AlaFile E-Notice

11-CV-2021-900430.00

Judge: DEBRA H JONES

To: ERBY JOHNSON FISCHER MR.
efischer@forthepeople.com

# NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF CALHOUN COUNTY, ALABAMA

DRAKE MORGAN V. PREFERRED PRECISION GROUP, LLC
11-CV-2021-900430.00

The following matter was FILED on 4/11/2022 12:34:31 PM

**C001 MORGAN DRAKE**

JOINT MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

[Filer: FISCHER ERBY JOHNSON II]

Notice Date: 4/11/2022 12:34:31 PM

KIM MCCARSON
CIRCUIT COURT CLERK
CALHOUN COUNTY, ALABAMA
25 WEST 11TH STREET
ANNISTON, AL, 36201

256-231-1750
Kim.McCarson@alacourt.gov

**STATE OF ALABAMA** Revised 3/5/08
**Unified Judicial System**
11-CALHOUN ☐ District Court ☑ Circuit Court

**Cas**
CV2(

DRAKE MORGAN V. PREFERRED PRECISION GROUP, LLC

# CIVIL MOTION COVER SHEET

*Name of Filing Party:* C001 - MORGAN DRAKE

*Name, Address, and Telephone No. of Attorney or Party. If Not Represented.*
ERBY JOHNSON FISCHER MR.
2317 3rd Ave North
BIRMINGHAM, AL 35203
*Attorney Bar No.:* FIS010

☐ Oral Arguments Requested

## TYPE OF MOTION

### Motions Requiring Fee

- ☐ Default Judgment ($50.00)
- ☐ Joinder in Other Party's Dispositive Motion (i.e.Summary Judgment, Judgment on the Pleadings, orother Dispositive Motion not pursuant to Rule 12(b)) ($50.00)
- ☐ Judgment on the Pleadings ($50.00)
- ☐ Motion to Dismiss, or in the Alternative SummaryJudgment($50.00)
- ☐ Renewed Dispositive Motion(Summary Judgment,Judgment on the Pleadings, or other DispositiveMotion not pursuant to Rule 12(b)) ($50.00)
- ☐ Summary Judgment pursuant to Rule 56($50.00)
- ☐ Motion to Intervene ($297.00)
- ☐ Other _____
  pursuant to Rule _____ ($50.00)

*Motion fees are enumerated in §12-19-71(a). Fees pursuant to Local Act are not included. Please contact the Clerk of the Court regarding applicable local fees.

☐ Local Court Costs $ 0

### Motions Not Requiring Fee

- ☐ Add Party
- ☐ Amend
- ☐ Change of Venue/Transfer
- ☐ Compel
- ☐ Consolidation
- ☐ Continue
- ☐ Deposition
- ☐ Designate a Mediator
- ☐ Judgment as a Matter of Law (during Trial)
- ☐ Disburse Funds
- ☐ Extension of Time
- ☐ In Limine
- ☐ Joinder
- ☐ More Definite Statement
- ☐ Motion to Dismiss pursuant to Rule 12(b)
- ☐ New Trial
- ☐ Objection of Exemptions Claimed
- ☐ Pendente Lite
- ☐ Plaintiff's Motion to Dismiss
- ☐ Preliminary Injunction
- ☐ Protective Order
- ☐ Quash
- ☐ Release from Stay of Execution
- ☐ Sanctions
- ☐ Sever
- ☐ Special Practice in Alabama
- ☐ Stay
- ☐ Strike
- ☐ Supplement to Pending Motion
- ☐ Vacate or Modify
- ☐ Withdraw
- ☑ Other Joint Motion for Preliminary Approval of Settlement
  pursuant to Rule ARCP 23 (Subject to Filing Fee)

Check here if you have filed or are filing contemoraneously with this motion an Affidavit of Substantial Hardship or if you are filing on behalf of an agency or department of the State, county, or municipal government. (Pursuant to §6-5-1 Code of Alabama (1975), governmental entities are exempt from prepayment of filing fees) ☐

Date: 4/11/2022 12:32:21 PM

Signature of Attorney or Party
/s/ ERBY JOHNSON FISCHER MR.

*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.

DOCUMENT 9

**Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.

ELECTRONICALLY FILED
4/11/2022 12:34 PM
11-CV-2021-900430.00
CIRCUIT COURT OF
CALHOUN COUNTY, ALABAMA
KIM MCCARSON, CLERK

**IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT**
**IN AND FOR CALHOUN COUNTY, ALABAMA**
**CIVIL DIVISION**

DRAKE MORGAN, on behalf of himself
and on behalf of all others similarly situated,

Plaintiff,

v. Case No. : 11-CV-2021-900430.00

PREFERRED PRECISION GROUP, LLC

Defendant.
_____/

**JOINT MOTION FOR PRELIMINARY APPROVAL OF**
**SETTLEMENT AND NOTICE TO SETTLEMENT CLASS**

Plaintiff, Drake Morgan ("Plaintiff"), on his own behalf and all similarly situated individuals, and Defendant, Preferred Precision Group, LLC ("Defendant") and, pursuant to Alabama Rule of Civil Procedure 23, by and through the undersigned counsel, hereby file their Joint Motion for Preliminary Approval of Settlement and Notices to Settlement Class, and states as follows:

## I. NATURE AND STAGE OF PROCEEDING

### A. The Litigation

The Class Representative alleges in the Class Complaint (the "Complaint") that Defendant violated 15 U.S.C. § 1681b(b)(2)(A)(ii) of the FCRA by failing to: obtain the proper authorization under the FCRA to obtain consumer reports (the "FCRA Claim"). More particularly, the Class Represenative alleges that Defendant did not first obtain Plaintiff's written authorization before obtaining his consumer report for employment purposes. Defendant adamantly denies the FCRA claim and that it violated any law.

### B. Settlement Agreement

The Parties exchanged relevant information and engaged in extensive settlement negotiations. The Parties' continued efforts culminated in settlement of the putative class consisting of approximately 1,337 members. The Parties thereafter executed a Class Action Settlement Agreement and Agreement, which the Parties will make available to the Court for in camera review as needed (the "Agreement"). The Agreement, subject to Court approval, provides for settlement under the following key terms:

- Certification for settlement purposes only of a class of all employees and job applicants in the United States subject of a consumer report procured by PPG for employment purposes but from whom PPG did not first obtain written authorization to procure their report in the two years preceding the filing of this action through the date of final judgment;

- Defendant agrees to establish a Settlement Fund as indicated in the Settlement Agreement. Any and all uncashed settlement compensation after the expiration of the 90-day period for negotiating checks used to distribute the Net Settlement Fund shall automatically revert back to Defendant;

- Every Settlement Class Member will receive a Settlement Payment[1] in the fixed amount of $50.00;

- Payment from the Settlement Fund of an attorneys' fees award, plus reimbursement from the Settlement Fund for litigation-related costs and expenses;

- Payment from the Settlement Fund of a compensation to the named Plaintiff for executing a general release, approved by the Court; and

- Notice and Administration by a Settlement Administrator deducted from the Settlement Fund.

## II. STATEMENT OF ISSUES

The issues before the Court are (a) whether to approve the Agreement on a preliminary

[1]"Settlement Payment" means the individualized *pro rata* share of the Settlement Fund that will be made in the first distribution from the Settlement Fund to the Settlement Class Members who do not timely and validly opt out of the settlement after the payment of the Class Representative Service, Class Counsel Attorney's Fees and Costs, and Class Settlement Administration Costs. The Settlement Payment will be calculated by dividing the Net Settlement Fund by the number of consumers in the Settlement Class.

basis, and (b) whether to approve the Notice of Proposed Class Action Settlement for distribution to members of Class.

## III. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED

### A. The Law Governing Preliminary Approval

Explicit in Rule 23 of the Alabama Rules of Civil Procedure, is that claims, issues or defenses of a certified class may be settled only with the court's approval. *Ala. Rule Civ. P. 23, based on Fed. R. Civ. P. 23*. The Eleventh Circuit has recognized that "[p]ublic policy strongly favors the pretrial settlement of class action lawsuits." *In re United States Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992); *see also Gevaerts v. TD Bank, N.A.*, 2015 WL 6751061, at *4 (S.D. Fla. Nov. 5, 2015) ("Federal courts have long recognized a strong policy and presumption in favor of class action settlements."). Settlement "has special importance in class actions with their notable uncertainty, difficulties of proof, and length. Settlements of complex cases contribute greatly to the efficient utilization of scarce judicial resources, and achieve the speedy resolution of justice...." *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 538 (S.D. Fla. 1988), *aff'd*, 899 F.2d 21 (11th Cir. 1990) (citations omitted). As a general matter, "unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." 4 Alba Conte & Herbert Newberg, Newberg on Class Actions §11.50, at 155 (4th ed. 2002).

"'At the preliminary approval stage, the Court's task is to evaluate whether the Settlement is within the "range of reasonableness.' 4 Newberg on Class Actions § 11.26 (4th ed. 2010). 'Preliminary approval is appropriate where the proposed settlement is the result of the parties' good faith.'"

### *1. The Settlement Agreement Is Not the Product of Fraud or Collusion.*

In assessing this factor, courts must presume that no fraud or collusion occurred unless there is evidence to the contrary. *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 287 (W.D. Tex. 2007). There is no evidence of fraud or collusion here. The proposed settlement in the Agreement was negotiated through an experienced and respected mediator, Mr. Chris Polaczek, Esq. "Where the parties have negotiated at arm's length, the Court should find that the settlement is not the product of collusion." *Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 692 (S.D. Fla. 2014). There was no fraud or collusion in reaching the Settlement. During this process, the Parties thoroughly evaluated their claims and defenses in order to negotiate what they believe is the most optimal settlement on behalf of the settlement class.

The absence of fraud and collusion is evidenced by a settlement reached through the mediation process following months of litigating. The proposed settlement reached by Plaintiff and Defendant resulted from concessions and compromise by the parties. The Agreement is a product of the functioning of the adversarial and negotiations processes, not fraud or collusion. Accordingly, the first factor supports approval of the settlement.

### *2. Litigating this Case Through Trial Would Be Complex, Expensive, and Time-Consuming.*

Although the total expenses that the parties will incur if this litigation progresses and the duration of the litigation, including the appellate process, cannot be predicted with certainty, Plaintiff and Defendant will vigorously advocate for their respective positions on various legal and factual issues, that will likely entail significant motion practice and likely trial. Defendant denies liability for any willful violations of the FCRA and asserted numerous affirmative defenses to Plaintiff's individual and alleged class claims.

There is no reason to believe that issues raised before, during, or after a trial would be any

less vigorously litigated by the parties or less expensive and time-consuming to resolve. Absent settlement, the resolution of factual issues relevant to each class member's claims would result in protracted litigation. The proposed settlement will save considerable time and resources that would otherwise be spent litigating disputes resolved by the proposed settlement. Thus, this factor weighs in favor of approving the settlement proposed in the Agreement. *Ayers v. Thompson*, 358 F.3d 356, 2369 (5th Cir. 2004) (holding that settlement would avoid risks and burdens of potentially protracted litigation weighed in favor of approving settlement).

***3. Settlement Class Counsel Has Documents and Other Information to Realistically Value the Claims.***

The parties possess "ample information with which to evaluate the merits of the competing positions." *Ayers*, 358 F.3d at 369. Specifically, Plaintiff has obtained sufficient discovery from Defendant to allow a well-informed and comprehensive settlement of the Class. Plaintiff and Defendant have reviewed Defendant's records and discovery responses for the relevant time period and determined that the Class consists of approximately 1,337 individuals, including Plaintiff. Defendant also identified and produced copies of the documents, policies, and procedures that pertain to the allegations in the Complaint, if any.

In addition to the discovery described above, the parties have extensively analyzed legal authorities regarding FCRA claims on a nationwide basis. Counsel for the parties have discussed their claims and defenses with each other.

As such, the parties believe that they have sufficient information to reach a fair, reasonable, and adequate settlement. The Agreement was negotiated based on the parties' realistic, independent assessments of the merits of the claims and defenses in this case and should be approved.

***4. Ultimate Success on the Merits of the Claims Is Uncertain Given the Risks of Litigation.***

When evaluating a proposed class action settlement, the court must balance the benefits of a certain and immediate recovery through settlement against the inherent risks of litigation. *See Bennett,* 737 F.2d at 986*; Reed v. General Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983). Here, recovery under the Agreement is favorable for the approximately 1,337 Settlement Class members given the general uncertainty surrounding all litigation and the risks specific to this case.

If this litigation proceeds, Defendant intends to continue to vigorously defend the claims, and Plaintiff and the Settlement Class will face legal challenges by Defendant, including challenges to merits of their claims, certification, and an appeal on class certification, if a class is certified. Any one of these challenges could significantly prolong the litigation at considerable expense to the parties and potentially result in no recovery for the class members. Each of these phases of litigation presents uncertainty and risks, which the settlement allows the parties to avoid.

Without this settlement, in order for members of the settlement class to recover any statutory damages under the FCRA, they must not only prove that Defendant failed to comply with the disclosure and authorization provisions, but also that Defendant did so willfully. *See* 15 U.S.C. § 1681n(a). Although Plaintiff contends that the violations were willful, Defendant will contest the question of willfulness if the lawsuit is further litigated. *See, e.g., Schoebel v. Am. Integrity Ins. Co.*, 2015 WL 3407895, at *7 (M.D. Fla. May 27, 2015) (dismissing FCRA stand-alone disclosure case seeking statutory damages because alleged violation was not willful); *See also, Lewis v. Southwest Airlines Co.*, 2018 U.S. Dist. LEXIS 5576 (N.D. Tex. Jan. 11, 2018) (summary judgment for defendant on issue of wilfullness). And, absent the settlement, certification under the current class definition is not certain. Although Defendant denies liability and has asserted affirmative defenses to the claims, Defendant nevertheless recognizes, as Plaintiff

does, the risks inherent in proceeding to trial.

A negotiated settlement that provides immediate relief is preferable to protracted litigation and an uncertain result in the future. Weighed against the risks associated with litigation, the proposed settlement is fair, reasonable, and adequate.

***5. The Settlement Agreement Is Fair in Light of the Possible Range of Recovery and Certainty of Damages.***

The Agreement should be approved because the proposed settlement compares favorably to the limited range of damages available under the FCRA that could potentially be recovered at trial. In his Complaint, Plaintiff seeks to recover compensation under 15 U.S.C. § 1681n(a)(1)(A), (2), and (3) for himself and the other class members consisting of (a) statutory damages of not less than $100.00 and not more than $1,000.00; (b) punitive damages, (c) attorney's fees and costs.[2] However, as § 1681n(a) of the FCRA indicates, proof of noncompliance with the technical requirements of the FCRA alone does not impose liability on a defendant. Recovery of damages under § 1681n(a) is contingent on establishing that the defendant willfully failed to comply with the FCRA; negligent noncompliance is not sufficient. *Safeco v. Burr*, 127 S. Ct. 2201, 2215 (2007); 15 U.S.C. § 1681n(a). And, even if liability for willful noncompliance is established as Plaintiff believe, the determination as to the size of the award is left to the discretion of the jury, which may return an award of no damages as a possible outcome.

The settlement proposed in the Agreement secures a monetary payment to each Settlement Class member who timely submits a proper Claim Form.[3] Even if the Settlement Class

[2] § 1681(n)(a) of the FCRA states that a person who willfully fails to comply with any requirement under 15 U.S.C. § 1681 *et seq*. regarding a consumer is liable to the consumer in an amount equal to the sum (a) "any actual damages sustained by the consumer as a result of the failure or damages of not less than $100.00 and not more than $1,000.00;" (b) punitive damages in such amount as the court may allow; and (c) the costs of an action, if successful, to enforce liability under this Section plus reasonable attorneys' fees as determined by the court. 15 U.S.C. § 1681n(a)(1)(A), (2)-(3) (emphasis added).

[3]The Parties have included an estimate of the final Settlement Payment to each Settlement Class Member in the Agreement.

established liability against Defendant for willful violations of the pertinent provisions of the FCRA, a real risk exists that the Settlement Class members could recover less after successfully litigating their claims through trial than the payment negotiated by the parties in the Agreement.

Settlement Class Counsel believes that the minimum individualized Settlement Payment to each Settlement Class member is a very good settlement, providing more relief to Settlement Class members than other recently approved settlements. The district court in *Hillson v. Kelly Services Inc.*, summarized the results of such settlements as follows:

> The results counsel achieved for the class were good. The gross recovery (i.e., recovery before fees and other expenses are taken from the fund) is $30.00 per class member (on average). This appears to be in line with the average per-class-member gross recovery in other settlements of stand-alone disclosure claims. *See Moore v. Aerotek, Inc.*, No. 2:15-CV-2701, 2017 WL 2838148, at *4 (S.D. Ohio June 30, 2017) (per-capita gross recovery of $25.00 in case involving a stand-alone disclosure claim and a claim that employer did not provide a copy of consumer report), *report and recommendation adopted*, 2017 WL 3142403 (S.D. Ohio July 25, 2017); *Lagos v. Leland Stanford Junior Univ.*, No. 15-CV-04524-KAW, 2017 WL 1113302, at *2 n.1 (N.D. Cal. Mar. 24, 2017) (per-capita gross recovery of $26.00); *Lengel v. HomeAdvisor, Inc.*, No. CV 15-2198, 2017 WL 364582, at *9 (D. Kan. Jan. 25, 2017) (citing FCRA disclosure cases with per-capita gross recoveries of $33.00, $40.00, and $44.00).

2017 WL 3446596, at *3 (E.D. Mich. Aug. 11, 2017); *See, e.g.*, *Marcum v. Dolgencorp, Inc.*; No. 3:12-cv-00108 (E.D. Va. 2014) ($53.00 gross payment per class member reduced by attorneys' fees and service awards paid from class Settlement Fund); *Knights v. Publix Super Markets*, *Inc.*; No. 3:14-cv-006720 (M.D. Tenn. 2014) ($48.55 paid to each class member); *Pitt v. Kmart Corp.*, No. 3:11-cv-00697 (E.D. Va. 2013) ($18.00 or $38.00 received by class members depending on date of FCRA violation).

The settlement proposed in the Agreement falls within the reasonable range of possible recovery for members of the Settlement Class. "A proposed settlement need not obtain the largest conceivable recovery for the class to be worthy of approval; it must simply be fair and adequate

considering all the relevant circumstances." *Klein v. O'Neal, Inc*., 705 F. Supp. 2d 632, 649 (N.D. Tex. 2010). Balancing the risk that liability cannot be established against Defendant for willful violations of the authorization provisions of the FCRA against the range of possible recovery of damages supports settlement.

***6. Settlement Class Counsel and the Parties Support the Settlement.***

As evidenced by the Agreement itself and this Motion in which the parties jointly request approval of the settlement, the terms of the settlement as proposed have the obvious support of Plaintiff, Settlement Class Counsel, and Defendant. Plaintiff and Defendant believe, based on their independent assessments, that settlement is in their respective best interest. Plaintiff and Settlement Class Counsel have likewise concluded that the proposed settlement is in the best interest of the Class.

Furthermore, the parties anticipate that the settlement will receive broad support from putative class members, especially considering that each individual member will receive a settlement check that is reasonable and consistent in the context of class action litigation. Even if applicants in the Settlement Class were able to overcome the difficulties of financing and finding legal counsel to pursue their relatively small individual claims, few members of the Settlement Class are likely to be inclined toward pursuing their individual claims.

Therefore, it is unlikely that Settlement Class members will oppose releasing their pertinent FCRA claims that in reasonable probability they never intended to bring, or were unaware to have possessed. Even if any putative class member does not agree with the terms of the proposed settlement, he or she is protected by the right to opt out of the proposed class settlement and retain his or her individual FCRA claims against Defendant rather than participating in the settlement.

The parties believe that the Agreement represents a fair, reasonable, and adequate

settlement. Consequently, the support of Plaintiff, Settlement Class Counsel, the putative class members of each Settlement Class, and Defendant weighs in favor of approving the settlement.

## IV. THE PROPOSED CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES ONLY.

State courts elsewhere have previously certified class action lawsuits alleging similar FCRA violations. *See, e.g., Blaney v. Aimbridge Hospitality, LLC*, No. 18-CA-001358 (Fla. 13th Cir. Ct. July 23, 2018); *Lindsey v. Ring Power Corporation*, No.: 18-CA-007124 (Fla. 13th Cir.); *Bulgajewski v. R.T.G. Furniture Corporation, d/b/a Rooms To Go*, No.: 18-CA-007000 (Fla. 13th Cir.); "A class may be certified 'solely for purposes of settlement [if] a settlement is reached before a litigated determination of the class certification issue.'" *Holman*, 2009 WL 4015573, at *2 (quoting *Borcea v. Carnival Corp.,* 238 F.R.D. 664, 671 (S.D. Fla. 2006); internal punctuation omitted). The proposed Settlement Class here meets the requirements of Alabama Rules of Civil Procedure 23.

ARCP Rule 23 requires the class to be so numerous that joinder of all members is impractical. That requirement is easily satisfied here as Defendant concedes that there are approximately 1,337 Settlement Class members. *ARCP Rule 23(a)(1).* Moreover, the identities of the Settlement Class members (who are job applicants) can be ascertained from records available to Defendant.

Second, there must be "questions of law or fact common to the class." *ARCP 23(a)(2)*. Even a single common issue may suffice. *See, e.g., Williams v. Mohawk Indus., Inc.,* 568 F.3d 1350, 1355 (11th Cir. 2009) ("[C]ommonality requires that there be at least one issue whose resolution will affect all or a significant number of the putative class members.") (internal quotation marks omitted). Under Plaintiff's theory of recovery, that requirement is met by the common questions of (1) whether a proper certification and/or authorization was made by

Defendant prior to procuring a consumer report on the Settlement Class membersand (2) whether Defendant willfully violated the FCRA.

*Rule 23(a))* (3) imposes a "typicality" requirement, which "is satisfied by showing the existence of 'a sufficient nexus ... between the claims of the named representative and those of the class at large.'" *Holman*, 2009 WL 4015573, at *2 (*quoting Hines v. Widnall,* 334 F.3d 1253, 1256 (11th Cir. 2003)). That requirement is met here because the claims of the Named Plaintiff and those of the Settlement Class members all stem from the same basic facts and legal theory—they were the subject of a background check obtained through what Plaintiff contends is an authorization that fails to satisfy the FCRA's requirements. *See, e.g., Kornberg v. Carnival Cruise Lines, Inc.,* 741 F.2d 1332, 1337 (11th Cir. 1984) (typicality satisfied where claims "arise from the same event or pattern or practice and are based on the same legal theory"). Further, Plaintiff seeks the same relief on his own behalf and on behalf of each Settlement Class member, *i.e.*, statutory damages available under the FCRA.

*ARCP 23(a)(4)* requires "adequacy," which is met if (1) "'plaintiffs' counsel are qualified, experienced, and generally able to conduct the proposed litigation'" and (2) the plaintiffs lack "'interests antagonistic to those of the rest of the class.'" *Kirkpatrick v. J.C. Bradford & Co.,* 827 F.2d 718, 726 (11th Cir. 1987)). Both of those things are true here. Plaintiff's counsel and their firm are experienced in class action litigation and, specifically, in litigating claims under the FCRA. *See* Exhibit "A" (Declaration of Marc Edelman). Plaintiff has no interests antagonistic to those of the Settlement Class.

In addition to Rule 23(b), a class must satisfy the requirements of one of the types of class actions authorized by Rule 23(b)(1)(B). Here, the Settlement Class meets the requirements of Rule 23(b)(3). The common questions identified above predominate over any individual

questions that might be identified. *ARCP 23(b)(3).* (the court must find that "the questions of law or fact common to class members predominate over any questions affecting only individual class members"). Whether a proper authorization was provided prior to Defendant obtaining a consumer report on the Settlement Class members and whether the authoritzation violates the FCRA are over-arching common issues that are critical to determining liability.

Further, in the context of this settlement, there is no question that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." *Id.* "Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Administration of a single, comprehensive settlement would be superior to multiple individual lawsuits asserting the same claims.

## V. PLAINTIFF'S COUNSEL SHOULD BE APPOINTED AS CLASS COUNSEL AND PLAINTIFF APPOINTED AS CLASS REPRESENTATIVE.

Plaintiff's counsel initially identified, investigated and asserted the claims of Plaintiff and the Settlement Class, and, as set forth above, continued to prosecute and investigate those claims throughout the discovery period. As set forth in Exhibit "A" hereto, the Declaration of Marc Edelman, Plaintiff's counsel has "experience in handling class actions" and "other complex litigation," including "the types of claims asserted in [this] action." *Id.* In fact, Plaintiff's Counsel has been approved as class counsel in several FCRA class actions alleging violations of 15 U.S.C. 1681b(b)(2). *Graham v. Pyramid Healthcare Solutions*, Case No.: 8:16-cv-1324-T-30AAS (Dkt.58), (M.D. Fla. June 18, 2017)(Moody, J.); *Coles v. Stateserv Medical of Florida, LLC et al*. No. 8:17-cv-829-T-17-AEP, (M.D. Fla., April 10, 2017) (Dkt. 45); *Fosbrink v. Area Wide Protective, Inc*., 8:17-cv-01154-JSM-CPT, (M.D. Fla., May 8, 2018) (Moody, J.) (Dkt. 58);

*Musa v. SOS Security LLC*, No. 2:17-cv-05681-MCA-SCM (D.N.J., Newark Division, April 16, 2018) (Dkt. 42); *Grice v. Pepsi Beverages Company, et al*, Case No:1:17-cv-08853-JPO (S.D.N.Y. May 23, 2018); *Gibbs v. Centerplate, Inc., et al.*, No.8:17-cv-2187-T-17EAK-JSS (M.D.Fla. July 12, 2018); *Hargrett v. Amazon.comDEDC LLC*, Case No.8:15-cv-2456-T-26EAJ (July 24, 2018); *Gross v. Advanced Disposal Services, Inc*., No. 8:17-cv-1920-T-36TGW (M.D.Fla. Dec. 10, 2018); *Williams v. Naples Hotel Group*, No: 6:18-cv-422-Orl-37DCI (M.D.Fla. June 11, 2019); *Parker v. PGT Industries*, No. 8:18-cv-2250-T-36AAS (M.D. Fla. Feb. 26, 2020); *Lindsey v. Ring Power Corporation*, No.: 18-CA-007124 (Fla. 13th Cir.); *Bulgajewski v. R.T.G. Furniture Corporation, d/b/a Rooms To Go*, No.: 18-CA-007000 (Fla. 13th Cir.). That experience and the research conducted in this case have provided counsel with "knowledge of the applicable law." *Id.* Further, "the resources that counsel" have "commit[ted] to representing the class" have been substantial, as evidenced by their work in this case. *Id.* (Plaintiff's Counsel will submit further detail regarding their expenditure of resources in this case with their motion for an award of attorneys' fees and expenses). In short, Plaintiff's Counsel have represented the Settlement Class well and will continue to do so.

Plaintiff has also represented the Settlement Class well. He has gathered documents and monitored the progress of this action, and provided invaluable insight into Defendant's practices.

## VI. THE PROPOSED NOTICE SHOULD BE APPROVED.

The Notice of Class Action Settlement to be mailed to the Settlement Class is appended to the Agreement, and will be made available to Court for in camera review as needed. The content of the proposed class notice and the method for notifying members of each Settlement Class satisfy the requirements of Rule 23, ARCP and comport with due process.

The proposed notice plan is reasonable and provides the best notice practicable to the

Settlement Class. Under the Agreement, the Notice of Proposed Class Action Settlement will be sent to each class member via first class mail to the last known addresses of class members based on information contained in Defendant's records or obtained by the third-party Settlement Administrator. Notice by mail is recognized as sufficient to provide due process to known affected persons as long as the notice is "reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *DeHoyos*, 240 F.R.D. at 296 (sending notice by mail is preferred when all or most class members can be identified). The Agreement also includes provisions to ensure that a reasonable effort is made to locate members whose notices are returned undelivered and to re-send the Notice of Proposed Class Action Settlement to these persons to the extent possible.

## VII. THE COURT SHOULD APPROVE A SCHEDULE AND PROCEDURES FOR A FAIRNESS HEARING, FILING CLAIMS, OPTING OUT, OBJECTING, AND FILING A MOTION FOR ATTORNEY'S FEES AND COSTS AND INCENTIVE AWARDS.

Plaintiff requests that, in conjunction with preliminarily approving the Agreement, the Court schedule a fairness hearing, to the extent needed if any Settlement Class members file an objection to the Settlement Agreement, to determine whether to finally approve the settlement.[4] Plaintiff also requests that the Court approve the deadlines and procedures the Agreement provides for filing claims, opting out, objecting, and filing a motion for attorney's fees and costs, class settlement administration costs, and an incentive award for Plaintiff. Under the Agreement, the schedule would be as follows:

[4] If no Settlement Class members file an Objection, then the Parties will jointly advise the Court that all provisions of the Settlement Agreement have been followed, that no Settlement Class members objected and seek Final Approval of the Settlement without the need for a final hearing.

| | |
|---|---|
| Settlement Administrator mails Notice ("Notice Date") | Within 14 days of Preliminary Approval Order |
| Deadline for Motion for Attorney's Fees and Costs, Class Settlement Administration Costs, and Incentive Award for Plaintiff | 14 days before the hearing on the Motion for Final Approval |
| Deadline for Objections | 60 days after Notice is mailed by Settlement Administrator |
| Deadline for Opt Outs (Exclusion Requests) | 60 days after Notice is mailed by Settlement Administrator |
| Deadline for Motion for Final Approval | 14 days before Fairness Hearing |
| Fairness Hearing | TBD by Court if any Settlement Class members file Objection to Settlement |
| Deadline for Cashing Settlment Checks | 90 Days after Notice is mailed by Settlement Administrator |

## VIII. CONCLUSION

The Court should approve the Agreement on a preliminary basis because the proposed settlement is fair, reasonable, and adequate. The Court should appoint Plaintiff's counsel as class counsel and Plaintiff as Class Representative. Class counsel's attorneys' fees and costs are appropriate under for settlement purposes. The Notice of Proposed Class Action Settlement should be approved for distribution to the Settlement Class because it meets the requirements of Alabama Rule of Civil Procedure 23 and due process.

WHEREFORE, Plaintiff, Drake Morgan, for himself and on behalf of all others similarly situated, and Defendant, Preferred Precision Group, LLC, request that the Court grant their Motion and enter an Order of preliminary approval.

Dated this 11th day of April, 2022.

**/s/ *Erby J. Fischer***
**ERBY J. FISCHER (FIS-010)**

**OF COUNSEL:**

**/s/ *William S. Pritchard, III***
**WILLIAM S. PRITCHARD, III, ESQ.**
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been filed electronically via the CM/ECF system and has been furnished via electronic transmission and/or via U.S. Mail on this 11th day of April, 2022, to the following:

William S. Pritchard, III, Esq.
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**/s/ *Erby J. Fischer***
**ERBY J. FISCHER, ESQ.**

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CIRCUIT COURT OF
CALHOUN COUNTY, ALABAMA
KIM MCCARSON, CLERK

# EXHIBIT “A”

**IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT**
**IN AND FOR CALHOUN COUNTY, ALABAMA**
**CIVIL DIVISION**

DRAKE MORGAN, on behalf of himself
and on behalf of all others similarly situated,

Plaintiff,

v. Case No. : 11-CV-2021-900430.00

PREFERRED PRECISION GROUP, LLC

Defendant.
_____/

**DECLARATION OF MARC R. EDELMAN**

I, MARC R. EDELMAN, declare under penalty of perjury as follows:

1. My name is Marc R. Edelman. Unless otherwise indicated, the facts set forth below are based on my personal knowledge and the opinions set forth herein are my own. I understand that this declaration under oath may be filed in the above captioned action.

2. I am employed as an attorney with the law firm of Morgan & Morgan, P.A. in the above-styled case. Morgan & Morgan is a nationwide trial advocacy law firm, currently employing over 500 attorneys, with vast resources at its disposal.

3. I am a licensed attorney in Florida. I have been a member of the Florida Bar since October, 1996. I have practiced law for approximately 25 years, half of which have been dedicated to labor and employment law. I have a J.D. from Florida State University College of Law and a Bachelor's degree from the University of Florida.

4. I am admitted in the United States District Courts for the Northern, Middle and Southern Districts of Florida, Eastern District of Michigan and Western District of Tennessee and the United States Court of Appeals for the Eleventh Circuit.

5. I have represented employers and employees in all stages of litigation in federal and state courts throughout the nation.

6. Since joining Morgan & Morgan, I have focused my efforts on employment law and employment related class action lawsuits. I possess the experience required to represent the proposed class. I have been approved as class counsel in other multiple employment-related FCRA and COBRA class actions, *Graham v. Pyramid Healthcare Solutions*, Case No.: 8:16-cv-1324-T-30AAS (Dkt.58), (M.D. Fla. June 18, 2017)(Moody, J.); *Coles v. Stateserv Medical of Florida, LLC et al*. No. 8:17-cv-829-T-17-AEP, (M.D. Fla., April 10, 2017) (Dkt. 45); *Fosbrink v. Area Wide Protective, Inc*., 8:17-cv-01154-JSM-CPT, (M.D. Fla., May 8, 2018) (Moody, J.) (Dkt. 58); *Musa v. SOS Security LLC*, No. 2:17-cv-05681-MCA-SCM (D.N.J., Newark Division, April 16, 2018) (Dkt. 42); *Grice v. Pepsi Beverages Company, et al*, Case No:1:17-cv-08853-JPO (S.D.N.Y. May 23, 2018); *Gibbs v. Centerplate, Inc., et al.*, No.8:17-cv- 2187-T-17EAK-JSS (M.D.Fla. July 12, 2018); *Hargrett v. Amazon.comDEDC LLC*, Case No.8:15-cv-2456-T-26EAJ (July 24, 2018); *Gross v. Advanced Disposal Services, Inc*., No. 8:17- cv-1920-T-36TGW (M.D.Fla. Dec. 10, 2018); *Williams v. Naples Hotel Group*, No: 6:18-cv- 422-Orl-37DCI (M.D.Fla. June 11, 2019); *Sharp v. Technicolor Videocassette of Michigan, Inc.*, No.: 2:18-cv-02325-cgc (W.D.T.N., December 5, 2019); *Lindsey v. Ring Power Corporation*, No.: 18-CA-007124 (Fla. 13th Cir.); *Bulgajewski v. R.T.G. Furniture Corporation, d/b/a Rooms To Go*, No.: 18-CA-007000 (Fla. 13th Cir.). *Bryant v. Realogy Group, LLC*, No.: 8:18-cv-2572-T-60CPT (M.D.Fla. April 9, 2020); *Bermudez v. CFI Resorts Management, Inc.*, No.: 6:19-cv-1847-Orl-37DCI (M.D.Fla. August 3, 2020); *Silberstein v. Petsmart, Inc.*, No.: 8:19-cv-02800-SCB-AAS (M.D.Fla. August 27, 2020); *Smith, et al. v. Kforce, Inc.*, No.: 8:19-cv-02068-CEH-CPT (M.D.Fla. June 28, 2021); *Betty Morris, et al. v. US Foods, Inc.*, No.: 8:20-cv-105-SDM-CPT

(M.D.Fla. July 14, 2021); *Broughton v. Payroll Made Easy, Inc.*, No.: 2:20-cv-41-NPM (M.D.Fla. July 27, 2021); *Tweedie v. Waste Pro USA, Inc.*, No.: 8:19-cv-01827-TPB-AEP (M.D.Fla August 5, 2021).

7. I have the desire, skills and ability to represent Plaintiff, Mr. Morgan, and the putative class through the conclusion of the litigation. I have no conflicts with any class members.

8. Leading up to the filing of the lawsuit, and subsequent to the filing of the action, Mr. Morgan has dutifully served the Settlement Class. He has provided insight and information related to his application experience, without which there would have been no lawsuit or proposed class resolution. Mr. Morgan has been responsive to inquiries and participated in the proposed resolution. Through his efforts and subject to the Court's approval, the Settlement Class Members will receive monetary compensation for claims they most likely did not even know existed. I am confident Mr. Morgan will continue to represent the Settlement Class through the conclusion of this litigation.

9. For the reasons set forth in the Memorandum of Law in Support of Plaintiff's Joint Motion for Preliminary Approval of Class Settlement and Notice to Settlement Class, I believe the Settlement provides an excellent outcome for the Settlement Class. The $50.00 fixed recovery for Class Members provides a significant monetary payment to a class of consumers who most likely don't know they have a claim.

10. The Settlement includes a simple process for filing a claim. To receive a settlement check, Class Members must only submit a claim form and certify they were denied employment or terminated from employment but did not first receive a copy of their background check or notice of rights. To remove any barriers and encourage participation, Class Members

are given the option of filing a claim by U.S. Mail or electronically.

11. The Court should approve the Settlement because it is fair, reasonable and adequate. Pursuant to the Settlement, notice reasonably calculated to reach all affected Class Members will be provides, along with an opportunity to receive a sizeable payment that compares favorably to similar FCRA class action settlements. Equally important, the Settlement provides the Settlement Class the opportunity to monetize their claims quickly without facing any of the risks inherent in litigation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 11th day of April, 2022 in Tampa, Florida.

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