

I. THE FAIR CREDIT REPORTING ACT CLAIMS

On January 29, 2015, Plaintiffs filed a Complaint in the United States District Court for the Eastern District of Virginia. (Doc. 1.). On April 12, 2016, Plaintiffs filed a First Amended Complaint, *inter alia* adding Plaintiff Halem to the Action (Doc. 83.) On July 13, 2016, Plaintiffs filed a Second Amended Class Action Complaint (Doc. 128). The Action alleges that Defendant violated Sections 1681k(a) and 1681e(b) of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681a–1681x (“FCRA”) in connection with providing background reports for employment purposes. The Action is filed on behalf of the Named Plaintiffs, individually, as well as on behalf of consumers residing in the United States who applied for employment subject to a background check prepared by Defendant, which is a consumer report under the FCRA. Defendant is a consumer reporting agency within the meaning of the FCRA and provided consumer reports about the Named Plaintiffs and purported class members for employment purposes.

Plaintiffs allege that Defendant violated the FCRA as to the Named Plaintiffs and purported class members because Defendant allegedly provided Plaintiffs’ potential employers with consumer reports containing information likely to adversely affect Plaintiffs’ ability to obtain employment without providing Plaintiffs with notice that it was reporting public record information about Plaintiffs at the time it provided those reports. Plaintiffs further allege that Defendant does not employ strict procedures to ensure the information it reports about consumers for employment purposes is complete and up-to-date in violation 15 U.S.C. § 1681k(a). Defendant denies Plaintiffs’ allegations and denies that it committed any violation of the FCRA.

The Action seeks to recover statutory damages, punitive damages, and attorneys’ fees and costs. The Named Plaintiffs and purported class members in the Action are represented by

Leonard A. Bennett, Susan M. Rotkis, and Craig C. Marchiando of Consumer Litigation Associates, P.C.; Kristi C. Kelly and Andrew Guzzo of Kelly and Crandall, PLC; James A. Francis and David A. Searles of Francis & Mailman, P.C.; and Scott Surovell of Surovell Isaacs Petersen & Levy, PLC (“Class Counsel”). Defendant is represented by Steven H. Stodghill, Geoffrey S. Harper and Thomas B. Walsh, IV of Fish & Richardson, P.C. (“Defense Counsel”).

Following the filing of the Action, the Parties engaged in multiple rounds of written discovery, depositions, and motions practice through which Class Counsel was provided with information concerning the consumers who were the subject of consumer reports provided by the Defendant to Plaintiffs’ potential employers that included information Plaintiffs contend was likely to adversely affect Plaintiffs’ ability to obtain employment, information regarding whether Defendant provided notice to the consumer at the time the reports were provided to the prospective employer, and information regarding the procedures maintained by Defendant to ensure the information reported about consumers for employment purposes was complete and up-to-date. The Parties also participated in multiple mediations and numerous and frequent informal negotiations, which resulted in this Settlement.

II. DEFENDANT’S DENIAL OF WRONGDOING AND LIABILITY

Defendant denies all charges of wrongdoing or liability arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Action and believes it has multiple legal and factual defenses to the Released Claims asserted by the Plaintiffs and the purported class members in this Action. Defendant believes that were it to proceed with this lawsuit, class certification would be denied and it would prevail on motion for summary judgment and/or at trial. Defendant, however, has agreed to settle this Action to avoid further fees and expenses and to bring closure to this litigation. This Settlement constitutes a

compromise settlement of disputed claims and shall not be deemed or construed to be an admission or acknowledgement of liability on any allegations or claim asserted in this Action.

III. CLAIMS OF PLAINTIFFS AND BENEFITS OF SETTLEMENT

Plaintiffs believe that the claims asserted in the lawsuit have merit and that if the case did not settle they would prevail at trial. However, Plaintiffs and Class Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the case against Defendant through trial and through appeals. Plaintiffs and Class Counsel also have taken into account the uncertain outcome and the risk of any litigation, including proceedings involving class certification. Plaintiffs and Class Counsel believe that the settlement set forth in this Settlement Agreement confers substantial benefits on the Settlement Classes and is fair, reasonable, and adequate, and in the best interests of Plaintiffs and the Settlement Classes.

IV. TERMS OF THE AGREEMENT OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Parties, by and through their respective attorneys, that, subject to the approval of the Court, the Action and the Released Claims shall be finally and fully compromised, settled, and released, and the Action shall be dismissed with prejudice upon and subject to the terms and conditions of the Settlement as follows:

1. Definitions

1.1. “Action” means the case styled *Ridenour and Halem v. Multi-Color Corporation and Sterling Infosystems, Inc.*, currently pending in United States District Court for the Eastern District of Virginia, Docket No. 2:15-cv-00041-MSD/DEM (E.D. Va.).

1.2. “CAFA” means the Class Action Fairness Act of 2005, 28 U.S.C. § 1711, *et seq.*

1.3. “CAFA Notice” means the notice described in section 4.10 below.

1.4. “Class Counsel” means Leonard A. Bennett, Susan M. Rotkis, and Craig C. Marchiando of Consumer Litigation Associates, P.C.; Kristi C. Kelly and Andrew Guzzo of Kelly and Crandall, PLC; James A. Francis and David A. Searles of Francis & Mailman, P.C.; and Scott Surovell of Surovell Isaacs Petersen & Levy, PLC.

1.5. “Class Member” or “Settlement Class Member” means any member of the Settlement Classes, as set forth in section 2.2(a) and (b) below, but specifically does not include those individuals who timely opt-out of the Settlement as forth in section 4.8.

1.6. “Class Period” means January 29, 2013 through October 31, 2016 for the Automatic Payments Class and means February 15, 2010 through October 31, 2016 for the Virginia Opt In Class.

1.7. “Court” means the United States District Court for the Eastern District of Virginia.

1.8. “Criminal Record” as used in the definition of Virginia Opt In Class means that Sterling’s records indicate the consumer report contained information reported in a component of the report that would typically contain criminal record information. “Criminal record” as used in the definition of the Automatic Payment Class means that for the consumer report that was disputed, the department field in Salesforce disputes database was coded as “Criminal,” meaning generally there was a county criminal search or other criminal search conducted and disputed.

1.9. “Defense Counsel” means Steven H. Stodghill, Geoffrey S. Harper and Thomas B. Walsh, IV of Fish & Richardson, P.C.

1.10. “Effective Date” means the date on which the Judgment approving this Settlement becomes Final.

1.11. “FCRA” means the Fair Credit Reporting Act, 15 U.S.C. §§ 1681a–x.

1.12. “Final” means thirty (30) days after the Court's entry of final judgment, provided there are no objectors to the settlement or appeals in the Action made or noted during that period in accordance with Federal Rules of Appellate Procedure 3 and 4. If a Class Member objects to or appeals the Settlement, "Final" means the date on which all appellate rights with respect to the Judgment have expired or have been exhausted in such a manner as to affirm the Judgment including review by the United States Supreme Court.

1.13. “Final Approval Hearing” means the hearing scheduled to consider final approval of the Settlement and awards to the Class Representatives and Class Counsel.

1.14. “Final Approval Order” or “Judgment” means a judgment and order of dismissal entered by the Court in the Action granting final approval of the Settlement and entering a judgment according to the terms set forth in this Settlement.

1.15. “Named Plaintiffs” or “Class Representatives” means Jeffrey Scott Ridenour and Amin Halem.

1.16. “Notice” means the form of notice to be provided to the Settlement Classes after preliminary approval of this Settlement by the Court, as further described in section 4.

1.17. “Opt-In” means the process by which a member of the Virginia Opt In Class may complete a claim form certifying his or her consumer report was incomplete or not up to date, as set forth in section 2.2(b).

1.18. “Opt-Out” means to timely request exclusion from the Settlement pursuant to Federal Rule Civil Procedure 23(c)(2)(B) and the procedure set forth in section 4.8.

1.19. “Person” means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association,

government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

1.20. “Potential Virginia Opt In Class Members” are those persons as described in section 2.2(b).

1.21. “Preliminary Approval Order” means the order proposed and submitted by the Parties as set forth in section 4.1.

1.22. “Released Claims” means all class action and individual claims under 15 U.S.C. § 1681, *et seq.* (including against Defendant’s insurers), with the sole exception of individual claims under 15 U.S.C. § 1681e(b). Plaintiffs and all Class Members release their right to bring a class action or individual action as well as actual, statutory and punitive damages and any other remedy based upon such Released Claims (with the sole exception being that Plaintiffs and all Class members retain their right to bring individual claims under 15 U.S.C. § 1681e(b)). For avoidance of doubt, Plaintiffs and all Class Members affirmatively release their right to bring a class action claim under 15 U.S.C. § 1681e(b).

1.23. “Defendant” means Sterling Infosystems, Inc. and its current and former parents, subsidiaries, affiliates, divisions, associates, agents, successors, assignors, assignees, and/or assigns and their respective subsidiaries, affiliates, divisions, associates, agents, successors, assignors, assignees and/or assigns, and each of their respective present, former or future officers, directors, shareholders, agents, control persons, advisors, employees, representatives, consultants, accountants, attorneys, and any representative of the above. “Defendant” does not include any employer, user or subscriber of Sterling Infosystems, Inc.’s consumer information, or any reseller of such information from Sterling Infosystems, Inc. or any provider of such

information to Sterling Infosystems, Inc. unless such person is also affiliated by common ownership.

1.24. “Released Persons” means Defendant, as defined in section 1.23, and also expressly includes Defendant’s insurers and reinsurers.

1.25. “Service Award” means the one-time payment to each of the Named Plaintiffs for the time and resources they have put into representing the Class Members, as set forth in section 7.2.

1.26. “Settlement” means the terms and conditions of settlement as described in this Settlement Agreement.

1.27. “Settlement Classes” has the meaning set forth in section 2 below.

1.28. “Settlement Fund” means the amounts set forth in section 2.6.

1.29. “Settlement Hearing” means the hearing described in section 5.

1.30. “Settling Parties” means Named Plaintiffs and Defendant as described in sections 1.15 and 1.23.

1.31. “Terminating Events” shall have the meaning set forth in section 8 below.

1.32. “Termination Notice” shall have the meaning set forth in section 8 below.

2. The Settlement

2.1. For the purposes of effectuating the Settlement only, Class Members and Defendant agree jointly to request that the Court certify the Settlement Classes as set forth herein. An individual can be a member of both Settlement Classes.

2.2. (a) The “**Automatic Payment Class**” consists of: All natural persons residing in the United States (including all territories and other political subdivisions of the United States) (i) who were the subject of a consumer report sold by Defendant on any platform

of Defendant to a third party from January 29, 2013 through October 31, 2016, (ii) whose report contained a Criminal Record, (iii) who then directly or indirectly disputed such Criminal Record contained in their consumer report with Defendant, and (iv) whose dispute resulted in an amendment to the Criminal Record of their report.

Excluded from the class definition are any employees, officers, or directors of Defendant, any attorney appearing in this Action, and any judge assigned to hear this Action, together with their immediate family members and any persons employed by him or her.

The Parties believe that the Automatic Payment Class consists of approximately 37,629 individual members. In the event that the class size exceeds 37,629 by more than 5%, Plaintiffs will have the right to withdraw from this Settlement unless Defendant increases the Settlement Fund referenced below proportionately to account for the larger class size.

(b) The “**Virginia Opt In Class**” consists of: All natural persons (i) who were the subject of a consumer report sold by Defendant on any platform of Defendant except ESIQ to a third party from February 15, 2010 through October 31, 2016, (ii) who had a primary residential address in the Commonwealth of Virginia that was provided to Defendant in requesting such report, (iii) whose consumer reports contained at least one Criminal Record, (iv) who affirmatively opt in and complete a claim form certifying that their consumer report(s) was/were incomplete or not up to date; and (v) where no notice was sent under 15 U.S.C. § 1681k(a)(1).

Excluded from the class definition are any employees, officers, or directors of the Defendant, any attorney appearing in this case, and any judge assigned to hear this Action, together with their immediate family members and any persons employed by him or her.

The Parties believe that there are approximately 170,075 individuals who were the subject of a consumer report sold by Defendant on any platform of Defendant except ESIQ to a third party from February 15, 2010 through October 31, 2016, regarding whom an address in the Commonwealth of Virginia was provided to Defendant in requesting such report, and whose consumer reports contained at least one Criminal Record. These persons are described hereafter as the **“Potential Virginia Opt In Class Members.”** In the event that the number of Potential Virginia Opt In Class Members exceeds 170,075 by more than 5%, Plaintiffs will have the right to withdraw from this Settlement unless Defendant increases the Settlement Fund referenced below proportionately to account for the larger potential class size.

2.3. On the Effective Date, the Settlement Classes set forth in section 2.2 above shall become permanently certified unless the Judgment does not become Final.

2.4. In the event the Settlement is not preliminarily and finally approved and implemented, or the Judgment does not become Final, the Settlement Classes are dissolved without prejudice or inference regarding the appropriateness of class certification and thereafter the issue of class certification will be decided *de novo*, and Defendant is not precluded from challenging class certification.

2.5. Defendant agrees to pay a total of Five Million, Nine Hundred Thousand Dollars (\$5,900,000.00) to settle the claims set forth by the Settlement Classes (the “Settlement Fund”).

2.5.1. The Settlement Fund shall be disbursed as follows: an equal payment to each member of the Automatic Payments Class and each member of the Virginia Opt In Class, subject to reduction for (a) attorneys’ fees and costs not in excess of thirty-three percent (33%) of the Settlement Fund, as awarded by the Court; (b) a service award to the two Named Plaintiffs in the amount of Five Thousand Dollars (\$5,000.00) each, subject to Court approval; and (c) any

amount for notice and settlement administration costs in excess of Two Hundred Thousand Dollars (\$200,000.00).

2.5.2 In addition to and separate from the payment of the Settlement Fund described above, Defendant will also pay the first Two Hundred Thousand Dollars (\$200,000.00) of the costs of notice and settlement administration. The remainder of such costs will be paid from the Settlement Fund.

2.5.3 In order to receive a payment from the Settlement Fund, members of the Automatic Payment Class do not need to do anything. In order to become a member of the Virginia Opt In Class and receive a payment from the Settlement Fund as to that Class, Potential Virginia Opt In Class Members are required to fill out and submit a claim form which is included with the Notice attached hereto as Exhibit C, no later than sixty (60) days from the mailing of the Notice. Upon doing so, that person will become a member of the Virginia Opt In Class. Any Potential Virginia Opt In Class Member who does not submit such a claim does not become a member of the Virginia Opt In Class and does not release any claims against Defendant.

2.5.4 Any amounts paid from the Settlement Fund that are not distributed or collected, including uncashed checks, shall be first used to reimburse the Defendant for the \$200,000.00 payment made pursuant to sections 2.5.2 and 2.7 for costs of notice and administration, with the remainder to be distributed to a mutually agreeable *cy pres* recipient, subject to Court approval.

2.6. Defendant shall deposit the Settlement Fund into an interest-bearing account with the financial institution designated by Class Counsel, subject to reasonable approval by Defendant. Defendant shall complete deposit of the \$5,900,000.00 by the Effective Date, provided there are no objectors to the settlement. If a class member objects, the Settlement Fund

shall be deposited into the designated account thirty (30) days after the District Court's entry of judgment becomes Final.

2.7. The separate payment of the first Two Hundred Thousand Dollars (\$200,000.00) of the costs of notice and settlement administration shall be made by Defendant directly to the Settlement Administrator by the Effective Date. If a class member objects, the Settlement Fund shall be deposited into the designated account thirty (30) days after the Court's entry of judgment becomes Final.

2.8. The amounts payable from the Settlement Fund for the Court-approved service awards and for Class Counsel's attorney fees and costs shall be payable within five (5) business days after the Settlement Fund is deposited in accordance with sections 2.6 and 2.7 above.

2.9 Within 45 days of the Effective Date (or after the Settlement Fund is deposited in accordance with sections 2.6 and 2.7), the Settlement Administrator shall mail checks to the Automatic Payment Class Members who have not opted out of the Settlement and to the members of the Virginia Opt In Class, which checks shall become void 60 days after issuance.

2.10 All checks paid pursuant to this Settlement shall become stale after sixty (60) days of mailing. Upon receipt of any undelivered check, the Settlement Administrator shall take commercially reasonable efforts to identify mailing addresses and re-mail any checks returned as undeliverable. The Settlement Administrator shall not mail checks to addresses it has already confirmed are incorrect or to whom a class member's notice was undeliverable. The amounts of such otherwise undeliverable checks shall remain within the Settlement Fund for distribution to all class members as otherwise provided in this Settlement Agreement. All funds not disbursed because the checks were not cashed within the sixty (60) day period shall be paid first reimburse

Defendant for notice and administration costs pursuant to sections 2.5.4, and then, subject to Court approval, to the Parties' agreed-upon *cy pres* recipient.

2.11. All taxes on the income of the Settlement Fund and tax-related expenses incurred in connection with the taxation of the Settlement Fund, if any, shall be paid out of the Settlement Fund.

2.12. Members of the Settlement Class shall be solely responsible for the taxes, interest, and penalties due and owing, if any, should the payment of Settlement Funds, or any portion thereof, be determined to be taxable.

3. Release

3.1 Upon the Effective Date, each member of the Automatic Payment Class who has not validly opted out of the Settlement shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against Defendant and the Released Persons. This release specifically excludes each Class Member's individual claim that he or she may have against Defendant for any violation of 15 U.S.C. § 1681e(b).

3.2 Upon the Effective Date, each member of the Virginia Opt In Class shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against Defendant and the Released Persons. This release specifically excludes each Class Member's individual claim that he or she may have against the Defendant for any violation of 15 U.S.C. § 1681e(b).

4. Notice of Order and Settlement Hearing

4.1 On execution of this Settlement, the Settling Parties shall jointly apply to the Court for preliminary approval of the Settlement set forth in this Settlement Agreement. It is

contemplated that the consent motion for preliminary approval will be filed contemporaneously with the filing of this Settlement Agreement. The Parties shall submit to the Court the Settlement Agreement, together with its Exhibits, and shall apply for entry of this Preliminary Approval Order, substantially in the form and content of Exhibit A hereto, requesting, *inter alia*, (a) preliminary approval of the Settlement; (b) preliminary certification of the Settlement Classes; (c) approval for the distribution of the Notices substantially in the form and content of Exhibits B and C hereto; and (d) a time and date for the Final Approval Hearing.

4.2 No later than thirty (30) calendar days after entry of the Preliminary Approval Order, Defendant shall provide to the Settlement Administrator and to Class Counsel, in a mutually agreeable electronic format, the two separate lists of names and addresses of the individuals that comprise the Automatic Payment Class and the Potential Members of the Virginia Opt in Class (the “Class Lists”). Class Counsel will have three business days to note any objections to the content or format of the Class Lists, which will otherwise be deemed acceptable and approved for use by the Settlement Administrator.

4.3 The Settlement Administrator shall mail to each member of the Settlement Classes the appropriate Notice within thirty (30) days after receiving the Class Lists in substantially similar form as the Notices attached hereto as Exhibits B and C, notifying each Automatic Payment Class Member or Potential Member of the Virginia Opt in Class of his or her right to participate in the settlement or to object to or opt out of the settlement.

4.4 All Automatic Payment Class Members who do not opt out or object within sixty (60) days from the date of mailing the Notices, as described in the Notices, shall be considered Automatic Payment Class Members and shall be bound by the terms of the Settlement.

4.5 The Notices will be sent to the last known address that can be contemporaneously verified by the Settlement Administrator using commercially reasonable means.

4.6 Members of the Automatic Payment Class shall be informed in the Notice, Exhibit B, that they are entitled to the cash funds, as set forth in section 2.5, without the need to submit a claim to receive payment.

4.7 Potential Virginia Opt In Class Members shall be informed in the Notice, Exhibit C, that they must submit a timely and valid claim form, to be enclosed with the Notice, in order to be included in the Virginia Opt In Class and be entitled to the cash funds, as set forth in section 2.5.3.

4.8 **Procedure to Opt-Out of the Settlement:** An Automatic Payment Class Member may request to be excluded from the Settlement Class by sending a written request for exclusion to the Clerk of Court at the address provided in the Notice. The Settlement Class Member's Opt-Out request must contain the Class Member's original signature, current postal address, and a specific statement that the Class Member wants to be excluded from the Settlement Class. Opt-Outs must be postmarked no later than the deadline set by the Court in the Preliminary Approval Order. In no event shall persons who purport to opt out of the Settlement Class as a group, on an aggregate basis or as a class involving more than one Class Member be considered valid Opt-Outs. Requests for exclusion that do not comply with any of the foregoing requirements are invalid. No later than seven (7) business days after the deadline for submission of a request to opt out, the Settlement Administrator shall provide Class Counsel and Defense Counsel with a complete list of all persons who have properly Opted Out of the Settlement together with copies of the opt-out requests.

4.9 **Procedure to Object to the Settlement**

4.9.1. Any Settlement Class Member who does not opt out, but who instead wishes to object to the Settlement or any matters as described in the Notices, may do so by filing with the Clerk of Court a notice of their intention to object (which shall set forth each objection and the basis therefore and containing the objecting Class Member's signature), along with any papers in support of their position. Objections must be mailed so that they are postmarked no later than the deadline set by the Court in the Preliminary Approval Order. Objections to Settlement Class Counsel's attorneys' fees may be supplemented up to seven (7) days after the filing of a motion for such fees to address additional information or materials in the motion. The objection and any supplement must indicate whether the Class member and/or his attorney(s) intends to appear at the Final Approval Hearing. Any attorney who intends to appear the Final Approval Hearing must enter a written Notice of Appearance of Counsel with the Clerk of Court no later than the deadline set by the Court in the Preliminary Approval Order.

4.10 Defendant shall cause notice of the proposed settlement that meets the requirements of the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715, to be served on the appropriate federal and state officials no later than ten (10) days after the filing of this Settlement with the Court ("CAFA Notice").

5. Final Approval Hearing Judgment and Notice

5.1 The Final Approval Hearing, as established in the Notice Order, shall be for the purpose of consideration of Final approval of the Settlement set forth in this Settlement Agreement.

5.2 No later than ten (10) calendar days before the Final Approval Hearing, the Settlement Administrator will certify to the Court that it has fully complied with the notice provisions set forth section 4 herein.

6. Administration and Supervision of the Settlement Fund

6.1. A Settlement Administrator will be a neutral third party mutually agreeable to the parties, approved by and responsible to the Court, and shall directly administer the Notice of the Settlement, the claims process and shall control the Settlement Fund, subject to Court approval. The Settlement Administrator shall administer and oversee the mailing of the Court-approved Notices and distribution of funds from the Settlement Fund only with mutual approval of both Defendant and Class Counsel. All funds shall be maintained in a bank escrow account unless the parties jointly agree otherwise. Costs of settlement administration in excess of the initial payment of \$200,000.00 by Defendant to the Settlement Administrator under section 2.5.2 shall be paid from the Settlement Fund before the distribution to Class Members. On completion of the administration of the Settlement, the Settlement Administrator shall provide or cause to be provided to the Court a final report on its administration of the Settlement. The Settlement Administrator shall have and shall provide to Class Counsel and Defense Counsel reasonable access to documents relating to compliance and administration of the Settlement, with the right, but not the obligation, to review and audit the documents to determine full compliance with the terms of the Settlement. The Settlement Administrator shall hold all documents and information received regarding Class Members and Potential Class Members in confidence, and not use such information for any purpose apart from administering the settlement.

6.2. No person shall have any claim against the Settlement Administrator, Class Counsel, Defense Counsel and/or Defendant based on the monetary payments made substantially in accordance with this Settlement Agreement, or further order(s) of the Court or stipulations of the Parties on the record.

7. Plaintiffs' Counsel's Attorneys' Fees and Reimbursement of Expenses

7.1. Class Counsel shall make an application to the Court for an award from the Settlement Fund for attorneys' fees, costs, and other expenses in an amount not to exceed thirty-three percent (33%) of the Settlement Fund. Defendant shall not oppose or object to this application provided that the request for an award of fees and costs is consistent with this Settlement. The Court's award of fees and costs shall be payable from the Settlement Fund within five (5) days after the Effective Date.

7.2. The Named Plaintiffs shall each apply to the Court to receive compensation for serving as class representative in the amount of \$5,000.00 (the "Service Award"), which shall be in addition to any other sums they may receive as a Class Member. Defendant shall not oppose or object to this application provided that the request for the two Service Awards is consistent with this Settlement. The Court-approved Service Awards shall be payable from the Settlement Fund within five (5) days after the Effective Date or after the Settlement Fund is deposited in accordance with sections 2.6 and 2.7, whichever is later.

8. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination

8.1. Plaintiffs or Defendant, at any of their sole discretion, shall each have the right to terminate the Settlement and this Settlement Agreement, including dissolution of the Settlement Class, if any of the following conditions subsequently occurs ("Terminating Events"):

(a) the Court's refusal to preliminarily or permanently approve this Settlement or any material part of it;

(b) the Court requires a notice program in addition to or substantially different from that set forth herein;

(c) the Court orders Defendant to pay attorneys' fees and costs with respect to the litigation greater than as provided herein;

(d) the Court orders Defendant to pay any Service Award with respect to the litigation greater than as provided herein

(e) the Court orders Defendant to pay, with respect to the litigation, any amount above the first \$200,000.00 payment for notice and settlement administration costs and the amount of \$5,900,000.00 required to establish the Settlement Fund, as provided herein;

(f) the Court declines to enter the Judgment in any material respect;

(g) the Potential Members of the Virginia Opt-in Class exceeds, by more than 5%, the class size numbers stated in section 2.2 of this Settlement Agreement, unless Defendant agrees to increase the Settlement Fund in an amount proportional to the excess number; or

(h) the Judgment is reversed, vacated or modified in any material respect by the Fourth Circuit Court of Appeals, the United States Supreme Court, or adverse action being taken by any other trial court or appellate court in any jurisdiction.

8.2. The failure of the Court or any appellate court to approve in full the request by Class Counsel for attorneys' fees, incentive awards, costs and other expenses shall not be grounds for Named Plaintiffs, the Settlement Classes, or Class Counsel to terminate this Settlement.

8.3. If any Party exercises its respective rights to terminate this Settlement and Settlement Agreement pursuant to section 8.1 herein, the Party shall terminate the Settlement, including dissolving the Settlement Classes, by delivering written notice of the election to terminate ("Termination Notice") to all other parties and their counsel hereto within thirty (30) days of the Terminating Event. In the event that a Termination Notice is so provided, then the Settlement shall be canceled and terminated unless and until Class Counsel and Defense Counsel mutually agree in writing to proceed with the Settlement.

8.4. In the event that the Settlement is terminated as provided for herein, then (a) this Settlement shall be null and void and of no further force and effect, including voiding the Settlement Classes; (b) the Settling Parties shall be restored to their respective positions in the Action immediately prior to the execution of this Settlement Agreement; (c) any portion of the Settlement Fund not used to fund notice and administration shall be returned to Defendant; (d) this Settlement shall not be used in the Action or in any other proceeding for any purpose; and; (e) any judgment or order entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated, *nunc pro tunc*.

8.5. Upon the filing of the proposed Settlement with the Court, all proceedings shall be stayed until further order of the Court, except such proceedings as may be necessary either to implement the proposed Settlement or to comply with or effectuate the terms of this Settlement Agreement.

9. Final Judgment

The Parties shall jointly seek entry by the Court of a Final Judgment that includes provisions:

- (a) granting final approval of this Settlement, and directing its implementation pursuant to its terms and provisions;
- (b) ruling on Class Counsel's application for attorneys' fees, costs and other expenses, and Plaintiffs' request for a Service Award;
- (c) discharging and releasing Defendant from the Released Claims as provided in section 3 above;
- (d) directing that the Action be dismissed with prejudice, and,
- (e) reserving to the Court continuing and exclusive jurisdiction over the parties with respect to the Settlement and the Final Judgment.

10. Miscellaneous Provisions

10.1. The Parties (a) acknowledge that it is their intent to consummate this agreement; (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement; and (c) agree to exercise their best efforts to accomplish the foregoing terms and conditions of this Settlement.

10.2. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Settlement Agreement.

10.3. This Settlement Agreement may be executed in counterparts, including by signature transmitted by facsimile. Each counterpart, when so executed, shall be deemed to be an original, and all such counterparts together shall constitute the same instrument.

10.4. Before entry of the Final Approval Order, the Settlement may be modified or amended only by written agreement signed by or on behalf of all Parties with notice to be given to the Court of the agreed modification or amendment, or by stipulations made on the record. Following entry of the Final Approval Order, the Settlement may be modified or amended only by written agreement signed by or on behalf of all Parties, and approved by the Court.

10.5. The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving party. The waiver by any of the Parties of any breach of this Settlement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement.

10.6. This Settlement binds and inures to the benefit of the Parties, their assigns, affiliates, heirs, administrators, executors, and successors.

10.7. Except as otherwise expressly stated herein, the Settlement is not intended to confer any benefits upon any non-party.

10.8. This Settlement Agreement constitutes the entire agreement among the Parties pertaining to the settlement of the Action and supersedes any and all prior and contemporaneous undertakings of the Parties in connection therewith. In entering into this Settlement, the Parties have not relied upon any representation or promise made by the other Party not contained in this document.

10.9. The headings in this document are included for convenience only and shall not be deemed to constitute part of this Settlement or to affect its construction.

10.10. Where this Settlement requires any party to provide notice or any other communication or document to any other party, such notice, communication, or document shall be provided by electronic mail or overnight delivery to:

10.11. For the Class:

Leonard A. Bennett
CONSUMER LITIGATION ASSOCIATES, P.C.
763 J. Clyde Morris Blvd., Suite 1-A
Newport News, VA 23601

10.12. For Defendant:

Geoffrey S. Harper
Thomas B. Walsh, IV
FISH & RICHARDSON P.C.
1717 Main St., Ste. 5000
Dallas, TX 75201
(214) 747-5070

10.13. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement, subject to Court approval.

The Court, having reviewed this Settlement Agreement, approves the same and Orders the Parties to proceed as agreed.

AGREED:

JEFFREY SCOTT RIDENOUR, AMIN HALEM, Plaintiffs

By: _____

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