UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

Jason Lee Hinkel, Sr. and Narily Noon, Individually and as representatives of the Class, Plaintiffs, v. Universal Credit Services, LLC, Defendant.	Case No. 2:22-cv-01902-KBH

MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT

Plaintiffs Jason Lee Hinkel, Sr. and Narily Noon ("Plaintiffs"), individually and on behalf of the Settlement Class, respectfully move the Court for final approval of the class action settlement with Defendant Universal Credit Services, LLC ("Defendant"). Defendant does not oppose the relief sought in this Motion.

Dated: April 23, 2024

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MEMORANDUM IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

TABLE OF CONTENTS

I. BACKGROUND 2

A. Procedural History and Summary of Claims 2

B. Relief to Class Members 3

C. Notice and Class Member Reaction 5

II. ARGUMENT 6

A. The Settlement Class was Adequately Represented & the Settlement was Reached by Arms-Length Negotiations, At a Developed Stage in the Proceedings 8

B. The Relief Provided Supports Approval, Especially in Light of the Complex Risks of Continuing Litigation 9

C. The Method of Distribution is Effective and Equitable to the Class Members 14

D. The Reaction of the Class Was Positive 15

E. The Ability of Defendant to Withstand a Higher Judgment 16

F. The Requests for Attorneys' Fees and Class Representative Awards Should be Approved 16

III. CONCLUSION 17

TABLE OF AUTHORITIES

Cases

In re Aetna Inc. Sec. Litig., MDL No. 1219, 2001 WL 20928 (E.D. Pa. 2001) 10

In re Am. Family Enterprises, 256 B.R. 377 (D.N.J. 2000) 15

Ashby v. Farmers Ins. Co. of Oregon, 592 F. Supp. 2d 1307 (D. Or. 2008) 10

In re Auto. Refinishing Paint Antitrust Litig., 617 F. Supp. 2d 36 (E.D. Pa. 2007) 9

Bach v. First Union Nat'l Bank, 149 Fed. App'x 354 (6th Cir. 2005) 13

Bell Atl. Corp. v. Bolger, 2 F.3d 1304 (3d Cir. 1993) 8

Boone v. City of Phila., 668 F. Supp. 2d 693 (E.D. Pa. 2009) 15

In re Cendant Corp. Sec. Litig., 109 F. Supp. 2d 235 (D.N.J. 2000) 11, 16

Chakejian v. Equifax Info. Servs., LLC, 275 F.R.D. 201 (E.D. Pa. 2011) 12

Couser v. Comenity Bank, 125 F. Supp. 3d 1034 (S.D. Cal. 2015) 15

Domonoske v. Bank of Am., N.A., 790 F. Supp. 2d 466 (W.D. Va. 2011) 12

Ehrheart v. Verizon Wireless, 609 F.3d 590 (3d Cir. 2010) 6

In re Farmers Ins. Co., Inc. FCRA Litig., 741 F. Supp. 2d 1211 (W.D. Okla. 2010) 10

Gascho v. Global Fitness Holdings, LLC, 822 F.3d 269 (6th Cir. 2016) 15

In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768 (3d Cir. 1995) .... *passim*

Girsh v. Jepson, 521 F.2d 153 (3d Cir. 1975) 7

McDonough v. Toys R Us, Inc., 80 F. Supp. 3d 626 (E.D. Pa. 2015) 12, 16

Mehling v. N.Y. Life Ins. Co., 246 F.R.D. 467 (E.D. Pa. 2007) 6, 9

Perry v. FleetBoston Fin. Corp., 229 F.R.D. 105 (E.D. Pa. 2005) 8, 10

Petruzzi's, Inc. v. Darling-Delaware Co., Inc., 880 F. Supp. 292 (M.D. Pa. 1995) 9

In re Philips/Magnavox Television Litig., 2012 WL 1677244 (D.N.J. May 14, 2012) 15

In re Processed Egg Prods. Antitrust Litig., No. 08-md-2002, 2016 WL 3584632 (E.D. Pa. 2016) 13

In re Prudential Ins. Co. America Sales Practice Litig. Agent Actions, 148 F.3d 283 (3d Cir. 1998) 7, 8

Reibstein v. Rite Aid Corp., 761 F. Supp. 2d 352 (E.D. Pa. 2011) 13

In re Rent-Way Sec. Litig., 305 F. Supp. 2d 491 (W.D. Pa. 2003) 10

In re Rite Aid Corp. Sec. Litig., 396 F.3d 294 (3d Cir. 2005) 2

Rougvie v. Ascena Retail Group, Inc., No. 15-724, 2016 WL 4111320 (E.D. Pa. July 29, 2016) 15

Smith v. LexisNexis Screening Sols., Inc., 837 F.3d 604 (6th Cir. 2016) 12

Sourovelis v. City of Phila., 515 F. Supp. 3d 321 (E.D. Pa. 2021) 7

Sullivan v. DB Investments, Inc., 667 F.3d 273 (3d Cir. 2011) 15

In re Toys R Us-Delaware, Inc. – FACTA Litig., 295 F.R.D. 438 (C.D. Cal. 2014) 11

Varacallo v. Mass. Mutual Life Ins. Co., 226 F.R.D. 207 (D.N.J. 2005) 15

In re Warfarin Sodium Antitrust Litig., 212 F.R.D. 231 (D. Del. 2002) 13

In re Warfarin Sodium Antitrust Litig., 391 F.3d 516 (3d Cir. 2004) 6, 8, 9

In re WorldCom, Inc. Sec. Litig., No. 02-3288, 2004 WL 2591402 (S.D.N.Y. Nov. 12, 2004) 11

Zepeda v. PayPal, Inc., No 10-2500, 2017 WL 1113293 (N.D. Cal. 2017) 16

Rules & Statutes

15 U.S.C. § 1681, *et seq.* ..... *passim*

Fed. R. Civ. P. 23 ..... 6, 7, 14

Plaintiffs Jason Lee Hinkel, Sr. and Narily Noon ("Plaintiffs" or "Class Representative"), individually and on behalf the Settlement Class, seek final approval of the settlement of Plaintiffs' and the Class's claims against Defendant Universal Credit Services, LLC[1] ("Defendant") for alleged violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq*. ("FCRA"). The settlement comes after extensive litigation was conducted by both parties and is the product of an arms-length negotiation. If approved, the settlement will resolve all claims of Plaintiffs and the Settlement Class Members in exchange for Defendant's agreement to pay $225,000 into a non-reversionary common fund from which payments to 1,767 Class Members will be made. The settlement will be divided *pro rata* among all Class Members who are entitled to receive a payment. Each Class Member payment is approximately $193. Roughly half of Settlement Class Members will be paid automatically, while the other half of the Settlement Class Members were required to complete a short and simple claim form to validate their claim. The settlement provides substantial monetary relief for the Class and compares favorably to other settlements involving consumer reporting agencies falsely reporting consumers as deceased.

On January 23, 2024, this Court preliminarily approved the parties' Settlement Agreement. (ECF No. 42.) The Court found on a preliminary basis that the terms of this settlement were "fair, reasonable, and adequate" and approved distribution of notice, appointed the Class Representatives, Class Counsel, and Continental Datalogix LLC as the Settlement Administrator for the Settlement Class. (*Id.* ¶¶ 7-9.) The Court's analysis is supported by the response of the Settlement Class. Out of 1,767 Class Members, there were zero objections, zero opt-outs, and 96

[1] Xactus, LLC is the successor in interest to certain assets of Universal Credit Services, LLC. Xactus, LLC, in its capacity as successor in interest to certain assets of Universal Credit Services, LLC, and Universal Credit Services, LLC, are collectively referred to as "Defendant."

Class Members filed valid and timely Claim Forms.[2] The Third Circuit has held that a low level of objection is a "rare phenomenon" that supports the fairness, reasonableness, and adequacy of a settlement. *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005).

For these reasons, and many others discussed herein, the settlement is much more than a fair and reasonable resolution of the claims at issue—it is a win for over a thousand consumers. Accordingly, Plaintiffs respectfully request that the Court grant final approval of the settlement.

I. BACKGROUND

The history of this litigation and settlement, and the claims involved, are set forth in detail in Plaintiffs' preliminary approval papers and motion for attorneys' fees, which are incorporated herein by reference and therefore will be only briefly summarized here. (*See* ECF Nos. 41-1,43-1.)

A. Procedural History and Summary of Claims

On April 8, 2022, Plaintiffs filed their class action Complaint against Defendant in the Philadelphia Court of Common Pleas, alleging that Defendant had violated the FCRA at 15 U.S.C. § 1681e(b) by failing to maintain reasonable procedures to assure maximum possible accuracy in the consumer reports it furnished. (*See generally* Complaint.) Specifically, Plaintiffs alleged that Defendant had furnished consumer reports to third parties that included deceased notations for the subjects of the reports, who were in fact alive, as well as claims related to debt summaries calculated based on duplicative tradelines. (*Id.*) Plaintiffs alleged that Defendant engaged in this reporting in spite of receiving information from at least one other consumer reporting agency that

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[2] The total number of claims filed listed in this Memorandum in Support of Motion for Final Approval is one claim higher than the number listed in the Declaration of Ritesh Patel ("Patel Decl."), ECF No. 46. The disparity between the documents is because one additional valid claim was received by the Administrator one day after the Patel Declaration was filed with the Court.

indicated class members were in fact alive. (*Id.*) On May 16, 2022, Defendant removed the case to this Court (ECF No. 1) and on June 17, 2022, filed its Answer (ECF No. 13).

The parties then commenced discovery in the case, exchanging written requests and responses, producing and reviewing extensive documents and data, Plaintiffs taking a deposition of Defendant, Plaintiffs and their spouses being deposed, and both sides pursuing third party discovery into Defendant's data vendor and the third parties who had ordered Plaintiffs' reports. (ECF No. 41-2 ¶ 4.) The parties also engaged in expert discovery, with both sides producing an expert report. (*Id.*)

In June 2023, the parties began to explore settlement possibilities through arms-length negotiations between counsel. (*Id.* ¶ 5.) The parties were able to ultimately reach a settlement in principle (ECF No. 39) and worked to formalize the Settlement Agreement. On January 23, 2024, this Court granted preliminary approval of the parties' Settlement Agreement. (ECF No. 42.)

B. Relief to Class Members

The Court certified, for settlement purposes only, with the preliminary approval order, the Settlement Class, defined as:

> All persons residing in the United States of America (including its territories and Puerto Rico) who: (1) were the subject of a bi-merge or tri-merge report using the legacy Universal Credit Services system and branding from April 8, 2020 through October 13, 2023; (2) that included at least one notation related to a deceased status in the score, fraud, or tradeline sections of the report; (3) where at least one of the underlying consumer reporting agencies returned a credit score; and (4) there was activity on a tradeline within 180 days of the date of the report or activity after the date of the report and that activity did not have a deceased indicator.

(ECF No. 42 ¶ 2.)

In consideration for the Settlement Class Members' release of all claims related to any notation or indicators that the consumer is deceased in reports prepared by the Defendant, Defendant will create a non-reversionary common fund of $225,000. (ECF No. 41-3 ("SA")

¶ 4.4.1.) Net payments per Class Member will be approximately $193. Every member will receive an equal payment from the fund. Class Members whose data met certain criteria indicating that they were alive at the time of the report will receive payment automatically.[3] Roughly half of the Class Members qualify for automatic payment.[4] The other half of the Settlement Class was required to submit a claim form to receive payment under the settlement. The claim form simply required Class Members to attest that they were the subject of a report with a deceased notation during the Class Period, and that they are alive. (*Id.*¶ 4.3.3.).

In the event checks issued to Settlement Class Members from the Settlement Fund remain uncashed after the expiration date—and the collective amount of those checks allows for a second distribution of at least ($20) to all Settlement Class Members after further reductions in the Settlement Fund for additional expenses incurred by the Settlement Administrator as a result of the need for a second distribution—then the Settlement Administrator shall distribute the funds associated with the uncashed checks, in proportion to each Settlement Class Members' initial settlement check, to those Settlement Class Members who cashed a check from the initial distribution. (SA ¶ 5.3.4.) Following the check negotiation period for reissued checks, if any, all

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[3] Those Class Members who meet the following criteria will receive their payments automatically: 1) whose report(s) were generated based on an application for credit, 2) where at least two consumer reporting agencies returned a credit score on the report(s) at issue, 3) where, based on third-party records, the Social Security Number associated with the death record matches the individual listed on the report(s) at issue, and 4) whose report(s) at issue were run using a Social Security Number that a third-party data provider did not match to a documented date of death. (*Id.* ¶ 4.3.2.) These criteria, combined, provide a very strong indication that the Class Member was alive at the time the report was issued in that they show the consumer was recently engaged in reportable credit activity (application for credit and recent tradeline activity such as a payment), had not been reported as deceased to at least two of the national credit reporting agencies, was applying for credit using their own Social Security number, and, to date, still has not been associated with a documented date of death by third party data providers.

[4] There are 826 individuals in the Automatic Payment Category and 936 in the Claim Category. (Patel Decl. ¶ 3.)

remaining funds will be allocated to a *cy pres* organization the parties propose—Public Justice, a non-for-profit charitable organization. No portion of the fund will revert to Defendant. (*Id.*)

The Settlement Agreement's common fund will not be reduced to pay for Class Counsel's attorneys' fees. Instead, the Settlement Agreement permitted Class Counsel to petition the Court for attorneys' fees to be paid by the Defendant separately from the Class Settlement fund. (ECF No. 41-3 ¶ 5.3; ECF No. 43.)

C. Notice and Class Member Reaction

On February 13, 2024, the Settlement Administrator, Continental Datalogix LLC, sent the Court-approved Postcard Notice to each of the Settlement Class Members via first-class U.S. Mail. (Patel Decl. ¶ 6.) Continental also activated the Settlement Website, which provided Class Members with general information about the settlement, hosted important case documents, including the complaint, the Settlement Agreement, the Preliminary Approval Order, and Motion for Attorneys' Fees, Costs, and Service Awards. (*Id.* ¶ 13). The Website also contained the Long Form Notice and answers to frequently asked questions and provided Class Members with the ability to submit a claim form online if desired. (*Id.*) Further, the Administrator established a toll-free telephone line on the same date as the Website. (*Id.* ¶ 14.)

Pursuant to the Order Preliminarily Approving Settlement, Continental reviewed the provided mailing list containing names and addresses for 1,767 class members and reduced the mailing list to 1,762 after finding 5 records were identified as duplicates. (*Id.* ¶ 3.) Prior to mailing and emailing the Notices, the Settlement Administrator reviewed the Class List from Defendant and updated address through the National Change of Address Database and other public record sources. (*Id.* ¶ 5.) The Settlement Administrator coordinated the mailing of the notices to the Class Members, and remailed those returned as undeliverable. (*Id.* ¶¶ 6-8.) Additionally, valid email

addresses were located for 1,094 class members, and notice was sent via email as well. (*Id*. ¶ 7.)

The postmark deadline for Settlement Class Members to file for a written exclusion or a notice of objection was on April 13, 2024. As of the close of business April 17, 2024, zero Class Members requested exclusion or objected. (*Id.* ¶ 18.) The Settlement Administrator reviewed all Claim Forms received, and using verification of identifiers provided by the claimants and those on the Class List, was able to confirm that 96 were validly submitted by Settlement Class Members by the deadline. (*Id.* ¶ 15; *supra* n.3.) The 96 validly filed claims forms reflect a 10% claims filing rate.

II. ARGUMENT

Courts favor the voluntary resolution of litigation through settlement, particularly in the class action context. *See In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) ("there is an overriding public interest in settling class action litigation, and it should therefore be encouraged."); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) ("*Gen. Motors*") ("[t]he law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation."); *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 595 (3d Cir. 2010) ("[s]ettlement agreements are to be encouraged.").

Fed. R. Civ. P. 23(e) requires judicial approval of the compromise of claims brought on a class basis. This is a two-step process, where the court first considers whether the settlement "fall[s] within the range of possible approval," and that notice of the settlement should be sent to the class members. *Mehling v. N.Y. Life Ins. Co.*, 246 F.R.D. 467, 472 (E.D. Pa. 2007). In the second step, the court holds a final fairness hearing and considers whether the settlement is fair, reasonable, and adequate, and warrants final approval. *Id*. The Third Circuit has outlined certain

factors to consider when determining whether a settlement should be finally approved:

> (1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risk of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining a class action; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation.

Gen. Motors, 55 F.3d at 785 (citing *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975)).[5] The 2018 amendments to Federal Rule of Civil Procedure 23(e) also formalize a list of considerations for settlement approval, which overlap with those previously adopted by the Third Circuit in *Girsh*. *See, e.g.*, *Sourovelis v. City of Phila.*, 515 F. Supp. 3d 321, 336 (E.D. Pa. 2021) ("[The Rule 23(e)] factors are in many respects a codification of various factors set forth in *Girsh*."). These include:

> (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); and
> (D) the proposal treats class members equitably relative to each other.[6]

Fed. R. Civ. P. 23(e)(2).

A court should "apply an initial presumption of fairness when reviewing a proposed settlement where: (1) the settlement negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a

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[5] In *In re Prudential Ins. Co. America Sales Practice Litig. Agent Actions*, 148 F.3d 283, 323 (3d Cir. 1998), the Third Circuit discussed additional factors to supplement those laid out in *Girsh*, to be reviewed "when appropriate." These considerations are largely only applicable to the settlement of mass torts (*id.*), or overlap with *Girsh* factors (i.e., extent of discovery is discussed in the analysis of Girsh factor regarding the stage of the proceedings).

[6] There are no agreements to be identified under (C)(iv) beyond the Settlement Agreement.

small fraction of the class objected." *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d at 535 (internal quotation omitted).

For the reasons set forth below, the settlement satisfies the considerations at issue and should be finally approved.

A. The Settlement Class was Adequately Represented & the Settlement was Reached by Arms-Length Negotiations, At a Developed Stage in the Proceedings.

The record in this case demonstrates that negotiations leading to this settlement were initiated only after substantial proceedings occurred and were conducted at arms-length. As detailed in Plaintiffs' preliminary approval papers, the parties undertook substantial efforts in the litigation and settlement of this matter. These efforts included: exchange of written requests and responses, extensive production of documents by both parties; depositions of Plaintiffs and their spouses; Defendant's 30(b)(6) representative; and third party discovery with Defendant's data vendor and the end-users of Plaintiffs' reports. Prior to negotiations, both Defendant and its third party vendor produced data samples, which Plaintiffs, after extensive meet and confers with Defendant, analyzed through an expert, resulting in a formal written report, and rebuttal by Defendant. The significant discovery taken in this case allowed the parties to make reasoned and informed decisions regarding the strengths, weaknesses, and the value of claims asserted. *Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1314 (3d Cir. 1993) ("[p]ost-discovery settlements are more likely to reflect the true value of the claim and be fair."); *Perry v. FleetBoston Fin. Corp.*, 229 F.R.D. 105, 115 (E.D. Pa. 2005) (finding these considerations satisfied where parties had exchanged some discovery and participated in mediation process). The parties thus had an "adequate appreciation of the merits of the case before negotiating." *In re Prudential*, 148 F.3d at 319 ("To ensure that a proposed settlement is the product of informed negotiations, there should be an inquiry into the

type and amount of discovery the parties have undertaken.”).

Furthermore, the parties conducted extended arms-length negotiations, through counsel, before the settlement’s terms were agreed upon. Plaintiffs themselves have additionally demonstrated that they have been invested in this litigation by continuously prioritizing Class’s interests first, through participating actively in discovery, including sitting for depositions, and reviewing and approving the settlement. Plaintiffs’ Counsel are highly experienced in complex litigation—FCRA litigation in particular—and committed substantial time and resources to this matter. (ECF No. 41-2 ¶¶ 10-15; *see also* https://www.troutman.com/.) Additionally, attorneys’ fees and service awards contemplated were not discussed or negotiated until all other material terms of the settlement had been agreed upon, limiting the possibility of a trade-off between compensation for the Settlement Class and compensation for Plaintiffs’ Counsel. (ECF No. 41-2 ¶ 9.)

In light of these circumstances, the settlement should be viewed as presumptively fair. *Mehling*, 248 F.R.D. at 459 (“[a] proposed settlement which is negotiated at arms-length by capable counsel after meaningful discovery is presumed to be fair and reasonable.”) (internal quotation omitted); *see also In re Auto. Refinishing Paint Antitrust Litig.*, 617 F. Supp. 2d 36, 341 (E.D. Pa. 2007); *Petruzzi’s, Inc. v. Darling-Delaware Co., Inc.*, 880 F. Supp. 292, 301 (M.D. Pa. 1995).

B. The Relief Provided Supports Approval, Especially in Light of the Complex Risks of Continuing Litigation.

When determining whether a settlement meets the requirements for final approval, courts are meant to collectively balance “the likelihood of success against the benefits of an immediate settlement.” *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d at 537. This determination is measured against the “best interest of the class members by reference to the best possible outcome”

and the timeliness of the proposed outcome where "a future recovery, even one in excess of the proposed settlement, may ultimately prove less valuable to the Class than receiving the benefits of the proposed Settlement at this time." *In re Aetna Inc. Sec. Litig.*, MDL No. 1219, 2001 WL 20928, *6 (E.D. Pa. 2001); *In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 501 (W.D. Pa. 2003). In considering these factors, the court may "give credence to the estimation of the probability of success proffered by class counsel, who are experienced with the underlying case, and the possible defenses which may be raised to their causes of action." *Perry*, 229 F.R.D. at 115 (internal quotation omitted).

Plaintiffs filed this action seeking statutory damages under the FCRA, which provides for between $100 to $1,000 for each willful violation. 15 U.S.C. § 1681n(a)(1). The FCRA itself does not provide any guidance to courts in choosing the appropriate recovery for a statutory violation, *see id.*, but courts have looked instead 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., Inc. FCRA Litig.,* 741 F. Supp. 2d 1211, 1224 (W.D. Okla. 2010).

The settlement in this case provides for a non-reversionary common fund of $225,000 with a net payment of $193 per participating Class Member, with over half of the Class participating – just under 50% receiving a payment automatically, and 96 others participating because they submitted a claim form. This recovery amount is significant and well within the range of FCRA settlements of similar claims. *See, e.g.*, *Roe v. IntelliCorp Records, Inc.*, No. 12-2288, ECF No. 139 (N.D. Ohio June 5, 2014) (final approval of settlement of alleged inaccurate reporting, and other FCRA claims, providing for $50-$270 net per class member); *Ryals v. HireRight Sols. Inc.*, No. 09-625, ECF No. 127 (E.D. Va. Dec. 22, 2011) (final approval of settlement involving

§1681e(b) claims, providing $15-$200 gross per class member recovery); *Ori v. Fifth Third Bank, Fiserv, Inc.*, No. 08-432, ECF No. 217 (E.D. Wis. Jan. 10, 2012) (final approval of settlement of alleged inaccurate mortgage loan reporting, claims-made, each claimant receiving approximately $55); *Speers v. Pre-Employ.com, Inc.*, No. 13-1849, ECF No. 83 (D. Or. Feb. 10, 2016) (final approval of settlement of failure to maintain strict procedures when reporting adverse public record information, resulting in approximately $153 net per class member); *Villaflor v. Equifax Info. Servc. LLC*, No. 09-329, ECF No. 177 (N.D. Cal. May 3, 2011) (final approval of settlement of §1681e(b) claims, providing credit monitoring for class members with a retail value of $155).

Moreover, the allocation between Class Members provides for equal payments to all participating Members. While there is a group of Class Members that returned a claim form to receive their equal payment, this is reasonable, as for this group there was uncertainty regarding whether they were alive at the time of the report or not, and therefore, whether Defendant's reporting about them was accurate. *See 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").

When recovery is significant, equitably allocated, and monetarily within the range of the likely award in this case if the case had proceeded all the way through final judgement, courts consider it an excellent result for Class Members—especially when that recovery comes before having established that the FCRA violation was willful, obtaining class certification, and prevailing at trial. *In re Toys R Us-Delaware, Inc. – FACTA Litig.*, 295 F.R.D. 438, 453-4 (C.D. Cal. 2014) ("A $5 or $30 award, therefore, represents 5% to 30% of the recovery that might have been obtained. This is not a *de minimis* amount."); *In re Cendant Corp. Sec. Litig.*, 109 F. Supp. 2d 235, 263 (D.N.J. 2000) ("The fact that a proposed settlement may only amount to a fraction of

the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.") (internal quotation omitted); *see also McDonough v. Toys R Us, Inc.*, 80 F. Supp. 3d 626, 646 (E.D. Pa. 2015) ("[T]he Third Circuit warned 'against demanding too large a settlement…after all, settlement is a compromise, yielding of the highest hopes in exchange for certainty and resolution.'") (citing *Gen. Motors*, 55 F.3d at 806).

Here, Plaintiffs face several risks should litigation continue through trial. ***First***, the risk of establishing, certifying, and maintaining a certified class through trial favors approval of the settlement. A litigation class had not yet been certified, and while Class Counsel are confident that such certification would have been achieved, Defendant would have fought aggressively against it. The settlement removes any potential threats to class certification, and without it, each Class Member would be left to attempt to pursue individual damages that without the aggregation of a class action, are small—as noted, the FCRA caps statutory damages at $1,000 per violation. 15 U.S.C. § 1681n(a)(1). ***Second,*** unlike other consumer statutes, in order to recover statutory damages under the FCRA, which is what Plaintiffs sought in the complaint, Plaintiffs must prove not only that Defendant violated the FCRA, but also that its violations were willful. If this litigation were to continue, Defendant would have vigorously challenged that any violations were willful. Willfulness is a high standard, and one on which FCRA plaintiffs can lose, even after a successful verdict at trial. *See Smith v. LexisNexis Screening Sols.*, Inc., 837 F.3d 604, 611 (6th Cir. 2016) (reversing jury verdict, holding that consumer reporting agency's conduct did not constitute a willful violation of the FCRA); *see also Domonoske v. Bank of Am.*, N.A., 790 F. Supp. 2d 466, 476 (W.D. Va. 2011) ("given the difficulties of proving willfulness or even negligence with actual damages [under the FCRA], there was a substantial risk of nonpayment."); *Chakejian v. Equifax Info. Servs.*, LLC, 275 F.R.D. 201, 212 (E.D. Pa. 2011) (proving willfulness in FCRA case was "a

high hurdle to clear" which weighed in favor of settlement approval); *Reibstein v. Rite Aid Corp.*, 761 F. Supp. 2d 352, 253 (E.D. Pa. 2011) (holding same). And to recover actual damages under the FCRA, damages must be caused by the FCRA violation itself, not merely by the report associated with the violation. *See Bach v. First Union Nat'l Bank*, 149 Fed. App'x 354, 361 (6th Cir. 2005) (evaluating "causal link" between violation and damages). ***Third***, even if Plaintiffs proceeded to trial and were successful, the necessary procedures to prevail add significant expense and time. While significant discovery had taken place, formal expert discovery, dispositive motions, and a motion for class certification all had yet to occur when this settlement was reached. In addition, there would have been a trial and likely, appeals, further prolonging the litigation and reducing the value of any recovery to the Class. Each of these stages imposes expense and delay, thus settling now is advantageous for all involved. *See In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 254 (D. Del. 2002) (when settlement reached prior to dispositive motions, trial, and appeals, this factor "strongly supports settlement"); *Gen. Motors*, 55 F.3d at 784 (the gains of avoiding costs and risks of trial "multiply when settlement also avoids the costs of litigating class status – often a complex litigation within itself.").

In sum, Plaintiffs and Class Counsel are confident in the strength of Plaintiffs' claims, certifiability of the Class, and their likelihood of success on the merits. However, Plaintiffs and Class Counsel also understand the high stakes, risks, and uncertainty involved in continuing litigation through dispositive motion practice (e.g., motion for class certification, motions for summary judgment, and ultimately trial). When weighing the risks of establishing willfulness and class certification, the settlement is even more favorable, and should be approved. *In re Processed Egg Prods. Antitrust Litig.*, No. 08-md-2002, 2016 WL 3584632, **15-16 (E.D. Pa. 2016) (finding relevant *Girsh* factors to favor final approval where court had yet to decide summary judgment or

class certification motions).

C. The Method of Distribution is Effective and Equitable to the Class Members.

To ensure the efficacy and equitability of the settlement, the Court must consider the proposed method of distributing relief to the Class, including the method of processing Class Member claims; the terms of any proposed award of attorneys' fees, including the timing of payment; any agreement required to be identified under Rule 23(e)(3); and whether the proposal treats Class Members equitably relative to each other. Fed. R. Civ. P. 23(e)(2)(C)(D). Here, these considerations are easily satisfied.

The method of allocation is fair, as each Settlement Class Member will receive an equal payment from the fund. Class Members who met certain criteria indicating that they were alive at the time of the report will receive payment automatically. Roughly half of the Class Members will receive automatic payment. The other half of the Settlement Class were required to complete a claim form to receive payment under the settlement. The requisite claim form was a simple form that merely required Class Members to attest that they were the subject of a report with a deceased notation during the Class Period, and that they are alive.

Additionally, each Settlement Class Member is eligible for a second distribution of monetary relief in the event checks issued to Settlement Class Members from the Settlement Fund remain uncashed after the issued stale date—and the collective amount of those checks allows for a second distribution of at least ($20). (ECF No. 41-3 ¶ 5.3.4.) Following the check distribution period, any remaining funds will be allocated to a *cy pres* organization the parties propose—Public Justice, a non-for-profit charitable organization that does legal work to ensure equal access to credit and accurate credit reporting. No portion of the fund will revert to Defendant. (*Id.*)

D. The Reaction of the Class Was Positive.

"In an effort to measure the class's own reaction to the settlement's terms directly, courts look to the number and vociferousness of the objectors." *Gen. Motors*, 55 F.3d at 812. Of the 1,767 Settlement Class Members, zero opted-out and zero objected. Courts view the absence of or minimal number of objections and opt-outs as evidence that Settlement Class Members support the settlement. *Boone v. City of Phila*., 668 F. Supp. 2d 693, 712 (E.D. Pa. 2009) ("A low number of objectors compared to the number of potential class members creates a strong presumption in favor of approving the settlement."); *In re Philips/Magnavox Television Litig.*, 2012 WL 1677244, at *9 (D.N.J. May 14, 2012) (finding that where .00002% and .00004% of the settlement class objected or opted-out, showed "overwhelming" approval of the settlement by the class); *Varacallo v. Mass. Mutual Life Ins. Co.*, 226 F.R.D. 207, 237-38 (D.N.J. 2005) (finding objection and opt-out rates of .003% and .06% to be "extremely low" and indicated approval by the class).

Further, Class Members in the Claim Filing Category had a response rate of 10% (96 validly filed claims). This claims rate is indicative of a very positive reaction from Class Members. *See, e.g., Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 329 (3d Cir. 2011) (describing special master finding that "consumer claim filing rates rarely exceed seven percent."): *Rougvie v. Ascena Retail Group*, Inc., No. 15-724, 2016 WL 4111320, *38 (E.D. Pa. July 29, 2016) (granting final approval of consumer class settlement with 3.3% claims rate); *In re Am. Family Enterprises*, 256 B.R. 377, 418 (D.N.J. 2000) (1.43% claims filing rate weighed in favor of settlement); *see also Gascho v. Global Fitness Holdings*, LLC, 822 F.3d 269, 276, 290 (6th Cir. 2016) (citing to a settlement administrator's testimony that "response rates in consumer class actions generally range from 1 to 12 percent," with a "median response rate of 5 to 8 percent."); *Couser v. Comenity Bank*, 125 F. Supp. 3d 1034, 1044 (S.D. Cal. 2015) (claims rate of 7.7% was "higher than average" for a

consumer class action); *Zepeda v. PayPal, Inc.*, No 10-2500, 2017 WL 1113293, **15, 16 (N.D. Cal. 2017) (finding in consumer protection case that a 3.8% claims rate indicated that the notice process had been "remarkably successful – and the Settlement Class's reaction to the Settlement has been overwhelmingly positive.").

The reaction of the Class Members thus strongly supports approval of the settlement. *In re Cendant Corp.*, 264 F.3d at 234-35 (class reaction favored approval where "the number of objectors was quite small in light of the number of notices sent and claims filed.").

E. The Ability of Defendant to Withstand a Higher Judgment.

Defendant, although not a very large corporation, likely could have withstood a larger judgment. "Even if solvency could be assured," the Third Circuit "regularly find[s] a settlement to be fair even though the defendant has the practical ability to pay greater amounts." *McDonough*, 80 F. Supp. 3d at 645 (citing cases). Thus, this factor supports approval.

F. The Requests for Attorneys' Fees and Class Representative Awards Should be Approved.

On March 21, 2024, three weeks before the deadline for objections, Plaintiffs and Class Counsel filed their motion seeking attorneys' fees of $225,000 to be paid to Class Counsel separate from the Settlement Fund and Named Plaintiff Service Awards of $7,500 for each Plaintiff to be paid from the Settlement Fund. (ECF No. 43-1.) Attorneys' fees were negotiated only after relief for the Class was agreed upon. The amount of fees and service awards that Plaintiffs and Class Counsel intended to seek were included in the Notice to the Settlement Class. As of the date of this filing, no Settlement Class Member has objected to the requested fees or service awards. The requests for attorneys' fees, service awards, as well as reimbursement of the settlement administration costs, should be approved.

III. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request the Court grant final approval to the parties' settlement.

Dated: April 23, 2024

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THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

JASON LEE HINKEL, SR. and NARILY NOON, individually and as a representative of the Classes, Plaintiffs, v. UNIVERSAL CREDIT SERVICES, LLC, Defendant.	Civil Action No. 2:22-cv-01902-KBH

ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFYING
SETTLEMENT CLASS, AND TERMINATING ACTION

Plaintiffs Jason Lee Hinkel, Sr. and Narily Noon ("Class Representatives" or "Plaintiffs"), on behalf of themselves and all others similarly situated, has submitted to the Court a Motion for Final Approval of the Settlement Agreement ("Final Approval Motion") with Xactus, LLC, as successor in interest to certain assets of Universal Credit Services, LLC and Universal Credit Services, LLC (collectively, "Defendant").

This Court has reviewed the papers filed in support of the Final Approval Motion, including the Settlement Agreement filed with Plaintiffs' Preliminary Approval Motion, the memoranda and arguments submitted on behalf of the Settlement Class, and all supporting exhibits and declarations thereto, as well as the Court's Preliminary Approval Order. The Court held a Final Fairness Hearing on May 15, 2024, at which time the parties and other interested persons were given an opportunity to be heard in support of and in opposition to the proposed settlement. The Court received zero objections regarding the proposed settlement.

Based on the papers filed with the Court and the presentations made at the Final Fairness Hearing, the Court finds that the Settlement Agreement is fair, adequate, and reasonable.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. This Final Approval Order incorporates herein and makes a part hereof the Settlement Agreement and the Preliminary Approval Order. Unless otherwise provided herein, the capitalized terms used herein shall have the same meanings and/or definitions given to them in the Preliminary Approval Order and Settlement Agreement, as submitted to the Court with the Motion for Preliminary Approval.

2. This Court has jurisdiction over the subject matter of this action, the Class Representatives, the Settlement Class, and Defendant.

SETTLEMENT CLASS

3. In the Preliminary Approval Order, this Court previously certified, for settlement purposes only, the Settlement Class defined as follows:

> All persons residing in the United States of America (including its territories and Puerto Rico) who: (1) were the subject of a bi-merge or tri-merge report using the legacy Universal Credit Services system and branding from April 8, 2020 through October 13, 2023; (2) that included at least one notation related to a deceased status in the score, fraud, or tradeline sections of the report; (3) where at least one of the underlying consumer reporting agencies returned a credit score; and (4) there was activity on a tradeline within 180 days of the date of the report or activity after the date of the report and that activity did not have a deceased indicator.

4. Certification of the Class for settlement purposes is hereby reaffirmed as a final Settlement Class pursuant to Fed. R. Civ. P. 23(b)(3). For the reasons set forth in the Preliminary Approval Order, this Court finds, on the record before it, that this action may be maintained as a class action on behalf of the Class for settlement purposes.

5. In the Preliminary Approval Order, this Court previously appointed Plaintiffs as Class Representatives for the Settlement Class and hereby reaffirms that appointment, finding on

the record before it, that Plaintiffs have and continue to adequately represent the Settlement Class Members.

6. **CLASS COUNSEL APPOINTMENT** — In the Preliminary Approval Order, this Court previously appointed E. Michelle Drake and Joseph C. Hashmall of Berger Montague PC as Counsel for the Settlement Class and hereby reaffirms that appointment, finding, on the record before it, that Class Counsel have and continue to adequately and fairly represent Settlement Class Members.

7. **CLASS NOTICE** — The record shows, and the Court finds, that notice to the Settlement Class has been given in the manner approved by the Court in the Preliminary Approval Order. The Court finds that such notice (i) constituted the best notice practicable to the Settlement Class under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of this Action, the terms of the Settlement Agreement, their rights under the Settlement Agreement and deadlines by which to exercise them, and the binding effect of the Final Approval Order on the Settlement Class Members; (iii) provided due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfy the requirements of the U.S. Constitution (including the Due Process Clause), Federal Rule of Civil Procedure 23, and any other applicable law.

8. Full opportunity has been afforded to members of the Settlement Class to participate in the Final Fairness Hearing. Accordingly, the Court determines that all Settlement Class Members are bound by this Final Approval Order in accordance with the terms provided herein.

FINAL APPROVAL OF THE SETTLEMENT AGREEMENT

9. Pursuant to Fed. R. Civ. P. 23(e), the Court hereby finally approves in all respects the settlement as set forth in the Settlement Agreement, and finds the benefits to the Settlement Class, and all other parts of the settlement are, in all respects, fair, reasonable, and adequate, and in the best interest of the Settlement Class, within a range that responsible and experienced attorneys could accept considering all relevant risks and factors and the relative merits of the Plaintiffs' claims and any defenses of Defendant, and are in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause, and the Class Action Fairness Act. Accordingly, the settlement shall be consummated in accordance with the terms and provisions of the Settlement Agreement, with each Settlement Class Member being bound by the Settlement Agreement, including all releases set forth in the Settlement Agreement.

10. Specifically, the Court finds that the terms of the Settlement Agreement are fair, reasonable, and adequate given the following factors, among other things:

A. All claims within the above-captioned proceeding are complex and time-consuming, and would have continued to be so through summary judgment and/or trial if it had not settled;

B. Class Counsel had a well-informed appreciation of the strengths and weaknesses of the Action while negotiating the Settlement Agreement;

C. The relief provided for by the Settlement Agreement is well within the range of reasonableness in light of the best possible recovery and the risks the parties would have faced if the case had continued to trial;

D. The Settlement Agreement was the result of arms' length, good faith negotiations and exchange of information by experienced counsel; and

E. The reaction of the Settlement Class has been positive.

11. The Court overrules the objections to the settlement. After carefully considering each objection, the Court concludes that none of the objections create questions as to whether the settlement is fair, reasonable, and adequate.

12. All claims in the above-captioned proceeding with respect to the deceased notation class claims are hereby dismissed with prejudice and terminated, as well as the trade summary putative class claims as to Narily Noon. Except as otherwise provided herein or in the Settlement Agreement, such dismissal and termination shall occur without costs to Plaintiffs or Defendant. Plaintiffs and all Settlement Class Members hereby fully release all Released Parties for all Released Claims, and are hereby enjoined from instituting, maintaining, or prosecuting, either directly or indirectly, any lawsuit or claim that asserts any Released Claims.

13. Pursuant to the Settlement Agreement, as of the Effective Date, Plaintiffs and the Settlement Class Members shall have fully, finally, and forever released and discharged the Released Parties from any and all Released Claims, as those terms are defined in the Settlement Agreement.

ATTORNEYS' FEES, COSTS, AND SERVICE AWARD

14. Pursuant to Fed. R. Civ. P. 23(h), Class Counsel applied to the Court for awards of attorneys' fees and costs as related to the Settlement Class.

15. The Court notes that the requested amounts were included in the notice materials disseminated to the Settlement Class and there have been no objections to the requested amounts.

16. The Court, having reviewed the declarations, exhibits, and memoranda submitted in support of the requests for attorneys' fees and costs, approves an award of attorneys' fee and

costs to Class Counsel in the amount of $225,000. The Court finds this amount to be reasonable and appropriate under all circumstances presented.

17. The Court also approves a service award to each of the Class Representative of $7,500.

18. The Settlement Administrator is further approved to reimburse its reasonable costs in connection with the Settlement Class from the Settlement Fund prior to the distribution to the Settlement Class Members.

19. The Settlement Administrator is directed to distribute the balance of the Settlement Fund to participating Class Members as expressly set forth in the Settlement Agreement. Should funds remain for *cy pres* distribution, the parties' selected organizations, Public Justice and Community Action Agency of Delaware County, Inc., are approved to receive such residual funds.

20. The Court expressly retains exclusive and continuing jurisdiction, without affecting the finality of this Order, over the Settlement Agreement, including all matters relating to the implementation and enforcement of the terms of the Settlement Agreement. It is in the best interests of the Parties and the Settlement Class Members, and consistent with principles of judicial economy, that any dispute between any Settlement Class Member (including any dispute as to whether any person is a Settlement Class Member) and any Released Party which, in any way, relates to the applicability or scope of the Settlement Agreement or the Final Judgment and Order, should be presented exclusively to this Court for resolution.

21. Nothing herein, including the Court's retention of jurisdiction over the Settlement Agreement, shall be a basis for any party, including any class member, to assert a court has personal jurisdiction over any other party in any matter other than a matter seeking to enforce the terms of the Settlement Agreement.

22. Neither this Final Judgment and Order, nor the Settlement Agreement, shall be construed or used as an admission or concession by or against the Defendant or any of the Released Parties of any fault, omission, liability, or wrongdoing, or the validity of any of the Settlement Released Claims. This Final Judgment and Order is not a finding of the validity or invalidity of any claims in this lawsuit or a determination of any wrongdoing by Defendant or any of the Released Parties. The final approval of the Settlement Agreement does not constitute any opinion, position, or determination of this Court, one way or the other, as to the merits of the claims and defenses of the Named Plaintiffs, the Settlement Class Members, or Defendant.

23. If the Effective Date, as defined in the Settlement Agreement does not occur for any reason whatsoever, this Final Approval Order shall be deemed vacated and shall have no force or effect whatsoever.

24. The parties are hereby directed to carry out their obligations under the Settlement Agreement.

25. There being no just reason for delay, the Court directs this Final Order be, and hereby is, entered as a final and appealable order.

It is SO ORDERED.

Dated: __________________ ___________________________________

Hon. Kelley B. Hodge
U.S. District Judge