IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
Atlanta Division

IN RE: TransUnion Rental Screening Solutions, Inc. FCRA Litigation	**No. 1:20-md-02933-JPB** **ALL CASES**

PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF THE PROPOSED SETTLEMENT AND MEMORANDUM IN SUPPORT

Plaintiffs, on behalf of the proposed Settlement Classes, respectfully move the Court for preliminary approval of a proposed settlement with Defendant TransUnion Rental Screening solutions, Inc. Plaintiffs respectfully request the Court enter the proposed Preliminary Approval Order. In support, Plaintiffs submit the attached Memorandum. Defendant does not oppose the relief sought in this Motion.

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I. INTRODUCTION

Plaintiffs'[1] proposed Settlement with Defendant TransUnion Rental Screening Solutions, Inc. ("TURSS" or "Defendant") provides meaningful relief for the proposed Classes, exceeds the applicable standards for settlement approval, and should be approved.

The Settlement provides two primary forms of relief. First, the Settlement establishes a Rule 23(b)(2) injunctive relief Settlement Class. The important policy changes required by the Settlement address many of the problems identified in the operative Complaint, including errors resulting from TURSS's current matching algorithm and record collection practices. Specifically, the Settlement will prohibit TURSS from linking a consumer with a Criminal Record without first matching the consumer's name as well as date of birth, Social Security Number, or address. This is a significant change that will improve the accuracy of reporting for all consumers going forward. The Settlement will also forbid TURSS from relying on Landlord-Tenant records collected from sources that are not visited at least every 60 days. Finally, the Settlement requires TURSS to reformat its reports to present multiple

[1] Unless otherwise explicitly defined herein, all terms have the same meanings as those set forth in the Settlement Agreement ("Settlement" or "Settlement Agreement" or "SA") attached to the Declaration of E. Michelle Drake ("Drake Decl.") as Exhibit 1.

litigation events from a single Landlord-Tenant action in such a way that they do not imply multiple eviction actions were filed. Although these changes sound simple, they are powerful, and a significant concession by TURSS. In exchange for this potent injunctive relief, Rule 23(b)(2) Settlement Class Members will release only their right to file class action lawsuits against TURSS for claims released by the Settlement, and will retain their right to sue TURSS in an individual lawsuit for damages. Second, the Settlement provides $11.5 million in cash monetary relief to members of the Rule 23(b)(3) Settlement Class, which includes consumers who had Criminal Records misattributed to them and/or who had outdated Landlord-Tenant records published on their consumer reports.

Both in terms of the scope of the injunctive relief and the value of the monetary relief, the Settlement compares favorably to other Fair Credit Reporting Act ("FCRA") settlements involving challenges to consumer reporting agencies' reporting practices.[2] The Settlement was reached only after the underlying actions'

[2] *See, e.g.*, *Clark v. Trans Union LLC*, No. 15-cv-00391, ECF No. 273 (E.D. Va. Aug. 29, 2018) (order granting final approval), *Clark v. Experian Info. Sols., Inc.*, No. 16-cv-00032, ECF No. 150 (E.D. Va. Feb. 1, 2019) (same); *Thomas v. Equifax Info. Servs. LLC*, No. 18-cv-00684, ECF No. 55 (E.D. Va. Sep. 13, 2019) (same) (collectively, the "Public Records Litigation"); *Stewart v. LexisNexis Risk Sols., Inc.*, No. 20-cv-00903, ECF Nos. 91, 92 (E.D. Va. July 27, 2022) (same); *Brown v. RP On-Site, LLC*, No. 20-cv-482 (E.D. Va.) (final approval of settlement regarding reporting of sex offender records); *Brown v. Corelogic Rental Prop. Sols., LLC*, No. 20-cv-363 (E.D. Va.) (final approval of settlement regarding reporting of sex

claims and defenses were vetted thoroughly by experienced Counsel and is the result of hard-fought arms-length negotiations. The Settlement provides closure on a multitude of consolidated actions. The Settlement more than satisfies Rule 23 and should be approved.

II. BACKGROUND

A. Nature of the Claims

Plaintiffs alleged claims under the FCRA, 15 U.S.C. § 1681e(b), which requires consumer reporting agencies to "follow reasonable procedures to assure maximum possible accuracy." As to Criminal Record reporting, Plaintiffs alleged that TURSS failed to comply with the FCRA by attributing Criminal Records to consumers that did not belong to them. (Consolidated Amended Class Action Complaint, ("CAC") § I.A.) Plaintiffs alleged that misattribution resulted from TURSS's unreasonable procedures related to its using or failure to use certain identifying information in its matching algorithm.[3] (*See, e.g.*, CAC ¶¶ 46-48.)

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offender records); *Saylor v. RealPage, Inc.*, No. 22-cv-00053, ECF No. 91 (E.D. Va. Feb. 7, 2022) (order granting preliminary approval).

[3] For example, for Plaintiff Hall, TURSS "matched" him to a sex offender in South Carolina even though TURSS had information in its system regarding the age of the sex offender, which ruled out Plaintiff as a potential match. (CAC ¶ 102.) Had TURSS required a match based on date of birth, Social Security Number, or address, TURSS would not have reported Plaintiff Hall as guilty of a sex offense. (*Id.* ¶ 112.) Similarly with Plaintiff Brown – TURSS had Plaintiff Brown's date of birth, but TURSS nonetheless reported at least 16 different criminal cases as belonging to her,

As to Landlord-Tenant Records, Plaintiffs alleged that TURSS failed to report favorable dispositions, such as satisfactions, appeal, vacaturs and dismissals, that were entered on the public docket at least 60 days prior to the consumer report. (CAC ¶ 270.) Plaintiffs alleged that TURSS did not obtain complete and up-to-date public records from the source, instead relying on old or incomplete data obtained from its vendor(s) or retrieved through automated processes. (*Id.* § II.B.)

B. The Consolidated Matters

Plaintiffs filed numerous separate actions, some of which were subject to motions to dismiss. Defendant moved to consolidate the actions before the Judicial Panel on Multi-District Litigation. *In re TransUnion Rental Screening Sols., Inc. FCRA Litig.*, MDL No. 2933, ECF No. 1. After briefing and arguing in front of the JPML, the matters were consolidated. Plaintiffs began discovery and litigation in this Court, eventually filing the Consolidated Amended Class Action Complaint on June 21, 2021. The CAC, which spans 113 pages, including eight Counts, was the result of substantial effort and coordination between Plaintiffs' counsel.

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when the offender on each had a different date of birth than Plaintiff Brown. (*Id.* ¶ 171.) For Plaintiff Robinson, TURSS included a criminal conviction on his report for a Christopher A. Robinson who was 33 years old and had committed his offense in Texas, when Plaintiff Christopher Robinson (no middle name) was 75 years old and had no address history in Texas – all information TURSS had in its possession about Plaintiff at the time of its reporting. (*Id.* ¶¶ 119-123.)

Defendant moved to dismiss certain counts and Plaintiffs filed oppositions. (ECF Nos. 93, 94, 10, 105.) This motion practice took place simultaneous with Plaintiffs' aggressive discovery in this matter. Plaintiffs took four depositions of Defendant's employees – including several focused on technical, data-related topics, and defended Plaintiff Hall's deposition. (Drake Decl. ¶ 4.) Plaintiffs served requests and negotiated responses resulting in the production of more than 50,000 pages of documents – a figure that, taken alone, vastly understates the volume of discovery in this case, as the bulk of discovery focused on the production of data samples from Defendant's various databases. (*Id.*) Database discovery in this case was far from simple. In order to meaningfully request data from Defendant, Plaintiffs first had to understand Defendant's systems, which include different systems and data fields for different products (for example, reports targeted at institutional landlords are stored in a different system with different fields than reports targeted at individual landlords), as well as various other data sources (such as the underlying databases that Defendant searches to assemble its reports), which have further differences. (*Id.* ¶ 5.) Plaintiffs then had to negotiate with Defendant for a sample from each system, respecting the burden of production on Defendant while still ensuring that the production would be robust enough to produce meaningful results. (*Id.*) After that lengthy process, Plaintiffs then had to analyze the data, as discussed in part below.

The information learned in discovery, and in motion practice, regarding Defendant's practices, procedures, and data – both before and after the filing of the CAC – was the result of significant effort by Plaintiffs' counsel and allowed the parties to explore settlement with deep knowledge of the claims and the classes.

C. Settlement Negotiations

The Settlement is the result of extensive, arms' length negotiations between experienced counsel, and was facilitated by four full-day formal mediation sessions with, and subsequent communications through, third-party neutral Nancy Lesser of PAX ADR. (Drake Decl. ¶ 7.) In addition, settlement negotiations included numerous letters and telephone calls between counsel, as well as countless emails, both about the data and underlying facts of the case, as well as the terms of any settlement. Settlement efforts began in mid-2020 with the first mediation session with Ms. Lesser, followed by three more full-day sessions in 2021.

During this time, TURSS produced numerous and voluminous data samples to facilitate the parties' discussions regarding class definitions and sizes. (*Id.* ¶ 8.) TURSS not only produced samples of its reporting during the Class Period; but it also produced its matching criteria and a copy of the data in its database regarding the same individuals. This allowed Plaintiffs' counsel to evaluate (1) what TURSS reported regarding a given individual, (2) what information it had on file regarding

the reported record that was not included in a published consumer report, and (3) why the information may have been reported, i.e., how TURSS's algorithms were used to match the person to the public record. This process was involved, time-consuming and required Counsel to retain and consult with an expert in the field. (*Id*.) This gave Plaintiffs a detailed understanding of the alleged failures of TURSS's match logic, which was crucial to reaching agreement on the injunctive relief and to defining the Classes in such a way as to target systematic problems with Defendant's matching algorithms. (*Id.*)

After receiving the data samples, Plaintiffs undertook an extensive process to compare the produced sample reports to public records to identify outdated and/or inaccurate criminal and landlord/tenant records. Specifically, Plaintiffs' counsel surveyed jurisdictions nationwide that were included in Defendant's sample to determine where (1) criminal records containing personally identifying information (address, Social Security Number, date of birth) or (2) landlord/tenant records with updated dockets were accessible. (Drake Decl. ¶ 9.) In those jurisdictions, Plaintiffs' counsel then expended significant efforts and resources to gather the records and analyze them to identify criminal records that had been misattributed and landlord/tenant records that had been reported without the most recent events on the docket reports. (*Id.*) This work included subpoenas, written and in-person records

requests, online data reviews, and review of responsive records for a total of 73 different jurisdictions. (*Id.*) Ultimately, these efforts shaped the injunctive relief in this case (which extends nationwide) and narrowed the jurisdictions for which Plaintiffs settled certain criminal record mismatch and landlord/tenant claims. In order to further explore the strengths and weaknesses of their claims, Plaintiffs also conducted three full-day mock jury focus groups with expert assistance, each of which tested different aspects of the Plaintiffs' claims. (*Id*. ¶ 6.) These efforts provided invaluable insight into the value of the claims and therefore assisted in the settlement negotiations.

Throughout the settlement negotiations in this matter, TURSS's main public records vendor, LexisNexis, was going through its own class action settlement process, which involved practice changes that would have a downstream effect on TURSS's practices as well. (ECF No. 128.) In a separate settlement, LexisNexis agreed to routinely provide each of the entities to whom it sells Landlord-Tenant Records with a report describing how often it updates its records from each jurisdiction (the "Visit Interval"). *Stewart v. LexisNexis Risk Data Retrieval Servs., LLC*, No. 20-cv-00903, ECF No. 93 (E.D. Va. July 27, 2022). In this Settlement, Defendant has agreed to change its procedures to incorporate the data from that report, and to refrain from reporting results from any jurisdiction in which the

reported Visit Interval is more than 60 days. (SA, Ex. A.) Plaintiffs' agreement with TURSS goes beyond the relief achieved in *Stewart* which did not require LexisNexis's customers to take any specific actions based on the Visit Interval reports. The relief here addresses TURSS's failure to report subsequent developments in Landlord-Tenant actions and ensures that consumers receive the benefit of resolutions reached with their landlords on their consumer reports.

The Parties reached an agreement in principle on the class claims in April 2022 and continued to work diligently to resolve those named plaintiffs who would settle individually, to refine the details of the injunctive relief, and to identify additional data that TURSS would need to compile to facilitate sending class notices after approval. (Drake Decl. ¶ 10.) All substantive elements of the class resolution were agreed upon before the Parties began negotiating the individual settlements. (*Id.*) If approved, and in combination with the individual settlements that have already been achieved, the Settlement resolves this action in its entirety, including all thirteen (13) different class and individual matters in this Court when the CAC was filed. (ECF No. 81.)

III. SETTLEMENT TERMS

The Rule 23(b)(2) aspect of the Settlement provides substantial injunctive relief that will improve TURSS's practices for matching Criminal Records to

consumers and will ensure that TURSS reports the up-to-date status of Landlord-Tenant Records. This will benefit hundreds of thousands of consumers nationwide while *preserving* those consumers' right to bring individual claims for damages. The Rule 23(b)(3) Settlement establishes a common fund of $11.5 million to compensate consumers for inaccurate reporting of Criminal and Landlord-Tenant Records.

A. The 23(b)(2) Settlement Provides Significant Injunctive Relief

The Rule 23(b)(2) Settlement Class includes all individuals in the United States about whom TURSS reported a Criminal Record and/or Landlord-Tenant Record to a third party before the Injunctive Relief Termination Date. (SA ¶ 25.) All Named Plaintiffs are members of the Rule 23(b)(2) Settlement Class. (SA § B.IV, Ex. A.) For Criminal Records, TURSS will implement procedures that only allow a Criminal Record to be matched to a consumer if there is a match on name *and* a match on date of birth, address, or Social Security Number. (*Id.*) For Landlord-Tenant Records, TURSS will re-format its reporting so that records relating to a single legal proceeding between a landlord and tenant are grouped together appropriately. TURSS will also not report Landlord-Tenant Records unless those Records are updated at the source at least every sixty (60) days. (*Id.*) This ensures that dispositions and docket updates will be captured on a regular basis. These important procedural changes directly address Plaintiffs' claims regarding the

mismatching of Criminal Records to consumers and TURSS's failure to capture complete and accurate statuses of Landlord-Tenant Records.

In exchange for these benefits, the Rule 23(b)(2) Settlement Class Members will release only their procedural right to bring new *class action* claims arising on or before the Injunctive Relief Termination Date that relate to the alleged conduct at issue – TURSS's reporting of out-of-date Landlord-Tenant Records because the reported Records did not include satisfactions, appeals, vacaturs, dismissals, withdrawals, or other favorable dispositions, TURSS's reporting of multiple Landlord-Tenant Record items that pertain to a single proceeding that may inaccurately indicate the existence of more than one such proceeding, or claims related to TURSS's misattribution of a Criminal Record. (SA § B.VI.) Class Members will retain the right to bring individual claims they have against TURSS that pertain to these issues, including claims for actual damages, punitive damages, statutory damages, and attorneys' fees and costs. (*Id.*)

B. The Rule 23(b)(3) Settlement Provides Substantial Monetary Relief

Members of the Rule 23(b)(3) Settlement Class are eligible to receive payments from an $11,500,000 Settlement Fund. The Settlement Class's membership is based on data, and includes five groups of consumers who can be identified from TURSS's and other available data as having had false information

reported about them to third parties. (SA ¶ 30.) Specifically, the groups are:

> (i) all individuals about whom TURSS reported a Criminal Record to a third party between November 7, 2016 and January 1, 2022 when TURSS had in its possession information about the age of the offender in the record and where such age information indicated that the offender was older than the subject of the report based on the subject of the report's date of birth at the time of the report (the "Age Mismatch Group");
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> (ii) all individuals about whom TURSS reported a Criminal Record to a third party between May 14, 2019 and January 1, 2022, where at least one of the Criminal Records included in the report were derived from any jurisdiction in California, Florida, Texas, or Utah and did not contain a date of birth, Social Security Number, or street address associated with the criminal record (the "State Criminal Group");
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> (iii) all individuals about whom TURSS reported a Landlord-Tenant Record to a third party between May 14, 2019 and January 1, 2022 from any jurisdiction in Virginia or Pennsylvania but where subsequent review of public records by Class Counsel shows that TURSS did not report a satisfaction, appeal, vacatur, dismissal, withdrawal, or other favorable disposition of such record that was recorded in the jurisdiction's public docket at least sixty (60) days prior to the date of the TURSS report containing such Landlord-Tenant Record (the "State Eviction Group");
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> (iv) all individuals from whom TURSS has a record of receiving a dispute between May 14, 2019 and January 1, 2022 related to TURSS's reporting of a Landlord-Tenant Record that TURSS categorized as "action date dispute," "case type/outcome dispute," "judgment amount dispute," or "other," and where the resolution was categorized as "data modified," "data removed," "data suppressed," or "no record available," (the "Eviction Disputes Group");
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> (v) all individuals from whom TURSS has a record of receiving a dispute between May 14, 2021 and January 1, 2022 related to TURSS's reporting of a Criminal Record that TURSS categorized as "record does not match," and where the resolution was categorized as "data suppressed," (the "Criminal Disputes Group").

The Settlement requires Defendant to produce to Class Counsel all data necessary to identify Class Members on or before February 28, 2023. (SA § C.II.A.) Class Counsel and Defendant then have 59 days to reach agreement on the composition of the Class List. (*Id.*) Once the Class List is agreed, the Parties will notify the Court and ask the Court to set a date for a final approval hearing.[4]

Payments to Rule 23(b)(3) Class Members have been calibrated to reflect the relative seriousness of the consequences of TURSS's conduct, with Class Members who were subject to misreporting of felonies and sex offenses, or who disputed their Criminal Records, receiving higher payments than those who were subject to misreporting of misdemeanors, lower-level offenses, or eviction records. (Drake Decl. ¶ 11.) These allocations are appropriate given that the Groups with higher shares had either (a) worse crimes misattributed to them, or (b) made the effort to dispute at the time the report was issued (SA § C.V):

[4] As set forth in Section C.II.A of the Agreement, creation of the Class List will occur after TURSS produces agreed upon data and Class Counsel has reviewed such data to determine both who satisfies the criteria for inclusion in the Rule 23(b)(3) Class and demarcates offense levels to determine the allocation of settlement shares. The Agreement sets deadlines for the production of data and agreement on the Class List. (*Id.*) However, the Parties may be able to agree on the Class List before the deadlines required by the Agreement and therefore respectfully request that the Court refrain from setting a final approval hearing date now, as any such date would have to be based on the latest possible date for establishment of the Class List. By refraining from setting a Final Approval Hearing date now, the Court will enable the Settlement to be finalized sooner than required by the Agreement.

Group	Settlement Shares
Age Mismatch (Felonies and Sex Offenses); State Criminal Record Valid Claimants (Felonies and Sex Offenses); Criminal Disputes	10
Age Mismatch (Misdemeanors, Non-Felonies, Non-Sex Offenses); State Criminal Record Valid Claimants (Misdemeanors, Non-Felonies, Non-Sex Offenses); Eviction Disputes	2
Evictions Group	1

The final payment per Class Member will depend on the number of valid claims submitted, the precise number of Class Members identified in each Group, and the amount of attorneys' fees and administrative costs awarded. Plaintiffs' counsel has estimated the class sizes based on the data samples provided during discovery. Based on those class size estimates, Class Counsel estimates that each settlement share, net of all requested attorneys' fees and costs, will be worth between $40 and $80, meaning each Class Member will receive between $40 and $800, depending on their Group.

Members of all Groups other than the State Criminal Group will receive payments automatically, without the need to return a Claim Form.[5] Members of the State Criminal Group will need to submit a Claim Form confirming that TURSS

[5] Members of the Age Mismatch Group will not be required to submit a Claim Form to receive a payment. However, if they believe they are eligible to receive more than they have been allocated, they can file a Claim Form seeking a review of Class Counsel's determination as to whether the Criminal Record that was misattributed to them was for a felony, sexual offense, or misdemeanor. (SA § C.II.D.)

falsely attributed a Criminal Record to them. (SA § C.II.D.) The Claim Form (or a link thereto) will be included with the Mail and Email Notice to members of the Rule 23(b)(3) State Criminal Group and will be available for online submission on the Settlement Website. Class Members may request to learn what TURSS reported about them, and the Settlement Administrator will respond within three days. (*Id.*)

Within 60 days following the passing of the Rule 23(b)(3) Claims Deadline, Class Counsel will review all claims for validity. (*Id.*) This review will require Class Counsel to review all records provided by the claiming Settlement Class Member, as well as publicly available records relating to the offense included on the Settlement Class Member's report. Based on such review, Class Counsel shall confirm whether the available public records contain a date of birth, Social Security Number and/or address that indicates the reported record belongs to the claiming Class Member. In the absence of any such public record, the claim shall be deemed valid.[6] Class Counsel will then provide a list of State Criminal Group members with valid claims, and Age Mismatch Group members with valid enhanced payment requests. Defendant will have 14 days to challenge the inclusion of any State Criminal Group Class Member on the list by producing a publicly available record

[6] Class Counsel will also conduct a review of claims submitted by the Age Mismatch Group as to whether the qualifying offense was a felony or sex offense. (*Id.*)

showing that the record reported by TURSS was correctly attributable to that Class Member. Without that information, however, the claim shall be deemed valid. (*Id.*)

Rule 23(b)(3) Class Members will release all claims that were or could have been asserted in the Litigation under the FCRA or any state equivalent relating to the accuracy of TURSS's reporting of Criminal Records or Landlord-Tenant Records. (SA § C.VI.) Because the release of claims associated with the Settlement is limited to certain kinds of claims, and because TURSS and TransUnion seek a full release of claims from each of the Named Plaintiffs (including for claims not settled in the Settlement, such as disclosure claims pursuant to 15 U.S.C. § 1681g) the Named Plaintiffs have also reached an agreement to provide Defendant a general release of all claims not encompassed in the Settlement. The amount TURSS and TransUnion will pay for these general releases will be determined through an arbitration that shall take place after final approval. (SA § C.VI.D.)

C. The Notice Plan is Robust

The Settlement requires publication notice to the Rule 23(b)(2) Class[7] through

[7] Neither Rule 23 nor Due Process requires *any* notice to a class certified pursuant to Rule 23(b)(2). Fed. R. Civ. P. 23(c)(2)(A); Fed. R. Civ. P. 23 advisory comm. note (2003 Am.) (explaining that "[t]he authority to direct notice to class members in a (b)(1) or (b)(2) class should be exercised with care" because there is no right to request exclusion and because of the potentially "crippl[ing]" cost of providing notice). The Parties' proposed notice plan far exceeds any legal requirement.

the Settlement Website, online digital advertisements, and a toll-free phone number. (SA ¶ 22.) For the Rule 23(b)(3) Class, the Settlement requires direct notice, which shall be accomplished through both postal mail *and* email, as well as the Settlement Website, Internet Notice, and toll-free number. (*Id.* ¶ 27.) The Parties' proposed Settlement Administrator, JND Legal Administration, was selected only after Class Counsel solicited competitive bids from several reputable notice administrators. (Drake Decl. ¶ 12.) JND is highly qualified to administer notice in this case and has been responsible for successful administration of some of the largest class action and FCRA settlements in the United States, including the Equifax Data Breach Settlement in this District (*In re: Equifax Inc. Customer Data Security Breach Litig.*, No. 17-md-2800 (N.D. Ga.)). (*See generally* Declaration of Jennifer Keough ("Keough Decl."); ¶ 7.)

1. Settlement Website and Toll-Free Phone Number

For both Classes, the Settlement Administrator will obtain and administer a Settlement Website, with a home page that contains general information about the overall settlement structure and enables visitors to obtain specific information about the relief afforded to both Rule 23(b)(2) and Rule 23(b)(3) Settlement Class Members. (SA § A.II.) The Settlement Website will include copies of all pertinent pleadings in this matter, including the CAC, the Preliminary Approval Motion and

Order, the Settlement Agreement, the forthcoming motion for attorneys' fees and costs, and a section for frequently asked questions and procedural information regarding the deadline for objections for both Classes, the deadline for opt-outs and Claims for (b)(3) Class Members, the status of the Court-approval process, and the date of the final approval hearing. (*Id.*) After final approval is granted, a copy of the Final Approval Order and the Injunctive Relief Order will also be posted. (*Id.*)

The Settlement Website will also include a feature by which Rule 23(b)(3) Class Members can request information about the public records Defendant reported about them that led to their inclusion in the Settlement Class. This will assist State Criminal Group and Age Mismatch Group Class Members in determining if they can or should submit a claim. The Settlement Administrator will use information derived from the Class List and respond to all Settlement Class Members who make such a request through the Settlement Website within 3 business days. (*Id.*)

The Settlement Administrator will also implement a toll-free telephone number. (*Id.* § A.III.) The toll-free number will incorporate interactive voice response ("IVR") and will provide callers with recorded information about the Settlement in both English and Spanish. The menu will allow callers to select to hear either Rule 23(b)(2)-specific information or Rule 23(b)(3) information and will also allow Class Members to request a return phone call from the Settlement

Administrator or a copy of the information about the public record(s) Defendant reported about them that led to their inclusion in the Settlement Class.[8] (*Id.*)

2. Rule 23(b)(2) Settlement Class Internet Notice

For the Rule 23(b)(2) specific Notice, the Administrator will purchase digital advertisements on Google Display Network, Facebook, and Instagram, targeting adult renters, to direct them to the Settlement Website, where the Internet Notice will be posted on the (b)(2) specific section. (SA § B.III.; Keough Decl. ¶¶ 15, 23-32.) The Administrator expects this notice campaign to deliver approximately 156 million impressions, easily reaching approximately 70% of the potential (b)(2) Settlement Class Members. (Keough Decl. ¶¶ 27, 53.)

3. Rule 23(b)(3) Settlement Class Direct Notice

Once the Parties have agreed on the Class List, the Class List will be transmitted to the Settlement Administrator. The Administrator shall use publicly available databases to obtain the most up-to-date mailing address information for all Rule 23(b)(3) Settlement Class Members. (Keough Decl. ¶ 36.) The Administrator will also use publicly available databases to identify email addresses for Rule 23(b)(3) Settlement Class Members. (*Id.* ¶ 37.) The Administrator will then send

[8] The Settlement Administrator will also, on behalf of TURSS, serve notice of the settlement in a form that meets the requirements of the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715. (SA § A.IV.)

Notice via U.S. mail, postage paid, requesting either forwarding service or change service, to each Rule 23(b)(3) Settlement Class Member on the Class List. The Settlement Administrator will *also* send Notice by email to all Rule 23(b)(3) Settlement Class Members for whom an email can be located. (*Id.* ¶ 34.) For up to forty-five (45) days following the mailing of the Notice, the Administrator will re-mail Notices to updated addresses received via address change notifications from the U.S. Postal Service. (*Id.* ¶ 36.) The Settlement Administrator may also send reminder notices via mail and email to members of the Rule 23(b)(3) Settlement Class who are eligible to make claims. (SA § C.II.C.)

The direct Notices sent to Rule 23(b)(3) Class Members will indicate for them what Group they fall into based on Defendant's records, and the attendant rights and deadlines by which to exercise them. (SA, Exs. F, H.) The Notice to those in the State Criminal and Age Mismatch Groups will include a business reply postcard Claim Form. (*Id.*, Ex. F.) For all Groups, there will be instructions on how to request the public records TURSS reported on them from the Settlement Administrator. (*Id.*) Claimants will have the opportunity to submit documentation in support of their claim if they wish. (*Id.*)

D. Opt-Outs & Objections

Because it is an injunctive relief only class, Rule 23(b)(2) Settlement Class

Members may not opt out of the Settlement. They will, however, have the opportunity to object (SA § B.V), and instructions and deadline by which to do so will be posted clearly on the Settlement Website, and in the Internet Notice (SA, Ex. E). The same information will be available through the toll-free phone number. The Rule 23(b)(3) Settlement Class will have the opportunity to exclude themselves or to object. (SA §§ C.III, IV.) Instructions and the deadlines by which to do so are included in the direct Notice (SA, Exs. F, H), and will be posted clearly on the Settlement Website, and noted on the Website and the toll-free phone number.

E. Contemplated Attorneys' Fees and Costs

The Settlement contemplates Class Counsel petitioning the Court for approval of payment of attorneys' fees in the amount of one-third of the Settlement Fund ($3,833,333) for its work on behalf of both Classes. (SA § A.VI.) It also contemplates that Class Counsel will request reimbursement for out-of-pocket expenses. (*Id.*) Both of these amounts would be paid from the Settlement Fund if approved and will be previewed for the Class Members on all forms of the Notice. Class Counsel will formally petition the Court for these amounts thirty (30) days prior to the Rule 23(b)(3) Opt-Out & Objections Deadline and the Rule 23(b)(2) Objections Deadline, and the motion will be posted promptly to the Settlement Website for Class Members to review. Approval of the Settlement is not contingent

upon any requested fees or costs being approved. Additionally, neither fees nor costs were discussed or negotiated until the Classes' relief was agreed upon. (SA § A.VI; Drake Decl. ¶ 10.)

IV. ARGUMENT

A. The Settlement Classes Should Be Certified

The Settlement contemplates the certification of the Settlement Classes for settlement purposes only. Even a class certified for settlement purposes must satisfy the requirements for class certification pursuant to Rule 23. The proposed Settlement Classes here meet the prerequisites for certification under Rule 23.

1. The Prerequisites of Rule 23(a) Are Met

Under Federal Rule of Civil Procedure 23(a), a class may be certified only when (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

a. Numerosity

Federal Rule of Civil Procedure 23(a)(1) requires a proposed class be "so numerous that joinder of all members is impracticable." This is a "generally low hurdle." *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1267 (11th Cir. 2009). "[T]he

general rule of thumb in the Eleventh Circuit is that 'less than twenty-one is inadequate, more than forty adequate.'" *C-Mart, Inc. v. Metropolitan Life Ins. Co.*, 299 F.R.D. 679, 689 (S.D. Fla. 2014) (quoting *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986)). In this case, where the Rule 23(b)(2) Settlement Class is estimated to be in the hundreds of thousands, and the Rule 23(b)(3) Settlement Class is estimated to be approximately 90,000, both well over forty, there is no question that the numerosity requirement is met.

b. Commonality

A proposed class satisfies the "commonality" requirement "if there are questions of fact and law which are common to the class." Fed. R. Civ. P. 23(a)(2). It is not necessary that all issues be common to the class, but rather only that there be at least one common issue. *Roundtree v. Bush Ross, P.A.*, 304 F.R.D. 644, 659 (M.D. Fla. 2015). Commonality can be found in FCRA settlements that include both Rule 23(b)(2) and 23(b)(3) classes. *Berry v. LexisNexis Risk & Info. Analytics Grp., Inc.*, No. 11-754, 2014 WL 4403524 (E.D. Va. Sept. 5, 2014), *aff'd sub nom. Berry v. Schulman*, 807 F.3d 600 (4th Cir. 2015).

Here, members of both Settlement Classes share common questions of law and fact. All Settlement Class Members are alleged to be the subjects of TURSS's unreasonable practices. Specifically at issue are TURSS's Criminal Record

matching procedures and its failure to update Landlord-Tenant Records to reflect events subsequent to the initial filing. Defendant's Criminal Record matching procedures were automated, and each member of the Class was subjected to the same algorithmic procedure. The reasonableness of this automated procedure is a common question.

On eviction records, Defendant relies upon a single data vendor to obtain eviction records and reported eviction records under the same set of automated procedures with respect to all Class Members. Plaintiffs allege that these automated procedures failed to properly ensure that Defendant reported up-to-date developments on the eviction dockets, making the reasonableness of those procedures a common question for the Class. [9]

[9] Two of the Groups included in the 23(b)(3) Class are limited to individuals with records reported from certain states: the State Criminal Group (California, Florida, Texas, or Utah) and the State Eviction Group (Virginia or Pennsylvania). These states were selected for various reasons after Plaintiffs' extensive review of public records and Defendant's procedures and data. The reasons for selecting these states include whether they were states from which Plaintiffs' records were reported, whether they are states where Plaintiffs' review of Defendant's data found significant errors and whether they are states where public records containing personal identifiers are available to evaluate class membership and the validity of claims submitted.

Additionally, two of the Groups included in the 23(b)(3) Class are limited to individuals who filed successful disputes with Defendant about their reports (the Eviction Disputes Group and Criminal Disputes Group). These individuals are identified by the presence of certain terms in their dispute records which indicate that (1) their dispute was about the subject matter of this case (that is, a Criminal

Whether Defendant's policies were "reasonable procedures to assure maximum possible accuracy" as required by the FCRA, 15 U.S.C. § 1681e(b), is thus a common question. *Patel v. Trans Union, LLC*, 308 F.R.D. 292, 304 (N.D. Cal. 2015) ("[c]ommonality exists here. Several common questions define and drive this lawsuit. The most central questions include [ ] were there reasonable procedures in place (here, the name-only logic) to ensure the maximum possible accuracy of the information?"); *Clark/Anderson v. Trans Union, LLC*, No. 16-cv-558, ECF 127 (E.D. Va. March 23, 2018) (certifying class for settlement purposes and finding common questions where class claim was under 15 U.S.C. § 1681e(b)); *Clark v. Experian Info. Sols., Inc.*, No. 16-cv-00032, ECF No. 131 (E.D. Va. Sept. 21, 2018) (same); *Thomas v. Equifax Info. Services, LLC*, No. 18-cv-00684, ECF No. 43 (E.D. Va. May 29, 2019) (same); *Feliciano v. CoreLogic, LLC*, No. 17-5507, 2019 WL 3406593, at *6 (S.D.N.Y. July 29, 2019) ("whether defendant followed reasonable procedures to ensure [] accuracy" is common question).

Further, whether any such violations were willful under 15 U.S.C. § 1681n is a common question for the Rule 23(b)(3) Settlement Class. *Rivera v. Equifax Info.*

Record or an Eviction Record, and (2) their dispute resulted in a change to Defendant's reporting about them – indicating an error in Defendant's initial reporting. Because these individuals' reports included errors of the same type as those of the Class Members in the other Groups, common questions of fact and law exist for them as well.

Services, LLC, 341 F.R.D. 328, 346 (N.D. Ga. 2022) ("[W]hether Equifax's violation of [FCRA provision] is willful constitutes a legal issue common to the class that properly is resolved on a class-wide basis."). Accordingly, the commonality requirement is satisfied.

c. Typicality

"The claim of a class representative is typical if the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory." *Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1357 (11th Cir. 2009) (quotation omitted). "The typicality requirement may be satisfied despite substantial factual differences when there is a strong similarity of legal theories." *Id.* (internal quotation and modifications omitted).

Here, there is a strong link between Plaintiffs' claims and those of absent class members in both Settlement Classes because Plaintiffs allege that Defendant's practices violated the FCRA by willfully failing to employ reasonable procedures to assure the maximum possible accuracy of the information it reported on class members. *See* 15 U.S.C. § 1681e(b). Plaintiffs' success on essential elements of these claims would advance the claims of the members of the Classes. As a result, typicality is satisfied. *See, e.g.*, *Patel*, 308 F.R.D. at 305 ("[Plaintiff] does more than allege a violation of the same provision of law. The conduct [Plaintiff] challenges

was not unique to any plaintiff; rather the plaintiff and the class suffer injury from the same course of conduct…There appear to be no claims that the named plaintiff brings that class members cannot bring, or vice versa.") (quotations omitted).

All Plaintiffs and members of the Classes challenge the reasonableness of Defendant's automated rules and standard processes for eviction and criminal record reporting, creating common questions. *Rivera*, 341 F.R.D. at 333 ("[Plaintiff]'s experience was not unique; it was typical." In its dealings with the plaintiff, defendant's "representatives and systems worked according to plan and in keeping with [defendant's] policy.") (internal quotation omitted); *see also Clark/Anderson v. Trans Union, LLC*, No. 16-cv-558, ECF 127 (E.D. Va. March 23, 2018) (certifying class for settlement purposes and finding typicality satisfied as to plaintiffs' claims under 15 U.S.C. § 1681e(b)); *Clark v. Experian Info. Sols., Inc.*, No. 16-cv-00032, ECF No. 131 (E.D. Va. Sept. 21, 2018) (same); *Thomas v. Equifax Info. Services, LLC*, No. 18-cv-00684, ECF No. 43 (E.D. Va. May 29, 2019) (same).

d. Adequacy

Plaintiffs and their Counsel are qualified to fairly and adequately represent the Settlement Classes as required by Federal Rule of Civil Procedure 23(a)(4). Plaintiffs understand and have accepted the obligations of a class representative, with certain of the Plaintiffs having responded to written discovery and produced

documents, Plaintiff Hall having prepared and sat for his deposition, and each of them having reviewed and approved of the Settlement Agreement. Further, Plaintiffs have retained Counsel who are experienced in consumer protection class actions, and in FCRA actions in particular. Indeed, this Court has already found Counsel to meet its criteria for Interim Class Counsel, including "willingness and ability to commit to a time-consuming process," and "professional experience in this type of litigation." (ECF No. 27.)

Plaintiffs' counsel respectfully submits that there is no group of lawyers with a deeper knowledge level and more relevant experience to represent the interests of Plaintiffs and the Classes. In approving Berger Montague PC, Kelly Guzzo PLC, and Consumer Litigation Associates, P.C. as class counsel, Judge David J. Novak described them as "the all-star team of consumer litigation." *Turner v. Zestfinance, Inc.*, No. 19-cv-293 (E.D. Va.). Other judges likewise have recognized all four of the appointed firms' and attorneys' quality and skill in consumer class-action litigation, and in FCRA litigation in particular. The four lead firms here were all involved in the landmark Public Records Litigation and earned accolades from the court there as well. *See, e.g., Clark v. Trans Union, LLC*, 15-391, 2017 WL 814252, at *13 (E.D. Va. 2017) (collecting cases and stating "This Court has repeatedly found that [proposed Class Counsel] is qualified to conduct such litigation. . . . This Court

echoes the sentiments previously stated about [proposed Class Counsel] because they pertain here with equal vigor." (citations omitted)). *See also generally* Drake Decl.; Declaration of Len Bennett ("Bennett Decl.); Declaration of Kristi Kelly ("Kelly Decl."); Declaration of James Francis ("Francis Decl.").

Berger Montague PC, previously appointed Interim Lead Counsel here, has led many of Plaintiffs' efforts in this matter. Berger Montague specializes in class action litigation and is one of the preeminent class action law firms in the United States. The firm currently consists of over 70 attorneys who primarily represent plaintiffs in complex civil litigation, and class action litigation, in federal and state courts. Berger Montague has played lead roles in major class action cases for over 50 years and has obtained settlement and recoveries totaling well over $30 billion for its clients and the classes they have represented. (Drake Decl. Ex. 2.) E. Michelle Drake, Executive Shareholder, has served as lead, or co-lead counsel in numerous notable consumer protection matters, including but not limited to: *Gambles v. Sterling Info., Inc.*, No. 15-cv-9746 (S.D.N.Y.) (FCRA class action, alleging violations by consumer reporting agency, resulting in a gross settlement of $15 million, one of the largest FCRA settlements to date); *In re: JUUL Labs, Inc. Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 19-md-2913 (N.D. Cal.) (appointed to Plaintiffs' Steering Committee in multi-district litigation consolidated class action,

regarding the marketing and sales practices of dangerous e-cigarettes to consumers); *In re: Am. Med. Collection Agency, Inc. Customer Data Security Breach Litig.*, No. 19-md-2904 (D.N.J.) (appointed to the Plaintiff's Quest Track Steering Committee in multi-district litigation consolidated class action, regarding the breach of consumers' medical information); *Rilley v. MoneyMutual, LLC*, No. 16-cv-4001 (D. Minn.) (court certified a litigation class of over 20,000 Minnesota consumers alleging that MoneyMutual violated Minnesota payday lending regulations, resulting in $2,000,000 settlement with notable injunctive relief).

Finally, the Khayat Law Firm has served graciously as local counsel. The Khayat Firm is a well-established firm in this District, with its President, Robert C. Khayat, having significant experience in complex litigation and a sterling reputation (*see generally* ECF No. 13-7). Plaintiffs and their Counsel have no interests antagonistic to the Classes and are unaware of any apparent or actual conflicts.

2. The Rule 23(b)(2) Settlement Class Satisfies the (b)(2) Requirements

If the requirements of Rule 23(a) are met, the proposed class must then fall into one of the categories of 23(b) to warrant certification. Here, the Rule 23(b)(2) Settlement Class is an injunctive relief only settlement class, which applies when "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief . . . is appropriate respecting the

class as a whole." Fed. R. Civ. P. 23(b)(2). The "key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011).

The Rule 23(b)(2) Settlement Class's claim is that Defendant's reporting practices for Criminal and Landlord-Tenant Records violated the FCRA's "reasonable procedures" requirement. 15 U.S.C. § 1681e(b). The Settlement treats all Rule 23(b)(2) Settlement Class Members alike in granting them the substantial benefits of the injunctive relief practice changes. Protecting the Class Members from inaccurate reporting by Defendant through these procedure changes is an effective way to provide direct relief by making it less likely they are subject to an inaccurate report from Defendant in the future. While Defendant maintains that it has always been in compliance with the FCRA, the fact that the Settlement modifies Defendant's conduct as to the Rule 23(b)(2) Settlement Class as a whole makes it appropriate for certification under Rule 23(b)(2). *Wal-Mart Stores*, 564 U.S. at 360.

Additionally, the Rule 23(b)(2) Settlement Class meets (b)(2)'s requirement that monetary relief be merely "incidental" to the injunctive relief provided, as the Settlement does not provide for monetary benefits for the Rule 23(b)(2) Class at all, unless such Class Members are otherwise Rule 23(b)(3) Settlement Class Members. The Rule 23(b)(2) Settlement Class retains the ability to bring individual claims for

actual damages, punitive damages, and attorneys' fee, and release only class action claims for statutory damages. This is incidental for purposes of Rule 23(b)(2). *Wal-Mart Stores*, 564 U.S. at 365; *see also Stewart*, 20-cv-00903, ECF No. 70 (E.D. Va. Feb. 25, 2022) (order certifying similar (b)(2) class for settlement purposes and finding that the defendants' practices concerning "the retrieval reporting and sale of [public records]" were generally applicable to the class, and that the "Agreement modifies Defendants' conduct as to the Rule 23(b)(2) Settlement Class as a whole mak[ing] it appropriate for certification" and the class's release of claims, similar to that here, was incidental to the injunctive relief).

3. The Prerequisites of Rule 23(b)(3) Are Met

In addition to satisfying the requirements of Rule 23(a), the Rule 23(b)(3) Settlement Class must also satisfy the predominance and superiority prerequisites of Fed. R. Civ. P. 23(b)(3). In evaluating these factors, the court may consider class members' interests in prosecuting their claims individually, the extent and nature of litigation, and the desirability of concentrating the litigation in the particular forum. Fed. R. Civ. P. 23(b)(3)(A)–(C). In the context of a classwide settlement, the court need not consider whether the case, if tried, would present difficult management problems. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). The applicable requirements are met here.

a. Common Questions of Law or Fact Predominate

When considering predominance, the core issue is "whether the proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623. Here, resolution of common issues of fact and law will not only promote the efficient adjudication of the matter, but it will also dispose of them entirely. Plaintiffs allege on behalf of the Rule 23(b)(3) Settlement Class that Defendant violated the FCRA by failing to follow reasonable procedures to assure maximum possible accuracy of the Criminal and Landlord-Tenant Records it was reporting, and that it did so willfully. *See* 15 U.S.C. §§ 1681e(b), 1681n. TURSS's practices for collection and use of Criminal and Landlord-Tenant public record data are generally common to all members of the Rule 23(b)(3) Settlement Class. *See, e.g.*, *Stewart*, No. 20-cv-00903, ECF No. 70 (E.D. Va. Feb. 25, 2022) (certifying (b)(3) settlement class regarding §1681e(b) claims, and finding common questions to predominate). Further, differences in damages, as well as differences in settlement recoveries, do not negate predominance. *See, e.g.*, *Brown v. Electrolux Home Prods., Inc.*, 817 F.3d 1225, 1239 (11th Cir. 2016) ("[T]he presence of individualized damages issues does not prevent a finding that the common issues in the case predominate.") (internal quotation omitted).

b. A Class Action Is the Superior Vehicle for Adjudication

To be certified, a class action must be "superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Again, in the settlement context, the court need not address the manageability requirements of Rule 23(b)(3)(D). *Amchem*, 521 U.S. at 620. "Proper superiority analysis considers 'the relative advantages of a class action suit over whatever other forms of litigation might be realistically available to the plaintiffs.'" *Dickens v. GC Servs. Ltd. P'ship*, 706 F. App'x 529, 537 (11th Cir. 2017). While the fact that a number of actions were consolidated into this MDL demonstrates that there were a handful of individuals motivated to bring suit against Defendant, the fact is that the vast majority of the members of the Classes did not do so – showing that a class action is the superior, and likely only, way in which these claims could be heard and resolved.

In a matter such as this, where the claims of all Rule 23(b)(3) Class Members are sufficiently similar and are based on a sufficiently similar common core of facts, it is clear that adjudicating this matter as a class action will achieve economies of time, effort, and expense, and promote uniformity of results. *See White v. E-Loan, Inc.*, No. 05-02080, 2006 WL 2411420, at *9 (N.D. Cal. Aug. 18, 2006) ("[W]ithout class actions, there is unlikely to be any meaningful enforcement of the FCRA by consumers whose rights have been violated."); *Singleton v. Domino's Pizza, LLC,* 976 F. Supp. 2d 665, 677 (D. Md. 2013) (finding class action superior and

certification for settlement purposes justified "particularly in light of the relatively modest amount of statutory damages available under the FCRA").

B. The Settlement is Fair and Adequate

A court may approve a settlement if the settlement "is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). *See Nelson v. Mead Johnson & Johnson Co.*, 484 Fed. Appx. 429, 434 (11th Cir. 2012) ("before approving a settlement, the district court must find that it is fair, adequate and reasonable and is not the product of collusion between the parties. Our judgment is informed by the strong judicial policy favoring settlement as well as by the realization that compromise is the essence of settlement.") (internal quotations and citations omitted). It is well-established that there is an overriding public interest in settling litigation, and this is particularly true in class actions. *See In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1341 (S.D. Fla. 2011) (quoting *In re Chicken Antitrust Litig. Am. Poultry*, 669 F.2d 228, 238 (5th Cir. 1982)) (Rule 23(e) analysis should be "informed by the strong judicial policy favoring settlements as well as the realization that compromise is the essence of settlement"). "Settlement agreements are highly favored in the law and will be upheld whenever possible because they are a means of amicably resolving doubts and uncertainties and preventing lawsuits." *Checking Account Overdraft*, 830 F. Supp. 2d at 1341 (*quoting In re Nissan Motor Corp.*

Antitrust Litig., 552 F.2d 1088, 1105 (5th Cir. 1977)). These considerations apply here. For the reasons set forth below, the Court should grant preliminary approval of the Settlement, and authorize the issuance of notice to the Settlement Classes.

Under Federal Rule of Civil Procedure 23, in determining whether to preliminary approve a settlement and direct that notice should be sent to the Settlement Classes, the Court should consider:

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:
> (i) the costs, risks, and delay of trial and appeal;
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> (iv) any agreement required to be identified under Rule 23(e)(3);[10] and
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). These factors are not meant to "displace any factor" previously articulated in the caselaw, but "rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." Fed. R. Civ. P. 23 adv. comm. notes. (2018). The Eleventh Circuit has articulated the following factors for consideration: (1) the

[10] There are no such agreements here.

likelihood of success at trial; (2) the range of possible recovery; (3) the range of possible recovery at which a settlement is fair, adequate, and reasonable; (4) the anticipated complexity, length and expense of further litigation; (5) opposition to the settlement; and (6) the stage of the proceedings at the time of settlement. *See Faught v. Am. Home Shield Corp.*, 668 F.3d 1233, 1240 (11th Cir. 2011) (citing *In re CP Ships Ltd. Sec. Litig.*, 578 F.3d 1306, 1315 (11th Cir. 2009)).

Here, the Settlement is fair, reasonable, and adequate and notice should be directed to the Settlement Classes.

1. The Settlement Is the Product of Serious, Informed, Non-Collusive Negotiations

As recounted above, the Settlement in this case was the result of arms' length negotiations facilitated by an experienced and well-respected mediator including four full day mediation sessions over the span of a year, accompanied by detailed data and record review and analysis, as well as multiple depositions of Defendant's representatives. (Drake Decl. ¶¶ 4-10.) The Parties reached this global resolution from informed positions. This supports approval. *See, e.g.*, *Begley v. Ocwen*, 2017 WL 11672899, *4 (N.D. Fla. Nov. 22, 2017) (settlement was result of "serious, informed, non-collusive, arm's-length negotiations," where "negotiations were protracted, extending over a nearly six month period of time during which the parties participated in three formal mediation sessions, exchanged numerous rounds of

informal discovery, and conducted extensive data and legal analysis.").

Further, both sides were represented by experienced and able counsel, and the negotiations were overseen by a well-respected mediator. This further supports approval. *See, e.g.*, *Perez v. Asurion*, 501 F. Supp. 2d 1360, 1384 (S.D. Fla. 2007) (granting final approval, noting reputation and experience of mediator and counsel).

2. The Settlement Is Well Within The Range of Approval As Compared to Other Settlements and Litigation Risks

The Settlement in this case is impressive considering the range of possible recoveries, the number of hurdles before final judgment, the significant uncertainties of litigation, and Defendant's intent to vigorously defend the case.

Plaintiffs filed their claims seeking statutory damages under the FCRA, which provides for between $100 and $1000 for each willful violation. 15 U.S.C. § 1681n(a)(1). The FCRA itself does not provide any guidance in choosing the appropriate recovery for a violation, *see* 15 U.S.C. § 1681n(a)(1), but in determining the amount of damages to impose, courts have looked to "the importance, and hence the value, of the rights and protections" at issue in the case. *Ashby v. Farmers Ins. Co. of Oregon*, 592 F. Supp. 2d 1307, 1318 (D. Or. 2008*); In re Farmers Ins. Co*., 741 F. Supp. 2d 1211, 1224 (W.D. Okla. 2010). A proposed recovery need not approach the potential maximum recovery in order to warrant approval. *See City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 n. 2 (2d Cir. 1974) ("[T]here is no

reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery."), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000).

Class settlements must be analyzed in light of both general litigation risks, but also in light of specific risks faced in the underlying case. Plaintiffs in this case faced numerous risks, including specific risk of not prevailing on their allegation that Defendant's conduct was "willful." The FCRA is not a strict liability statute. Instead, to recover, a plaintiff must show the defendant acted negligently or willfully. But where the defendant's violation was only negligent, recovery is limited to actual damages. *See* 15 U.S.C. §§ 1681n(a)(1), 1681o(a)(1). To recover statutory damages, Plaintiffs would have had to prove both a violation of the FCRA and willfulness. Willfulness is usually a question of fact. At least one court has held it requires plaintiff to show the defendant acted in "conscious disregard" of its obligations. *Dalton v. Capital Associated Indus.*, 257 F.3d 409, 417-18 (4th Cir. 2001). As to Criminal Records, Defendant is a sophisticated company that used a complex matching algorithm developed by professionals for its matching procedures. As to Landlord-Tenant records, Defendant relied on LexisNexis, undoubtedly the industry leader in the provision of civil public records. Defendant vigorously maintained the

reasonability of its procedures, and would have advocated equally vigorously that any violations were merely negligent, not willful. Given the high bar for willfulness, Plaintiffs undoubtedly faced risk on this issue.

In light of these risks, the Settlement represents a substantial accomplishment, particularly in terms of the real-world value it provides to Class Members. First, the Settlement's provision of prospective relief is notable because, despite the critical importance of policy changes to consumers who often care as much about ensuring the problem does not recur as they do about obtaining monetary relief, injunctive relief may not have been available had plaintiffs chosen to litigate rather than settle. *See Hamilton v. DirecTV, Inc.*, 642 F. Supp. 2d 1304, 1305 (M.D. Ala. 2009) (citing cases holding private plaintiffs cannot obtain injunctive relief under the FCRA).

This Settlement solves problems at their source. In a separate settlement, LexisNexis agreed to routinely report how often it updates its records from each jurisdiction to each of the entities to whom it sells Landlord-Tenant Records. *Stewart*, No. 20-cv-00903, ECF No. 93 (E.D. Va. July 27, 2022). In this Settlement, Defendant has agreed to *use* that report and to cease reporting results from any jurisdiction with a reported Visit Interval of more than 60 days. (SA, Ex. A.). Plaintiffs' agreement with TURSS thus expands the reach of the relief achieved in *Stewart*, and addresses Plaintiffs' concern regarding TURSS's failure to report

subsequent developments in Landlord-Tenant actions. These process changes will protect the (b)(2) Settlement Class Members, who were or are renters, from inaccurate reporting by Defendant, one of the dominant players in rental screening, in the future. The Settlement's agreed changes to TURSS's matching and reporting procedures will also prevent Class Members from being wrongly labeled as criminals or repeat evictees.

In terms of the monetary relief provided, the Settlement is well in line with settlements involving similar claims. *See, e.g. Henderson v. Acxiom Risk Mitig., Inc.*, No. 12-cv-589 (approving FCRA settlement where everyone received $35.25 while those who disputed or submitted claims received up to $8,000); *Patel v. Trans Union, LLC*, No. 14-00522, 2018 WL 1258194, at *5 (N.D. Cal. Mar. 11, 2018) (approving FCRA settlement under §1681e(b) claims where everyone received $400 and could make a claim for further damages); *Ryals v. HireRight Solutions, Inc.*, No. 09-625, ECF No. 127 (E.D. Va. Dec. 22, 2011) (approving FCRA settlement for inaccurate criminal record reporting providing $15-$200 per class member); *Dougherty v. QuickSIUS, LLC*, No. 15-06432, ECF No. 66 (E.D. Pa. May 31, 2018) (approving FCRA settlement under § 1681e(b) with payments of $419 to some class members, and payments of $104 to those who submitted a claim form).

Viewed in the context of the significant litigation risks faced, Defendant's

defenses and anticipated motion practice, as well as the substantial delay and costs that Settlement Class Members would have experienced in order to receive proceeds from an adversarially-obtained judgment, not to mention the judicial resources required, this Settlement is in the best interests of the Named Plaintiffs and the Settlement Class Members and should be approved.

3. The Settlement Appropriately Allocates Relief

For the Rule 23(b)(2) Class, all Class Members will receive equal benefit of the injunctive relief. For the Rule 23(b)(3) Class, all Settlement Class Members have an opportunity to receive a payment from the Settlement Fund. The distinctions made between Groups of (b)(3) Class Members – in that some Class Members are entitled to automatic payments, and some must submit a simple claim form– is not preferential treatment, but the most rational way to fairly administer the Fund: some Class Members' entitlement to relief is apparent from Defendant's data, some require additional information to substantiate. For the State Criminal Group, the Parties require more information to determine whether a Record was a mismatch or not. Providing these Class Members with an opportunity to certify that they in fact were subject to an inaccurate Criminal Record reporting, while also providing them an opportunity to request the records to help them make an informed attestation, is a fair and appropriate method to determine whether certain Class Members are

entitled to payment. Similar attestations have been approved in other settlements, including FCRA settlements. *See, e.g., In re WorldCom, Inc. Sec. Litig.*, No. 02-3288, 2004 WL 2591402, *12 (S.D.N.Y. Nov. 12, 2004) (requiring claim form was "important in helping to insure that the settlement fund is distributed to class members who deserve to recover from the fund"); *Thomas v. Backgroundchecks.com*, No. 13-29, ECF No. 115 (E.D. Va. Aug. 11, 2015) (final approval of FCRA settlement with some class members eligible to receive additional payments by asserting certain harm); *Ridenour v. Multi-Color Corp., Sterling Infosystems, Inc.*, No. 15-41, ECF No. 204 (E.D. Va. July 26, 2017) (approving FCRA settlement where class members who disputed received automatic payments, while others had to submit claim form).

Similarly, the Settlement's allocation structure is fair to each Group. The FCRA itself provides a range of statutory damages, and the allocative payment structure is common in FCRA settlements in particular, and class settlements in general. *See* cases cited *supra* Section III.B.2. *See also In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132, at *21 (N.D. Ga. Mar. 17, 2020), *aff'd in part, rev'd in part and remanded*, 999 F.3d 1247 (11th Cir. 2021) (approving settlement establishing different amounts of relief for different class members in different circumstances).

C. The Proposed Notice Plans Satisfy Rule 23 and Due Process

Fed. R. Civ. P. 23(e)(1) requires that the court "direct notice in a reasonable manner to all class members who would be bound by the proposal." For a class certified under Rule 23(b)(3) "the court must direct to class members the best notice that is practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B). For a class certified under Rule 23(b)(2), notice is discretionary any notice that is authorized need not constitute the "best notice practicable." Fed. R. Civ. P. 23(c)(2)(A). As to the (b)(2) Notice, the Parties could have elected to request that the Court allow them to forego notice altogether. Instead, the Parties chose to go above and beyond the baseline legal requirements, implementing a notice plan for the 23(b)(2) class that is similar to notice plans that have been approved in Rule 23(b)(3) settlements under the far more stringent "best notice practicable" standard that is applied when notice is mandatory. *See, e.g., Edwards v. Nat'l Milk Producers Fed'n,* No. 11-04766, 2017 WL 3623734, at *4 (N.D. Cal. June 26, 2017) (approving a settlement pursuant to Rule 23(b)(3) and finding that "notice plans estimated to reach a minimum of 70 percent are constitutional and comply with Rule 23"). As detailed above, the Rule 23 (b)(2) and (b)(3) Notice Plans include the Settlement Website, Internet Notice, and a toll-free phone number with recorded information. For the Rule 23 (b)(2) Class, there will also be targeted online advertising, which is designed to reach

approximately 70% of potential Rule 23(b)(2) class members. For the Rule 23(b)(3) Class, the Administrator will send straightforward and tailored Mail and Email Notices which are written in plain language directly to Class Members. All notices inform Class Members of their rights and the deadlines by which to exercise them and contain all required information under Rule 23. The notice program proposed here is similar to that approved in two other recent hybrid (b)(2) and (b)(3) settlements and complies with Rule 23(c)(2) and (e)(1). *See Hill-Green v. Experian Info. Servcs., LLC*, No. 19-cv-708, ECF No. 95 (E.D. Va. Dec. 3, 2021) and *Stewart*, No. 20-cv-903 (E.D. Va. Feb. 25, 2022).

V. CONCLUSION

Based on the foregoing, the Court should enter the Parties' proposed Preliminary Approval Order.

Date: September 9, 2022

BERGER MONTAGUE PC
By: */s/ E. Michelle Drake*
E. Michelle Drake, Bar No. 229202
emdrake@bm.net
Joseph C. Hashmall
jhashmall@bm.net
1229 Tyler Street NE, Suite 205
Minneapolis, Minnesota 55413
T: (612) 594-5999
F: (612) 584-4470

Robert C. Khayat, Jr. (416981)
rkhayat@khayatlawfirm.com
KHAYAT LAW FIRM

75 Fourteenth Street, N.E.
Suite 2750
Atlanta, Georgia 30309
T: (404) 978-2750
F: (404) 978-2901

Leonard A. Bennett
lenbennett@clalegal.com
Craig C. Marchiando
craig@clalegal.com
CONSUMER LITIGATION
ASSOCIATES, P.C
763 J. Clyde Morris Boulevard, Suite 1-A
Newport News, Virginia 23601
T: (757) 930-3660
F: (757) 930-3662

Kristi C. Kelly
kkelly@kellyguzzo.com
Andrew J. Guzzo
aguzzo@kellyguzzo.com
Casey S. Nash
casey@kellyguzzo.com
KELLY GUZZO, PLC
3925 Chain Bridge Road, Suite 202
Fairfax, Virginia 22030
T: (703) 424-7572
F: (703) 591-0167

James A. Francis
jfrancis@consumerlawfirm.com
John Soumilas
jsoumilas@consumerlawfirm.com
Lauren KW Brennan
lbrennan@consumerlawfirm.com
FRANCIS MAILMAN SOUMILAS PC
1600 Market St., Suite 2510
Philadelphia, PA 19103

T: 215-735-8600
F: 215-940-8000

G. Blake Andrews, Jr.
blake@blakeandrewslaw.com
BLAKE ANDREWS LAW FIRM, LLC
1831 Timothy Dr.
Atlanta, GA 30329
T: 770-828-6225

Attorneys for Plaintiffs

CERTIFICATION OF COMPLIANCE WITH L.R. 5.1B

I hereby certify that the foregoing has been computer processed with 14 point Times New Roman font in compliance with the U.S.D.C. Northern District of Georgia Local Rule 5.1B.

Date: September 9, 2022

/s/E. Michelle Drake
E. Michelle Drake, Bar No. 229202
Counsel for Plaintiffs