ORDER GRANTING JOINT MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AND NOTICE TO SETTLEMENT CLASS

THIS MATTER came before the Arbitrator upon the Joint Motion for Preliminary Approval of Settlement and Notice to Settlement Class. Having considered the Settlement, all papers and proceedings held herein and having reviewed the record in this action, the Arbitrator finds:

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

The parties seek certification for settlement purposes of a class defined as:

> All natural persons residing in the United States (including all territories and other political subdivisions of the United States) for whom MLS procured a consumer report for employment purposes in a co-employment relationship with Peoplease, that was used in whole or in part to take an adverse employment action against an applicant or employee, between June 1, 2016 and January 1, 2022.

A class action may be maintained if the class fulfills the four "prerequisites" in Rule 23(a) and fits within one of the "types of class actions" under Rule 23(b). *UAW v. General Motors Corp.*, 497 F.3d 615, 625 (6th Cir. 2007). The Court must conduct a "rigorous analysis" to confirm Rule 23 is satisfied. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 347 (2011). District courts are given broad discretion to determine whether class certification is appropriate. *In re Whirlpool Corp. Front-Loading Washing Prods. Liab. Litig.*, 722 F.3d 838, 850 (6th Cir.2013). As explained below, certification of this Settlement Class satisfies Rule 23's requirements and is otherwise appropriate.

The Arbitrator finds the Settlement Class is ascertainable based on objective criteria – namely, between June 1, 2016 and January 1, 2022, each class member's consumer report was used in whole or in part as the basis of an adverse employment action.

The Arbitrator finds numerosity is satisfied, as there are approximately 300 members in the Settlement Class.

The Arbitrator finds questions commonality is satisfied. Plaintiff's claims, and the claims of the Settlement Class can be resolved by determining 1) whether Defendants procured a consumer report for employment purposes, 2) whether such reports were used as part of an adverse employment action,) whether Defendants failed to first provide notice and a copy of the report before taking adverse action. These questions are common to both Plaintiff and the Settlement Class.

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

The Arbitrator finds Plaintiff to be an adequate class representative. Plaintiff is a part of the class, possesses the same interest, suffered the same injury, and thus, seeks the same type of relief as the other class members. *See Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 562 (6th Cir. 2007) (quoting *Amchem*, 521 U.S. at 625–26. The record reflects Plaintiff has participated in the action, and has no conflicts with the Settlement Class.

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

Rule 23(b)(3) requires that the questions of law or fact common to all members of the class predominate over questions pertaining to individual members. *In re American Med. Sys.*, 75 F.3d 1069, 1084 (6th Cir. 1996) ("[Rule 23](b)(3) parallels subdivision (a)(2) in that both require that common questions exist, but subdivision (b)(3) contains the more stringent requirement that common issues 'predominate' over individual issues."). The Arbitrator finds the core facts common to the Settlement Class all stem from Defendants' use of consumer reports for employment purposes, and its practices when such reports contained codes potentially disqualifying a person from employment. The process was sufficiently standardized for all Settlement Class Members. The predominating issue is whether Defendants' respective practices violated FCRA. This issue is the same as to every Settlement Class Member. There are no other questions requiring individual review or any other pertinent facts requiring an impermissible individualized analysis. Moreover, to the extent there are individual issues, questions of law and fact common to the class still predominate. For this reason, the Rule 23(b)(3) predominance requirement is satisfied.

The Arbitrator finds Rule 23(b)(3)'s superiority requirement is also satisfied, as this Settlement efficiently resolves the claims of 300 consumers. Moreover, the amount in controversy for any individual claimant is relatively small, since the

statutory damages available are between $100.00 and $1,000.00. *See* 15 U.S.C. § 1681n. Any member who believes they have suffered actual damages has the right to opt out of the Settlement to pursue their claims on an individual basis.

3. **The Arbitrator Preliminarily Approves the Settlement**

The Arbitrator incorporates a two stage process to review a class action settlement - preliminary and final approval. Fed. R. Civ. P. 23(e)(1)-(2) (eff. Dec. 1, 2018); *see* Conte & Newberg, 4 *Newberg on Class Actions*, § 11.25, at 38–39 (4th ed. 2002). The first step is a "preliminary, pre-notification hearing to determine whether the proposed settlement is within the range of possible approval." *In re Packaged Ice Antitrust Litig.*, 2010 WL 3070161, at *4 (E.D. Mich. Aug. 2, 2010). Before the Arbitrator can grant preliminary approval and direct notice to the classes, Plaintiff must "show[] that the court will likely be able to approve the proposal under Rule 23(e)(2)." Fed. R. Civ. P. 23(e)(2).

Before approving a settlement that would bind class members, a district court must conclude that it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). Several factors guide this inquiry: (1) the likelihood of success on the merits weighed against the amount and form of the relief offered in the settlement; (2) the risks, expense, and delay of further litigation; (3) the judgment of experienced counsel who have competently evaluated the strength of their proofs; (4) the amount of discovery completed and the character of the evidence

uncovered; (5) whether the settlement is fair to the unnamed class members; (6) objections raised by class members; (7) whether the settlement is the product of arm's length negotiations as opposed to collusive bargaining; and (8) whether the settlement is consistent with the public interest. See, e.g. *Intl. Union, United Auto., Aerospace, and Agr. Implement Workers of Am. v. Gen. Motors* Corp., 497 F.3d 615, 631 (6th Cir. 2007).

"The most important of the factors to be considered in reviewing a settlement is the probability of success on the merits. The likelihood of success, in turn, provides a gauge from which the benefits of the settlement must be measured." *Poplar Creek Development Co. v. Chesapeake Appalachia, LLC*, 636 F.3d 235, 245 (6th Cir. 2011). (citations omitted). The Arbitrator has evaluated the probability of success relative to the benefits of the Settlement. The Arbitrator finds the interests of the class as a whole are better served if the litigation is resolved now, as Settlement Class Members are receiving gross awards of $900.00, approximately of the maximum statutory damages available.

"[M]ost class actions are inherently complex and settlement avoids the costs, delays, and multitude of other problems associated with them." *In re Southeastern Milk*, 2012 WL 2236692, at *3 (citing *In re Telectronics Pacing Sys., Inc.*, 137 F.Supp.2d 985, 1013 (S.D. Ohio 2001)). See also *Gokare v. Fed. Express Corp.*, 2:11-CV-2131-JTF-CGC, 2013 WL 12094870, *4 (W.D. Tenn. Nov. 22, 2013).

The Arbitrator finds the Settlement, which eliminates future costs, delays and risk, to be in the best interest of the Class.

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

The Arbitrator finds Class Counsel had sufficient information to determine the value of the case and conclude the Settlement to be a fair compromise.

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

The Arbitrator finds this Settlement to be a product of arm's length negotiations. The Arbitrator finds no evidence of fraud or collusion.

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

The Arbitrator finds the $5,000.00 compensation provided to Plaintiff for executing a general release and serving the class, to be reasonable, as Plaintiff Espinoza has sacrificed his individual claims against Defendant and brought the action that ultimately resulted in class wide relief.

4. Class Counsel will Fairly and Adequately Represent the Class

The Arbitrator finds Marc R. Edelman, Esq. and his firm, Morgan & Morgan P.A. will adequately represent the Settlement Class. Mr. Edelman has been practicing law for over 25 years, identified the FCRA violation alleged, and obtained a very favorable outcome for the Settlement Class. Additionally, Mr. Edelman has been named as Class Counsel in more than a dozen similar FCRA class action lawsuits.

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

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

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

Finally, the Arbitrator sets this case for hearing for final approval of the settlement on July 1, 2022, at 9:30 a.m. (via Zoom) and instructs the Parties to

include this hearing date, time and location in the Notice to be sent pursuant to the notice plan.

DONE AND ORDERED at Tampa, Florida this 14th day of April, 2022.

CARLOS BURRUEZO, ESQ.
ARBITRATOR

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Counsel of Record