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10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF SAN MATEO**
12 **UNLIMITED CIVIL**

13 DAVID WALKER, MELISSA CLARK,
14 and BENJAMIN WILSON, individually
and as representatives of the Class,

15 Plaintiffs,

16 v.

17 INFLECTION RISK SOLUTIONS, LLC,

18 Defendant.
19
20
21

Case No.: 22-CIV-02954

**PLAINTIFFS' SUPPLEMENTAL
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Assigned for all purposes to
Hon. V. Raymond Swope

Date: December 16, 2024

Time: 3:00 PM

Department: 23

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by Superior Court of California, County of San Mateo

ON 12/12/2024

By /s/ Ashlee Nelson
Deputy Clerk

Case No.: 22-CIV-02954

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15 U.S.C. § 1681, *et seq.*..... 1, 3, 6

Other Authority

Newberg and Rubenstein on Class Actions (6th ed.)..... 1

Robert W. Wood, *IRS Form 1099 Rules for Settlement and Legal Fees*, Business Law Today, Jan. 28, 2020 2

1 In its tentative decision, the Court raised 14 concerns regarding the proposed class
2 settlement. Those concerns are addressed sequentially below.

3 **Issue No. 1 – mediator’s qualifications and experience.**

4 Please see Exhibit 1 for information about Mr. Peterson’s qualifications and
5 experience in mediation.

6 **Issue No. 2 – claim forms.**

7 In response to this concern, the class definition has been edited, to make clear that
8 the class consists of individuals with erroneous reports. (*See* Exhibit 2, Amended
9 Settlement Agreement (“Am. SA”)¹, ¶ 23 (revising the Settlement Class definition by
10 adding “Plaintiffs allege Defendant issued inaccurate reports about the individuals in the
11 following Groups (collectively hereafter, the ‘Settlement Class’).”) The term “inaccurate”
12 was used instead of “erroneous” in the revision because the Fair Credit Reporting Act
13 (“FCRA”) specifically uses this term, therefore the term has an established meaning in a
14 body of caselaw interpreting the FCRA. *See* 15 U.S.C. § 1681i(a)(1)(A) (in cases of
15 disputes, “the agency shall, free of charge, conduct a reasonable reinvestigation to
16 determine whether the disputed information is inaccurate”). The Settlement Administrator
17 will send notice to all individuals in the Groups as originally defined, to allow those with
18 inaccuracies in their reports to identify themselves to receive payment. This is permissible.
19 *See generally* Newberg and Rubenstein on Class Actions §§ 12:18; 9:19 (6th ed.); *Shames*
20 *v. Hertz Corp.*, 2012-2 Trade Cas. (CCH) ¶ 78120, 2012 WL 5392159, *9 (S.D. Cal. Nov.
21 5, 2012) (noting that “there is nothing inherently objectionable with a claims-submission
22 process, as class action settlements often include this process”); *McPhail v. First Command*
23 *Financial Planning, Inc.*, 251 F.R.D. 514, 519 (S.D. Cal. 2008) (that “inquiry into
24 individual issues can take place... during the claims administration process”); *On the House*
25 *Syndication, Inc. v. Federal Exp. Corp.*, 203 F.R.D. 452, 458, 51 Fed. R. Serv. 3d 1044
26

27 ¹ The Amended Settlement Agreement and its Exhibits are provided in clean form at Exhibit
28 2, and as redlined against the prior submitted Settlement Agreement and its Exhibits at
Exhibit 3 for ease of reference in reviewing the parties’ changes.

1 (S.D. Cal. 2001) (“[T]he most appropriate time to gather any necessary information from
2 individual class members is generally after a determination of liability and before payment
3 of individual claims.”). The claims process will also allow individuals to provide
4 information that may fill in any gaps between public record information and Defendant’s
5 records. For example, some sex offender registries may not contain all elements of the
6 offender’s personally identifying information and the claims process allows the Settlement
7 Class Member to supplement this information, demonstrating that they are a proper
8 recipient of monetary relief.

9 **Issue No. 3 – notice postcard.**

10 The proposed forms of Notices have been revised to make clear that only members
11 of the Successful Disputes Group for whom Defendant does not possess a Social Security
12 Number (“SSN”) are being asked to provide their SSN for tax purposes. Individual Notices
13 will be personalized to indicate whether the individual is required to provide a SSN in order
14 to receive full payment, and the Long Form Notice for the Settlement Website also explains
15 this process. The reason some class members may need to provide the Administrator with
16 a SSN is that the IRS generally requires settlement payments of over \$600 to be
17 accompanied by a Form 1099, which requires a SSN.² If the Administrator does not receive
18 a given class member’s SSN, however, it can still issue a payment, but it must withhold a
19 default amount from that class member’s check amount. To the extent that Defendant
20 possesses class members’ SSNs, it has agreed to share those with the Administrator. This
21 issue was contemplated by the parties’ original Settlement Agreement at ¶ 33, which
22 provided that the Administrator shall seek all necessary information from class members in
23 order to comply with tax requirements. The modifications to the notice process, which
24 provide for personalized postcards and also provide an explanation in the Long Form
25 Notice, address the Court’s concern that the original notices were imprecise about who is/is

26 _____
27 ² See Robert W. Wood, *IRS Form 1099 Rules for Settlement and Legal Fees*, Business Law
28 Today, Jan. 28, 2020, available at:
[https://www.americanbar.org/groups/business_law/resources/business-law-today/2020-
february/irs-form-1099-rules-for-settlements-and-legal-fees/](https://www.americanbar.org/groups/business_law/resources/business-law-today/2020-february/irs-form-1099-rules-for-settlements-and-legal-fees/).

1 not required to submit information in order to receive a payment.

2 **Issue Nos. 4 & 5 – notice postcard.**

3 The Notice postcard has been edited to address the Court’s concerns. (*See* Am. SA
4 at Ex. C.)

5 **Issue No. 6 – deadline for opt-outs.**

6 To address the Court’s concerns, the parties have agreed to extend the deadline for
7 opt-outs and objections to 105 days, rather than 60 days. The addition of 45 more days to
8 this deadline is appropriate in this case because the Administrator advised that the vast
9 majority of re-mailings could be completed in the initial 45 days, ensuring that the majority
10 of class members would then have at least 60 days to consider their Notice in advance of
11 the deadlines. (Declaration of American Legal Claim Services, LLC (“Admin. Decl.”) ¶
12 7.)

13 **Issue No. 7 – releases are overly broad and vague.**

14 The original Settlement Agreement did not anticipate releases that go beyond the
15 claims that were asserted or could have been asserted in the Second Amended Complaint,
16 and to the extent that was unclear, Paragraph 53 of the Amended Settlement Agreement has
17 been edited to clarify this point. (Am. SA ¶ 53.)

18 The release in Paragraph 52 is limited to the “Released Claims,” which as defined
19 in Paragraph 20, means claims “resulting from, arising out of, or relating to claims that were
20 brought or could have been brought in the operative complaint.” The limitation on joining
21 future class or mass actions in Paragraph 52 is similarly limited to the Released Claims. (*Id.*
22 ¶ 52.) Such a release is proper and commonly included in FCRA settlements. *See, e.g.*
23 *Berry v. Schulman*, 807 F.3d 600, 609 (4th Cir. 2015) (affirming approval of FCRA
24 settlement where class members released ability to receive statutory damages as part of a
25 class, but retained the ability to sue individually for individual damages); *Serrano v. Sterling*
26 *Testing Sys., Inc.*, 711 F. Supp. 2d 402, 417 (E.D. Pa. 2010) (same).

27 Similarly, Paragraph 53 now makes clear that the release pursuant to California Civil
28 Code Section 1542 also only encompasses the Released Claims. (Am. SA ¶ 53.)

1 Finally, in Paragraph 54, it is true that the Named Plaintiffs are providing a broader
2 release. This is permissible, however, as, unlike absent class members, the Named Plaintiffs
3 are doing so after a full investigation of all of the surrounding facts, and after consulting
4 with counsel. *See, e.g., Ontiveros v. Zamora*, 303 F.R.D. 356, 369 (E.D. Cal. 2014);
5 *Bellinghausen v. Tractor Supply Co.*, 303 F.R.D. 611, 622 (N.D. Cal. 2014).

6 Finally, Paragraph 20 has been edited correspondingly to ensure the Amended
7 Settlement Agreement is clear on these points.

8 **Issue No. 8 - qualifications and experience of the proposed settlement administrator.**

9 Please see the attached Declaration of American Legal Claim Services, LLC
10 regarding the qualifications and experience of the proposed Settlement Administrator.

11 **Issue No. 9 – class member definitions are ambiguous.**

12 With respect to the questions posed by the Court, to be a member of the Name and
13 DOB Group, all name components and date of birth must be a mismatch. Language has
14 been added to the Amended Settlement Agreement in Paragraph 23 making this requirement
15 clear, to address the Court’s concern. (*See* Am. SA ¶ 23 (“For avoidance of doubt, this
16 means that all of the identified fields did not match.”).) For the SOR Report Group, the
17 parties addressed the Court’s concern as described above (*see* Issue No. 7). Further, the
18 time period referenced (July 20, 2020 – May 30, 2024), the “Class Period,” refers to the
19 date the given report was prepared, not a date on the registry.

20 **Issue No. 10 – plaintiff Melissa Clark’s name.**

21 This issue has been addressed throughout the Amended Settlement Agreement and
22 its Exhibits.

23 **Issue No. 11 – costs.**

24 Plaintiffs’ current litigation costs are roughly \$13,000, and the Administrator’s
25 expected costs are just under \$98,000. (Admin. Decl. ¶ 9.) The proposed Notices have
26 been edited to make clear that the combined costs to be requested are not expected to exceed
27 \$125,000.

28 **Issue No. 12 – cy press recipients.**

1 The parties and their counsel hereby declare they have no legal interest in the *cy*
2 *pres* recipients (Bay Legal, Defy Ventures, and Breakthrough Colorado), including in their
3 governance, and have added this representation to the Amended Settlement Agreement.
4 (See Am. SA ¶ 32 (“The Parties agree and represent that they do not have any governance
5 interest in the *cy pres* recipients and are not aware of any conflict of interest with the *cy*
6 *pres* recipients receiving payment under this Agreement.”).)

7 **Issue No. 13 – service awards.**

8 The Named Plaintiffs have been active participants in the litigation and settlement
9 processes. Declarations from the Named Plaintiffs detailing this involvement are attached
10 hereto as Exhibits 4-6. Notably, the settlement is not contingent upon the service awards
11 being granted as requested– the awards are at the Court’s discretion. The parties
12 respectfully submit that, at this stage of the proceedings (preliminary approval), the Court
13 should only assess whether the provisions relating to service awards render the entire
14 settlement unreasonable. Given that the awards are fully discretionary and not required to
15 be granted in full for the settlement to be effectuated, the parties submit that the settlement
16 should be preliminarily approved without more detailed consideration of the awards’
17 appropriateness. After class members have received notice (and had an opportunity to
18 object), and after Plaintiffs have submitted full briefing on the issues of both service awards
19 and attorneys’ fees, the Court can make a final determination about the requested service
20 awards. Plaintiffs note that service awards of \$5,000 or more per class representative are
21 commonly approved in similar circumstances. See, e.g., *Carter v. McDonald's Restaurants*,
22 No. 15-cv-01531, 2017 WL 5634300, at *2 (C.D. Cal. Mar. 15, 2017) (approving \$10,000
23 service award per representative, in FCRA case); *Kutzman v. Derrel's Mini Storage, Inc.*,
24 No. 18-CV-00755, 2020 WL 5909151, at *10 (E.D. Cal. Oct. 6, 2020) (approving \$7,500
25 service award per representative, in FCRA case); *Reyes v. Experian Info. Sols., Inc.*, No.
26 16-CV-00563, 2021 WL 9748881, at *1 (C.D. Cal. May 4, 2021) (\$15,000 service award
27 per representative, in FCRA case); *Kang v. Credit Bureau Connection, Inc.*, No. 18-CV-
28 01359, 2023 WL 6811994, at *18 (E.D. Cal. Oct. 16, 2023) (granting \$5,000 service award

1 per representative, in FCRA case, noting that a “service payment of \$5,000 for the class
2 representative ‘is presumptively reasonable’ in the Ninth Circuit” (citing cases)).

3 **Issue No. 14 – intra-class differences.**

4 As the Court noted in its tentative ruling, there are some differences between the
5 treatment of the different Groups in the Settlement Class. These differences are “rationally
6 based on legitimate considerations.” *7-Eleven Owners for Fair Franchising v. Southland*
7 *Corp.*, 85 Cal. App. 4th 1135, 1162-1163 (2000).

8 First, members of the DOB Match Group and SOR Reports Group are required to
9 submit Claim Forms in order to receive payment, while members of the Disputes Group are
10 not. This is because the parties’ counsel are going to verify claims to ensure that the records
11 reported about claiming members of the DOB Match Group and SOR Reports Group were
12 in fact inaccurate. This is not needed for members of the Disputes Group, by definition –
13 those individuals have already, on their own initiative, contacted Defendant, told Defendant
14 that the record reported about them was inaccurate, and Defendant, after conducting its own
15 investigation, has agreed. *See generally* 15 U.S.C. § 1681i (FCRA dispute procedures).

16 The fact that members of the Disputes Group took the initiative to contact Defendant
17 about their inaccurate reports also justifies the potentially larger recovery this Group
18 receives under the settlement.³ That these class members disputed is likely to indicate that
19 the misreporting was impactful to them: that it was a barrier to a job or an apartment, for
20 example. That impact, along with the fact that the parties know these class members
21 invested their own time and effort in disputing, justifies the potentially larger recovery. Such
22 tiered or otherwise differing recovery settlements are common in cases brought under the
23 FCRA. *See, e.g., Berry v. LexisNexis*, No. 3:11-cv-00754-JRS, ECF No. 128 (E.D. Va.
24 Sept. 5, 2014) (approving settlement with an injunctive relief class and a monetary relief
25 class for individuals who disputed); *Goode v. LexisNexis Risk & Info. Analytics Grp., Inc.*,

26 _____
27 ³ As noted in the Amended Settlement Agreement, the payments to claiming DOB Match
28 Group and SOR Reports Group members will be distributed *pro rata*. (See Am. SA ¶ 28.) Those payments are capped at the same amount that each Disputes Group member receives - \$1,500.

1 No. 2:11-cv-02950-JD, ECF No. 77 (E.D. Pa. Dec. 29, 2014) (same); *In re: TransUnion*
2 *Rental Screening Solutions, Inc. FCRA Litigation*, No. 1:20-md-02933-JP (N.D. Ga. 2023)
3 (granting final approval to FCRA settlement that gave different recoveries to different
4 groups, including disputes groups).

5 **Conclusion.**

6 For the reasons expressed herein, and in Plaintiffs' initial brief in support of the
7 Motion for Preliminary Approval of the Class Action Settlement, and based on the
8 Amended Settlement Agreement and its Exhibits, as well as the supplemental Declarations
9 attached hereto, Plaintiffs respectfully request that the Court grant preliminary approval of
10 the proposed settlement.

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BERGER MONTAGUE PC

Date: December 12, 2024

/s/Joseph C. Hashmall
Joseph C. Hashmall, *pro hac vice*

ATTORNEYS FOR PLAINTIFFS