

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

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| MARY HEATHER MCAFEE, <i>on</i> |) | |
| <i>behalf of herself and all similarly</i> |) | |
| <i>situated individuals,</i> |) | |
| |) | |
| <i>Plaintiff,</i> |) | |
| |) | |
| v. |) | |
| |) | |
| CIC MORTGAGE CREDIT, INC., |) | |
| |) | |
| <i>Defendant.</i> |) | |

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

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

This matter is before the Court on Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement ("Motion for Preliminary Approval") (ECF No. 39). 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 Motion for Preliminary Approval (ECF No. 39) is GRANTED, and the proposed settlement is preliminarily 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 **February 15, 2024, at 10:00 a.m.** 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.

Let the Clerk send a copy of this Order to all counsel of record.

It is so ORDERED.



Roderick C. Young
United States District Judge

Richmond, Virginia
Date: October 18, 2023