 Settlement Governed by Tennessee Law.

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

5.17 Survival of Confidentiality Agreements.

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

5.18 Construction of Captions and Interpretations.

Paragraph titles, captions, or headings in this Settlement Agreement are inserted as a matter of convenience and for reference and do not define, limit, extend, or describe the scope of this Settlement Agreement or any provision in it. Each term of this Settlement Agreement is contractual and is not merely a recital.

5.19 Use of Counter Signatures.

This Settlement Agreement may be executed with wet signatures 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 Settlement Agreement.

5.20 Notices.

Unless otherwise specifically provided in this Settlement Agreement, 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 R. EDELMAN, ESQ.

MORGAN & MORGAN, P.A.
201 N. Franklin Street, Suite 700
Tampa, FL 33602-5157

If to Defendant:

STEPHEN J. BUMGARNER, ESQ.
MAYNARD, COOPER & GALE, P.C.
1901 Sixth Avenue North, Suite 1700

Birmingham, Alabama 35203

If mailed, notice will be deemed given as of the third 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 Settlement Agreement. Therefore, the Notice of Class Action Settlement will advise all members of the Class of the binding nature of the release contained in this Settlement Agreement and will have the same force and effect as if this Settlement Agreement was executed by each Settlement Class Member to the extent applicable law allows.

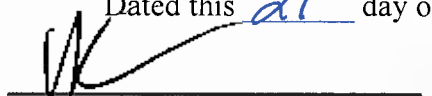
5.21 Exhibits.

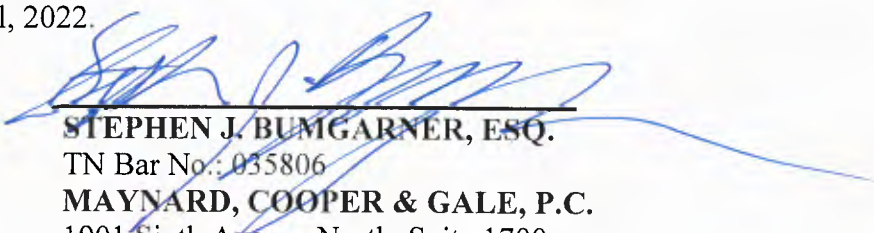
“1”– Claim Form; and

“2” – Proposed Notice of Class Action Settlement.

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

Dated this 29th day of April, 2022.


MARC R. EDELMAN, ESQ.
(Pro Hac Vice)
MORGAN & MORGAN, P.A.
201 N. Franklin Street, Suite 700
Tampa, FL 33602-5157
Telephone: 813-223-5505
Facsimile: 813-257-0572
medelman@forthepeople.com


STEPHEN J. BUMGARNER, ESQ.
TN Bar No.: 035806
MAYNARD, COOPER & GALE, P.C.
1901 Sixth Avenue North, Suite 1700
Birmingham, Alabama 35203
Tel: 205-254-1000
Facsimile: 205-254-1999
sbumgarner@maynardcooper.com

Attorneys for Defendant

BRIAN C. WINFREY, ESQ.
TN Bar No. 02576

MORGAN & MORGAN, P.A.
810 Broadway, Suite 105
Nashville, TN 37203
Telephone: 615-928-9890
Fax: 615-928-9917
BWinfrey@forthepeople.com

Attorneys for Plaintiffs

EXHIBIT “1”

A court authorized this notice. This is not a solicitation from a lawyer.

NOTICE OF CLASS ACTION SETTLEMENT

IF ONIN STAFFING, LLC OBTAINED YOUR CONSUMER REPORT (ALSO KNOWN AS A BACKGROUND REPORT) FOR EMPLOYMENT PURPOSES, AND THE REPORT RESULTED IN AN ADVERSE EMPLOYMENT ACTION CAUSING YOU HARM, YOU ARE ELIGIBLE TO RECEIVE APPROXIMATELY \$* FROM A CLASS ACTION SETTLEMENT.**

YOU ARE RECEIVING THIS NOTICE BECAUSE YOU HAVE BEEN IDENTIFIED AS A CLASS MEMBER. YOUR LEGAL RIGHTS WILL BE AFFECTED BY THE SETTLEMENT OF THIS LAWSUIT. PLEASE READ THIS NOTICE CAREFULLY. IT EXPLAINS THE LAWSUIT, THE SETTLEMENT, AND YOUR LEGAL RIGHTS.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
HOW TO GET PAID FROM THE SETTLEMENT	If you timely return the attached Claim Form or file a claim through the Settlement Website, www.*****.com , noting that you choose to receive a cash recovery, and the Court grants final approval of the Class Settlement, you will be sent a Settlement Check estimated to be \$***. THE CLAIM FORM MUST BE RECEIVED BY THE CLASS SETTLEMENT ADMINISTRATOR NO LATER THAN ***.
IF YOU DO NOTHING	If the Court approves the Settlement and you do nothing, you will be releasing your claims and you will not receive any money. The Full Release and Released Parties are available on the Settlement Website, www.*****.com
IF YOU EXCLUDE YOURSELF FROM THE SETTLEMENT	You have the right to exclude yourself from the Settlement completely (“opt out”) if you do not wish to be part of the Settlement Class. You can opt out by following the instructions on the Settlement website. You will not receive any monetary payments from the Settlement. You will not have any right to object, but you will not be bound by the terms of this Settlement and will retain your right to file your own lawsuit. The opt out deadline is ***.

If you do not exclude yourself, you may object to the Settlement. You can remain in the Settlement Class, but file written objections to the Settlement. The Court will consider the objections in deciding whether to approve the Settlement. Instructions for mailing an objection are on the Settlement Website. If the Settlement is approved, you will not be able to sue Onin Staffing, LLC for claims relating to an employment background check when you applied for a job.

1. What is this lawsuit about?

This lawsuit is pending in the United States District Court for the Middle District of Tennessee. Bobby Miles, Jr. (the “Plaintiff”), sued Onin Staffing, LLC in this class action case (*Miles, Jr. v. Onin Staffing, LLC 3:21-CV-0275*) alleging that it violated the Fair Credit Reporting Act (the “FCRA”), 15 U.S.C. §1681b(b)(3), because it failed to provide applicants subjected to an adverse employment action, based in whole or in part on their consumer report, notice and a copy of the report before taking such action. Onin Staffing, LLC contends that its procedures did not violate the FCRA and did not willfully violate the FCRA. Onin Staffing, LLC maintains that, absent a settlement, it would have vigorously defended the case on the merits and for class certification purposes, and is settling because of the expense of litigation, the length of time necessary to resolve the issues presented, and the inconvenience involved.

This “Class” is defined to include:

All applicants and employees in the United States who were subject to an adverse employment action based, in whole or in part, on their background report but to whom Defendant did not first provide an adverse action notice and a copy of the background report and were harmed by an adverse employment action consisting of the failure to employ, wrongful termination

of employment, wrongful dismissal, or wrongful reassignment as a result of their background report during the Covered Period from April 4, 2017 through March 23, 2022.

2. Who are the Attorneys representing the Class and how will they be paid?

The Court has appointed lawyers to represent the Class, but you may enter an appearance in the case through an attorney if you want. If you do so, you will have to pay for your own lawyer.

The attorneys who have been appointed by the Court to represent the Class are:

**Marc R. Edelman
Morgan & Morgan, P.A.
201 N. Franklin Street, 7th
Floor Tampa, FL 33602-5157
813-223-5505**

Defendant has agreed to establish a Settlement Fund up to a maximum amount of \$350,000.00 to settle this lawsuit. Subject to the Court's approval, Onin Staffing, LLC has agreed to compensate Class Counsel for their attorney's fees for an amount equal to one-third of the Settlement Fund (\$115,500.00) plus costs incurred. Class Counsel will also ask the Court to approve a \$4,500.00 payment to Plaintiff for her service to the class and as compensation for releasing all claims against Onin Staffing, LLC.

3. What rights am I giving up in this Settlement?

Unless you exclude yourself from this Settlement, you will be considered a member of the Class, which means you give up your right to sue or file a lawsuit against Onin Staffing, LLC or its related entities regarding the legal issues that were raised or could have been raised in this case. Giving up your legal claims is called a release. The released parties collectively include Onin Staffing, LLC and its parent and related companies, direct or indirect affiliates, principals and agents. You will be releasing these parties from all claims relating to the procurement of a background report when you applied for a job.

4. If I chose to do so, how do I exclude myself from the Settlement?

If you wish to be excluded, you must mail a written request for exclusion to the Settlement Administrator at:

Miles, Jr. v Onin Staffing Settlement Administrator, PO Box 23459, Jacksonville, FL 32241

Your request for exclusion must be in writing and postmarked on or before ****. The request must state: "I do not want to be part of the Class in *Miles, Jr. v. Onin Staffing, LLC, 3:21-CV-0275*. The request should be signed, with your name, address, and telephone number printed below your signature. The address you use should be the address to which this notice was mailed, so that you can be properly identified. However, if you have a new address, please inform us of the new address so we can make the change in the Class List.

5. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing on ****, at ***** a.m. The hearing will be held in the United States Federal Courthouse for the Middle District of Tennessee, 801 N. Broadway, #800, Nashville TN 37203. At the Fairness Hearing, the Court will consider whether the proposed Settlement is fair, reasonable, and adequate. The Court will hear objections to the Settlement, if any. We do not know how long the Court will take to make its decision. In addition, the hearing may be continued at any time by the Court without further notice to you.

6. Where can I get additional information?

This notice is only a summary of the proposed Settlement of this lawsuit. Certain pleadings and documents filed in Court, including the Settlement Agreement, may be reviewed or copied in the Clerk's Office or by visiting the website www.****.fcrasettlement.com.

EXHIBIT “2”

CLAIM FORM

MILES v ONIN STAFFING, LLC CLASS ACTION
c/o Notice Administrator
PO Box 23459
Jacksonville, FL 32241

Postmaster: Do Not Mark Barcode

$$*\leftrightarrow\kappa\varepsilon\psi\lambda i\nu\varepsilon\approx*$$

«fname» «lname»

«addrline1»

«addrcity» «addrstate» «addrzip»

CLAIMS MAY ALSO BE FILED ONLINE AT:

WWW.MILESFCRASETLEMENT.COM *↔νοτιχειδ≈

Notice ID: «noticeid»

PIN: «pin»

MILES V. ONIN STAFFING, LLC CLASS ACTION

If you wish to file a claim in the captioned settlement, you must complete and provide all information:

BIRTH MONTH AND DAY (for verification purposes only):

M	M	/	D	D
---	---	---	---	---

☐ My name and mailing address are correct as printed above.

☐ I have corrected my name and address below.

$$* \leftrightarrow \pi_1 V \approx *$$

FIRST NAME

[illegible]

LAST NAME

[illegible]

MAILING ADDRESS

[illegible]

CITY

[illegible]

STATE

--	--

ZIP

--	--	--	--	--

EMAIL ADDRESS

[illegible]

CURRENT PHONE NUMBER

$$(\quad \quad \quad) \quad \quad \quad - \quad \quad \quad \quad \quad$$

By signing below, I state that I want to receive a portion of the \$350,000.00 settlement fund, estimated to be \$****.00. I understand that this is an estimate, and that the actual payment may vary depending on the factors identified in the Settlement Agreement.

I hereby certify I did not voluntarily resign from any employment with Onin Staffing, LLC, and believe, in good faith, that I was harmed by an adverse employment action consisting of the failure to employ, wrongful termination of employment, wrongful dismissal, or wrongful reassignment because I was not hired, was reassigned or terminated because of my background report results and believe I did not receive a copy of my background report and written notice of my adverse action rights before I was not hired, was reassigned or terminated.

M	M	-	D	D	-	2	0	2	Y
---	---	---	---	---	---	---	---	---	---

SIGNATURE

DATE (MM-DD-YYYY)

Deadline: This form must be received on or ***** to be valid. Mail this completed Claim Form to: **MILES v ONIN STAFFING, LLC CLASS ACTION, c/o Notice Administrator, PO Box 23459, Jacksonville, FL 32241.**

06394491.1

Administrator Use Only - Do not write below this line

490_{v1.1}

490

Case 3:21-cv-00275 Document 73-1 Filed 04/29/22 Page 34 of 34 PageID #: 482

Docket

Received

Postmarked