IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

DANIEL MICHALSKI, *on behalf of himself and all others similarly situated*, *Plaintiff*, v. MIB GROUP, INC., MIB, LLC, and FIDELITY SECURITY LIFE INSURANCE COMPANY, *Defendants*.	C.A. NO. 1:24-CV-10227-DJC **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR AN ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT AND DIRECTING NOTICE TO THE CLASS**

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I. INTRODUCTION

Plaintiff Daniel Michalski ("Plaintiff" or "Michalski") respectfully requests that the Court enter an Order preliminarily approving the Settlement Agreement that has been reached between Plaintiff and Defendants MIB Group, Inc. and MIB, LLC ("Defendants" or "MIB"), and directing that notice be sent to the Settlement Class defined therein. For the reasons set forth in this memorandum and the supporting documents, the settlement is fair, reasonable and adequate and serves the best interests of the Settlement Class Members. Accordingly, Plaintiff respectfully requests that the Court (1) find that it will likely be able to approve the proposed settlement under FED. R. CIV. P. 23(e)(2) as amended, and certify the proposed Settlement Class for purposes of judgment on the Settlement; (2) approve the form, content, and method of delivering notice to the Class as set out in the Settlement Agreement; and (3) schedule a final approval hearing.

II. STATEMENT OF THE FACTS

A. Plaintiff's Claims and Early Motion Practice

Plaintiff filed his Class Action Complaint on January 29, 2024 in the U.S. District Court for the District of Massachusetts. ECF 1. The Complaint asserts four claims against MIB under the federal Fair Credit Reporting Act ("FCRA"). In Count I, Plaintiff asserts that MIB failed to disclose to him and other consumers the codes communicated to end users concerning their medical history, in violation of FCRA section 1681g(a). In Count II, Plaintiff asserts that MIB failed to disclose to him and other consumers all of the sources from which MIB obtained the information that it retains about them and communicates to end users, in violation of FCRA section 1681g(a)(2). In Count III, Plaintiff asserts that MIB routinely fails to conduct reasonable reinvestigations following consumer disputes, in violation of FCRA section 1681i. And in Count V, Plaintiff asserted that MIB failed to follow reasonable procedures to assure the maximum possible accuracy of the information reported about him to prospective insurers, in violation of

FCRA section 1681e(b).[1] Plaintiff brought the claims in Counts I-III on a class basis, and sought to represent consumers who were subjected to the same standardized practices and procedures applied to him. ECF 1 at ¶ 73.

MIB filed an Answer to the Complaint on March 26, 2024. ECF 14. MIB filed a Motion for Judgment of Dismissal on the Pleadings July 2, 2024. ECF 33. After complete briefing, this Court denied MIB's motion was denied on January 14, 2025. ECF 61.

B. Plaintiff Thoroughly Investigated his Claims

Even while the early motion practice was pending, the parties commenced written discovery, including exchanging interrogatory requests and responses, and producing hundreds of pages of documents. These documents included materials regarding MIB's reporting of information concerning Plaintiff, its investigation of his dispute, and its responses to his requests for information. MIB also produced substantial information concerning its policies and procedures for obtaining information, preparing consumer reporting, and responding to consumer requests for information. Written discovery also included production of voluminous medical records concerning Plaintiff's medical history.

In addition to written discovery, Plaintiff took the deposition of an MIB witness who addressed MIB's handling of Plaintiff's dispute and requests for information, as well as the deposition of a Fidelity witness regarding its handling of Plaintiff's dispute when it was communicated to Fidelity by MIB.

Redacted

[1] Count IV pled a claim against Fidelity Security Life Insurance Company ("Fidelity"), an insurer to whom Plaintiff asserts that MIB disseminated in inaccurate report. Fidelity filed an Answer (ECF 15), and moved for dismissal on the pleadings. ECF 34-35. Fidelity's motion was granted on standing grounds. ECF 61.

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C. The Parties' Arms-Length Settlement Negotiations

With the benefit of this substantive discovery, as well as the guidance from the Court's ruling on MIB's Motion for Judgment on the Pleadings, the Parties requested that the Court stay the case deadlines so that they could go to a private mediation to discuss a class-wide resolution of the case. ECF 64.

The Parties scheduled a mediation for April 3, 2025, with respected mediator Brad Honoroff of The Mediation Group in Brookline, MA. In addition to the formal discovery described above, the Parties exchanged further information informally to support their settlement discussions, and ultimately rescheduled the mediation for May 14, 2025 in order to permit time for a complete exchange and evaluation of this information. ECF 66.

On May 14, 2024, the Parties attend a full-day, in-person mediation with Mr. Honoroff which included extensive arms-length negotiations, and resulted in a signed term sheet. The Parties notified the Court on May 22, 2025 that they had reached a settlement in principle. Documenting a formal settlement agreement and related documents took additional time and included the preparation and exchange of drafts and a series of telephone and written negotiations concerning the specific terms and conditions of the agreement and exhibits to the agreement,

including the proposed class notices and class forms. The parties finalized their agreement on July 30, 2025, resulting in the Settlement Agreement attached hereto as Appendix I (the "Settlement Agreement" or "Agreement").

III. TERMS OF THE SETTLEMENT

A. Generally

The proposed settlement is fair, reasonable and adequate, because it directly addresses the practices identified in the litigation and provides substantial benefits to Settlement Class Members. The Settlement Agreement provides for a substantive practice change, namely that upon receipt of a consumer's dispute, MIB will require the insurer(s) that furnished the information to use reasonable efforts to specifically identify the name of the underlying medical provider (*e.g.*, physician, lab) and provide such information to the consumer in a communication after completing the reinvestigation process. This practice change will benefit all Settlement Class Members and other consumers going forward.

The Settlement Agreement also establishes a $2.425 million Settlement Fund to provide cash payments for Settlement Class Members, the costs of notice and administration of the settlement, a service award for Plaintiff, and attorneys' fees and costs. Settlement Class Members will receive automatic payments without the need to take any action.

For purposes of directing notice to the class, the following summarizes the Settlement Agreement's terms.

B. The Proposed Settlement Class

The parties have agreed to resolve the claims of the following Settlement Class:

> All individuals with an address in the United States (including all territories and other political subdivisions of the United States) to whom Defendants provided a consumer file disclosure letter specifically including a record which references medical

> information from a Service Provider from January 29, 2022 through May 14, 2025.

MIB has confirmed that there are 10,886 Settlement Class Members.

C. The Consideration Provided to Settlement Class Members

In connection with the proposed settlement, and in exchange for the releases discussed in more detail below, MIB has agreed to both non-monetary prospective relief for the benefit of the Settlement Class and other consumers and to establish a Settlement Fund to make cash payments to Settlement Class Members.

1. Prospective Relief

MIB has agreed to, going forward, make changes to the requirements imposed on insurers who furnish information into its database when consumers make disputes regarding the completeness and accuracy of information. Specifically, when a consumer disputes information in their MIB consumer file, and that information was provided by a "Service Provider" source, MIB will require that the furnisher of that information must 1) use reasonable efforts to identify the underlying medical provider(s) (*e.g.*, physician, lab), and 2) if identified, include the name(s) of the provider(s) in their communication to the consumer after completing the reinvestigation process. This change will benefit consumers going forward by establishing a mechanism for consumers to learn where to go for additional information if a reinvestigation does not resolve their concerns regarding an item of information provided by a "Service Provider" source. Indeed, such a practice would have permitted Plaintiff himself to learn much earlier of the true medical provider source of medical history at issue that he contends is inaccurate.

2. The Settlement Fund

In addition to the prospective relief that will provide substantial benefits to all Settlement Class Members and other consumers, MIB will establish a non-reversionary Settlement Fund in

the total amount of $2,425,000.00. Agreement at §§ 4. All payments to Settlement Class Members will be paid out of the Settlement Fund, as well as any service award approved by the Court, and the award of attorneys' fees and expenses to Class Counsel. *Id*. at § 4(b)(i), (ii). The costs of notice and administration of the settlement, estimated to be approximately $40,000.00, will also be padi out of the Settlement Fund. *Id.* at § 4(b)(iii).

i. Class Member Payments

All members of the Settlement Class are eligible to receive a payment from the Settlement Fund and do not need to do anything to receive a payment. All individuals in the Settlement Class whose notices are not returned as undeliverable and who do not submit valid Requests for Exclusion will receive an automatic payment. *Id*. at § 10(a). Payments to Settlement Class Members will be calculated on a *pro rata* basis. *Id*.

ii. Attorneys' Fees and Costs

The Settlement Agreement provides that for purposes of settlement, Plaintiff will request that the Court appoint Francis Mailman Soumilas, P.C. as Class Counsel. *Id*. at § 1(e). Class Counsel will request that the Court approve an award of attorney's fees of one-third of the Settlement Fund, $808,333.33, plus litigation costs and expenses of up to $25,000.00. The Fee Petition will be filed fourteen (14) days prior to the deadline for class members to object to the Settlement, and will be placed on the Settlement Website. *Id*. at Any requested attorneys' fees and expenses that are not awarded by the Court will be distributed to the *cy pres* recipient. *Id*. at § 4(b)(ii). The *cy pres* recipient shall be a non-profit charitable organization whose goals are aligned with consumer interests and the funds shall be used for purposes of consumer credit education, counseling, advocacy, or financial literacy, and will be identified in connection with the Motion for Final Approval. *Id.* at ¶ 4(c).

iii. Service Award to Plaintiff

The Settlement Agreement provides that Plaintiff will be appointed as Class Representative for purposes of settlement. Agreement at § 1(f). Plaintiff will request that the Court approve a service award in the amount of $5,000 in recognition of Plaintiff's service to the Settlement Class. *Id*. at § 9(b) Class Counsel will submit this request at the same time as the Fee Petition, prior to the deadline for members of the Settlement Class to object to the Settlement.[2]

iv. Costs of Notice and Administration

All costs of notice and administration of the Settlement shall be paid out of the Settlement Fund. *Id*. at § 4(b)(iii). Subject to the Court's approval, Apex Class Action Administration ("Apex") will act as the Settlement Administrator. *Id*. at § 1(gg). Apex was selected following a competitive bidding process and submitted the lowest bid. The Settlement Administrator will perform all tasks specified and assigned to it in the Settlement Agreement, including emailing notice, mailing any postcard notices required under the Settlement Agreement, setting up a settlement website and toll-free telephone number, receiving and processing Requests for Exclusion, and providing regular reports to the parties and a report to the Court prior to the Final Approval Hearing. *Id*. § 5.

v. No Reverter

Under the terms of the Settlement Agreement, there is no reversion of any portion of the Settlement Fund to NSC. Agreement at § 4(b)(iv). All amounts remaining in the Settlement Fund after the payments provided for in the Agreement will be paid to the *cy pres* recipient. *Id*. at § 4(c).

[2] Because the Settlement Agreement resolves only the claims asserted in Count II which are shared by the entire Settlement Class, the Parties have agreed to a separate confidential individual settlement resolving Plaintiff's claims against MIB asserted in Counts I, III, and V of the Complaint, in exchange for a general release. The Parties are contemporaneously filing a stipulation of dismissal of these counts.

D. Releases

Settlement Class Members who do not opt out will release any and all claims asserted in the Complaint under 15 U.S.C. § 1681g(a)(2). Agreement at §§ 1(dd); 11. The release is thus limited to claims that MIB failed to disclose all sources of information to consumers; Settlement Class Members would remain free to bring claims asserting that MIB reported inaccurate information or failed to conduct a reasonable reinvestigation into a consumer's dispute.

E. The Proposed Notice Plan

The Settlement Agreement provides for a notice program in which the Settlement Administrator will issue notices directly to Settlement Class Members to inform them of the Settlement and their rights. *Id*. at § 6. Members of the Class will receive notice by either electronic mail or first-class mail using the most recent contact information available. *Id*. at § 6(a)-(b).

The primary form of notice for the Settlement will be via email, because MIB regularly communicates with consumers via email and maintains email address for consumers. *Id*. For Class Members for whom email notice is undeliverable, or for whom no email address is available, the Settlement Administrator shall send a postcard notice containing the same information as the email notice. *Id*. at § 6(b); Exhibits C and D thereto,

Additionally, the Settlement Administrator will establish and maintain a website devoted to providing information regarding the settlement. *Id*. at §§ 5(b), 6(c). The Settlement Website will contain information regarding the settlement, the rights of Class members, and a list of important deadlines. *Id*.; *see also* Ex. E. The Settlement Agreement and a Website Notice will also be available on the website. *Id*. Plaintiff's Motion for Attorneys' Fees, Costs, and an Service Award will be available for Class members to download after it is filed. The Settlement Website also will provide information for Settlement Class Members regarding how to request exclusion from the settlement. *See* Agreement at Ex. E.

Finally, the Settlement Administrator will maintain a toll-free number that Settlement Class Members may call to receive more information regarding the settlement. *Id*. at § 5(b). The E-Mail Notice and Mail Notice shall inform persons in the Settlement Class of the toll-free number. *See* Exs. C-E.

F. Opt-Out Rights

Settlement Class Members may request exclusion from the settlement by sending a written request to the Settlement Administrator up until the Opt-Out and Objection Deadline. Agreement at § 7. Exclusion requests must contain the Settlement Class Member's full name, mailing address and telephone number, the unique identifier included on the Settlement Class Member's notice, and a specific statement that the Settlement Class Member wants to be excluded from the Settlement. *Id*. at § 7(b). No request for exclusion will be valid unless all of the information described above is included. *Id*. No person in the Settlement Class, or any person acting on behalf of or in concert or participation with a person in the Settlement Class, may exclude any other person from the Settlement Class. *Id*. at § 7(d). Settlement Class Members will have forty-five (45) days from the date the Settlement Administrator initially sends notice to request to be excluded from the settlement. *Id*. at § 1(l).

G. Objections to the Settlement

Any Settlement Class Member who has not opted out may submit a written objection to the Settlement Agreement. *Id*. at § 8(a). Settlement Class Members will have forty-five (45) days from the date of the initial notice mailing to object to the Settlement. *Id*. at § 1(v). The objection must be in writing, identify the objector and the objector's contact information and any counsel retained by the objector, explain the basis for the objection, state whether the objector or their counsel intend to appear at the final approval hearing and be submitted to Class Counsel, Defendant's Counsel, and the Clerk of the Court. *Id*. at § 8(a)(ii). Settlement Class Members who

object may be heard at the final approval hearing if they submit an appropriate notice of intent. *Id.* at § 8(a)(iii).

H. Deadlines Contemplated by the Settlement Agreement

If the Court orders that notice be directed to the Settlement Class as requested herein, the following table sets out the deadlines proposed in the Settlement Agreement:

EVENT	PROPOSED DEADLINE
Deadline for mailing Notice (the "Notice Deadline")	30 days following Preliminary Approval Order
Fee Petition Due	31 days following the Notice Deadline
Deadline to opt-out or object	45 days following Notice Deadline
Settlement Administrator provides report on requests for exclusion/opt outs	52 days following the Notice Deadline
Brief in support of final approval of the settlement filed with the Court	14 days before final approval hearing
Final Approval Hearing	At least 110 days following Preliminary Approval Order

IV. ARGUMENT IN SUPPORT OF DIRECTING NOTICE TO THE CLASS

FED. R. CIV. P. 23(e) governs a court's consideration of a proposed class action settlement, and states that grounds exist to give notice of a proposed class action settlement where the parties show that "the court will likely be able to (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." FED. R. CIV. P. 23(e)(1)(B). FED. R. CIV. P. 23(e) requires court approval of a class action settlement and the 2018 Amendments to Rule 23, provide additional guidance to federal courts considering whether to grant preliminary approval of a class action settlement. *See* FED. R. CIV. P. 23(e), Committee Notes. "[I]n weighing a grant of preliminary approval, district courts must determine whether 'giving notice is justified by the parties' showing that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.'" *In re Payment Card*

Interchange Fee & Merch. Disc. Antitrust Litig., No. 05-MD-1720-MK-BJO, 2019 WL 359981, at *12 (E.D.N.Y. Jan. 28, 2019) (c*iting* FED. R. CIV. P. 23(e)(1)(B)(i–ii)). Therefore, although the factors under Rule 23(e)(2) "apply to final approval, the Court looks to them to determine whether it will likely grant final approval based on the information currently before the Court." Those factors are as follows:

> (A) the class representatives and 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.

Id. (*citing* FED. R. CIV. P. 23(e)); *accord Hays v. Eaton Grp. Attorneys, LLC*, No. CV 17-88-JWD-RLB, 2019 WL 427331, at *4 (M.D. La. Feb. 4, 2019). The fundamental principles governing a court's evaluation of whether a class action settlement is fair, reasonable, and adequate remain undisturbed by the 2018 amendments: "The goal of this amendment is not to displace any factor, 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, Advisory Committee Note on 2018 Amendment to Subdivision (e)(2). Consideration of these factors supports sending notice to the Settlement Class Members of the proposed settlement.

In addition, the public interest continues to "strongly favor[] the voluntary settlement of class actions," and consequently, a "presumption in favor of finding the settlement fair, reasonable

and adequate" remains, when sufficient discovery has been provided and the parties have bargained at arms-length. *Hays, supra* (recognizing same pro-settlement policy post-2018 amendments to Rule 23 and attendant presumption).

A. The Court Will Likely Be Able to Approve the Settlement Agreement Because It Is Fair, Reasonable And Adequate

The decision to order that notice be given of a proposed class action settlement was previously known as "preliminary approval" of a class action settlement. "The general rule is that a court will grant preliminary approval where the proposed settlement is neither illegal nor collusive and is within the range of possible approval." William B. Rubenstein, et al., *Newberg on Class Actions* § 13:10 (5th ed. 2015). The Court performs this analysis in the shadow of the "strong public policy in favor of settlements." *Medoff v. CVS Caremark Corp*., No. 09-cv-544, 2016 WL 632238, at *5 (D.R.I. Feb. 2, 2017). A presumption of fairness attaches to a proposed settlement agreement "when the court finds that: (1) the negotiations occurred at arm's length; (2) was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected." *In re Lupron Mktg. & Sales Practices Litig.*, 345 F. Supp. 2d 135, 137 (D. Mass. 2004) (internal quotations and citations omitted)); *see also In re Colgate-Palmolive Softsoap*, 2017 WL 7282543 at *9; *Bezdek v. Vibram USA Inc.,* 79 F. Supp. 324, 343 (D. Mass. 2015) *aff'd*, 809 F.3d 78 (1st Cir. 2015) ("There is a presumption that a settlement is within the range of reasonableness when sufficient discovery has been provided and the parties have negotiated at arms' length. . . . This is the threshold requirement to survive at the preliminary review stage.") (internal quotations and citations omitted); and 4 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions*, §11.41 (4th ed. 2011); *Cf. Hochstadt v. Bos. Scientific Corp*., 708 F. Supp. 2d at 108 (D. Mass. 2010) (evaluating the experience of counsel in preliminary approval process as a factor that contributes to the presumption of fairness). Here,

these factors are met and directing notice to the Class is appropriate.

1. Plaintiff and Class Counsel Have Adequately Represented the Class

The adequacy determination under Rule 23(e)(2)(A) looks to whether the representative parties will "fairly and adequately protect the interests of the class" and whether class counsel is "'qualified, experienced and able to vigorously conduct the proposed litigation.'" *In re Nexium (Esomeprazole) Antitrust Litig.*, 296 F.R.D. 47, 53 (D. Mass. 2013); *accord In re Payment Card Interchange Fee*, 2019 WL 359981, at *15 (considering adequacy requirement of newly amended Rule 23(e)(2) by looking to the interpretation of adequacy under Rule 23(a)); *see Amchem Products v. Windsor*, 521 U.S. 591 (1997) (courts examine whether representative's interests are antagonistic to or in conflict with those of the class members). Where, as here, the injuries suffered by the named Plaintiff are the same as those that the class is alleged to have suffered, the adequacy requirement is usually satisfied. *Duhaime v. John Hancock Mutual Life Ins. Co.*, 177 F.R.D. 54, 63 (D. Mass. 1997).

Plaintiff Michalski has vigorously prosecuted this action on behalf of the Settlement Class Members by actively participating in this litigation, including by assisting his lawyers with gathering information and documents, by apprising himself of the bases for his legal claims, personally participating in the mediation, and by committing to represent the Class. If Mr. Michalski had been unwilling to bring this matter and to prosecute it on behalf of other similarly situated, there would be no settlement benefits for Class Members at all. There is no indication that Mr. Michalski has any conflict with any class member.

Furthermore, Mr. Michalski has retained highly experienced counsel with expertise in FCRA class action litigation, a factor which supports a finding of the adequacy of counsel. *Lapan v. Dick's Sporting Goods, Inc.*, No. 1:13-CV-11390-R, 2015 WL 8664204, at *3 (D. Mass. Dec. 11, 2015). Francis Mailman Soumilas, P.C. has been found to be well-qualified to represent

consumer classes on over sixty occasions, including on contest and over objection by competing counsel. As a judge recently observed, "[Plaintiff's] attorneys are highly qualified, experienced, and capable. Plaintiff's law firm, Francis Mailman Soumilas ("FMS"), has served as class counsel in over 70 class actions. And FMS has been recognized for specialized expertise in litigating FCRA cases such as this one." *Brooks v. Trans Union LLC*, No. CV 22-48-KSM, 2024 WL 3625142, at *14 (E.D. Pa. Aug. 1, 2024). Accordingly, Plaintiff and Class Counsel have and will continue to adequately represent the Settlement Class.

2. *The Settlement Agreement Is the Result of Engaged, Arms-Length Negotiations Overseen by an Experienced Mediator*

Rule 23(e)(2)(B) instructs the court to consider whether the proposed settlement was negotiated at arm's length. There is typically an initial presumption that a proposed settlement is fair and reasonable when it was the result of arm's-length negotiations between experienced, capable counsel after meaningful exchange of information relevant to settlement. *See, e.g.*, *In re Payment Card Interchange Fee*, 2019 WL 359981, at *19; *Bezdek*, 79 F. Supp. 3d at 343 ("There is a presumption that a settlement is within the range of reasonableness when sufficient discovery has been provided and the parties have bargained at arms-length."). Such a presumption is appropriate here.

The Settlement Agreement is the result of intensive, arm's-length negotiations between experienced attorneys who are familiar with class action litigation and with the legal and factual issues of this case. Plaintiff's counsel are particularly experienced in the litigation, certification, and settlement of FCRA cases similar to this case. In negotiating the Settlement Agreement, counsel also had the benefit of years of experience litigating class actions and a familiarity with the facts of this case. Moreover, the parties engaged in an extensive and contested mediation before an experienced mediator, Brad Honoroff of the Mediation Group in Brookline, MA. Prior

to their session, the parties prepared detailed memoranda and exchanged information relevant to settlement, which was reached only after both Class Counsel and Defendants' Counsel were fully informed of the facts, and following extensive adversarial negotiations. This factor also therefore supports a finding that notice should be sent to members of the proposed Settlement Class.

3. *The Settlement Provides Substantial Relief for Settlement Class Members*

The proposed Settlement provides substantial benefits to all Settlement Class Members, including important changes to MIB's practices, by providing a mechanism by which consumers can learn of the underlying medical provider(s), such as the treating or diagnosing physician or laboratory where tests where conducted, when they submit a dispute.

Furthermore, the Settlement provides substantial financial payments to all Settlement Class Members, without the need to submit a claim or take any other action. If the Settlement is approved, all Settlement Class Members who do not request exclusion and whose notice is not returned as undeliverable will automatically be sent a *pro rata* payment, expected to be approximately $140.00. This payment falls within the $100-$1,000 statutory damages range provided under the FCRA at § 1681n, and provides an excellent recovery that is well in line, or exceeds, other class settlements resolving FCRA disclosure claims. *Flores v. Express Services, Inc.*, No. 14-3298, 2017 WL 1177098, at *1 (E.D. Pa. Mar. 30, 2017) (approval of FCRA settlement with $50 automatic payment to 32,000 member class); *Patrick v. Interstate Mgmt. Co., LLC*, No. 15-cv-1252 (ECF 49) (M.D. Fla. Apr. 29, 2016) (approving settlement of FCRA disclosure claim where class members received $9 each); *King v. Gen'l Info. Serv's, Inc*., C.A. No. 10-6850 (ECF 125) (E.D. Pa. Nov. 14, 2014) (challenging practice of reporting outdated adverse non-conviction records; class members paid $49.68 each); *Robinson v. Gen'l Info. Serv's, Inc*., C.A. No. 11-7782 (ECF 55) (E.D. Pa. Nov. 4, 2014) (challenging practice of failing to notify consumers that consumer reporting agency was reporting to prospective employers; class members paid $49 each);

Marcum v. Dolgencorp, Inc., No. 12-cv-108 (ECF 78) (E.D. Va. Oct. 16, 2014) (approving settlement that pays inadequate disclosure class members $53 each); *Simons v. Aegis Comm's Group*, No. 2:14-cv-04012 (ECF 29) (W.D. Mo. Oct. 15, 2014) (approving improper disclosure settlement with payment of $35 per class member).

The benefits provided in the Settlement are fair and reasonable in light of the risks of continued litigation, and the method of distribution of the proposed Settlement Fund is effective in that it provides for direct payments to all reachable Settlement Class Members.

4. *The Settlement Agreement Is a Preferable Alternative to the Risks Each Party Would Face Through Continued Litigation*[3]

The Settlement provides all of the significant benefits described above to Settlement Class Members without the risks, costs, and delays inherent in continued litigation, trial, and appeal. The expense, complexity, and duration of litigation are important factors considered in evaluating the reasonableness of a settlement. *See, e.g., Bacchi v. Massachusetts Mut. Life Ins. Co.*, No. 12-11280-DJC, 2017 WL 5177610, at * 2 (D. Mass. Nov. 8, 2017); *Roberts v. TJX Cos., Inc.*, No. 13-cv-13142-ADB, 2016 WL 8677312, at * 6-7 (D. Mass. Sept. 30, 2016).

Plaintiff is confident that if the case were to continue to litigate, he would be successful in certifying the proposed Settlement Class on contest. Plaintiff anticipates, however, that MIB

[3] In addition to the factors discussed above, Rule 23(e)(2)(C) as amended requires the Court to consider the existence of any side agreements made in connection with the settlement. The main purpose of this disclosure requirement is to permit courts to monitor any agreements made with objectors to the class settlement in order ensure that objectors are not being "bought off." *See In re Samsung Top-load Washing Mach. Mktg., Sales Pracs. & Prods. Liab. Litig*., 2020 WL 2616711, at *18 (W.D. Okla. May 22, 2020) (noting that Rule 23(e)(2)(c) provides courts with the "authority to scrutinize the 'buying out' of such objectors."). Because Plaintiff's individual resolution of his separate individual claims is not contingent upon approval of the class settlement, as shown by the Parties' contemporaneously filed stipulation of dismissal of Counts I, II, and V of the Complaint, Plaintiff does not believe that this is the type of side agreement contemplated by Rule 23(e)(2)(C), but discloses it out of an abundance of caution. Courts routinely find that such agreements do not pose a barrier to preliminary approval, or undermine the fairness, adequacy, or reasonableness of class settlement, particularly where, as here, the named plaintiff has substantial individual claims not shared by the class. *See, e.g. In re GSE Bonds Antitrust Litig.,* 414 F. Supp. 3d 686, 696 (S.D.N.Y. 2019) (finding after reviewing agreement filed under seal that it did not impact the preliminary approval analysis);*Gumm v. Ford*, 2019 WL 2017497, at *12 (M.D. Ga. May 7, 2019); *Stewart v. Quest Diagnostics Clinical Labs., Inc*., 2025 WL 1456922, at *3 (S.D. Cal. May 21, 2025)

would raise substantive opposition to the certification of any class, including through the vehicle of appellate review pursuant to FED. R. CIV. P. 23(f).

Even if Plaintiff succeeded in certifying one or more classes, he would still face the task of proving liability on the merits of his claims, including the risks associated with a possible motion for summary judgment, and the even greater risks, uncertainty, delay, and expense of trial. Even if Plaintiff succeeded in passing the liability hurdle, the parties would continue to battle over whether Plaintiff and other class members have sustained damages, and if so, the proper measure of those damages. The battles would be fought not only before and at trial, but also on appeal. By contrast, the proposed Settlement provides significant prospective and monetary benefits to the Settlement Class without the risks set out above.

The amount of the payments to Settlement Class Members under the Agreement cannot be determined with precision until the notice process is complete and Settlement Class Members have an opportunity to request exclusion. However, assuming that each Settlement Class Member can be located and none excludes himself or herself, payments would be approximately $140.00. As discussed above, this payment is within the FCRA's statutory damages range upon a finding of a willful violation, and is well in excess of many settlements of FCRA disclosure claims, which have been approved where they provide payments as low as $9 per class member. *Patrick v. Interstate Mgmt. Co., LLC*, No. 15-cv-1252 (ECF 49) (M.D. Fla. Apr. 29, 2016). By comparison, the monetary relief provided in the Settlement is excellent.

5. *The Proposed Award of Attorney's Fees Is Fair and Reasonable*

If the Court orders that notice be directed to the Settlement Class, Plaintiff's counsel will request that the Court award them attorneys' fees of one-third of the Settlement Fund, or $808,333.33, plus litigation costs and expenses of up to $25,000.00. Agreement at § 9. Plaintiff's Counsel has negotiated a settlement that establishes a common fund to benefit all Settlement Class

Members. *Id*. at § 4. The amount of attorneys' fees and costs – negotiated only after the substantive terms of the settlement were agreed upon – is supported by the percentage-of-the-fund method that First Circuit courts use to determine fees and costs in common fund class action cases.

The First Circuit recognizes two methods for calculating attorneys' fees in the class action context involving a common fund, the "percentage of the fund" ("POF") method, or the lodestar method. *See In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir. 1995). The POF "method functions exactly as the name implies: the court shapes the counsel fee based on what it determines is a reasonable percentage of the fund recovered for those benefitted by the litigation." *Id*. at 305. The POF method is preferred in common fund cases. *See In re Cabletron Systems, Inc. Securities Litigation*, 239 F.R.D. 30, 37 (D.N.H. 2006) (citations omitted). Under the POF method, "the court shapes the counsel fee based on what it determines is a reasonable percentage of the fund recovered for those benefitted by the litigation." *Thirteen Appeals*, 56 F.3d at 305.

Here, an attorney's fee award of one-third of the value of the settlement is within the range in which courts in the First Circuit award fees. *See, e.g., Wright v. S. New Hampshire Univ.,* 561 F. Supp. 3d 211, 214 (D.N.H. 2021) (awarding one-third of settlement fund created by class settlement in attorneys' fees).

Prior to final approval, Plaintiff's Counsel will file a separate motion for award of attorneys' fees and costs, addressing in detail the facts and law supporting their fee request. Counsel will file this motion 14 days before the deadline to object to the settlement to provide Settlement Class Members with sufficient time to review the fee request. However, a review of the factors for approving fees indicates that Plaintiff's counsel's contemplated request is well

within the range of reasonableness, demonstrating that it is appropriate to direct notice to the Settlement Class.

6. *The Method of Providing Relief Will Be Effective*

The relief provided for in the Settlement Agreement will be distributed through prospective relief and through cash payments from the Settlement Fund. Each of these methods will effectively address the experiences of the Settlement Class Members, as alleged in the Complaint.

First, all Settlement Class Members will benefit from the implementation of the practice changes provided by the prospective relief provision of the Settlement Agreement.

Second, the Settlement Agreement establishes a process for providing direct automatic payments to all Settlement Class Members, without the need to make a claim or take additional action. Agreement at § 10. This is a highly effective method of providing Settlement Class Members with meaningful relief.

7. *The Settlement Treats All Settlement Class Members Fairly*

The Settlement Agreement treats Settlement Class Members fairly. All Settlement Class Members have been objectively identified through MIB's records, and all Settlement Class Members are treated identically: each will receive an equal *pro rata* payment as long as their Notice is not returned as undeliverable and they do not request exclusion. Furthermore, the Settlement Fund is non-reversionary. Any funds remaining in the Fund after distribution of Class Member Payments will be donated as *cy pres* monies as approved and directed by the Court. Agreement at § 4(b)(iv). This arrangement treats all class members fairly.

B. The Court Will Likely Be Able to Certify The Settlement Class for the Limited Purpose of Settlement

Sending notice of the terms of the proposed Settlement is also justified because the Court will likely be able to certify the proposed Settlement Class for purposes of judgment on the

proposal. FED. R. CIV. P. 23(e)(1)(B)(ii). The Parties agree that the Court should certify the Settlement Class for settlement purposes, and that Class Counsel and a Class Representative shall be appointed. Agreement at §§ 1(e),(f). For the reasons set forth below, the Settlement Class meet the requirements for certification under Rule 23(a) and (b)(3).

The numerosity requirement of Rule 23(a) is satisfied. MIB has confirmed based upon its records that there are 10,886 Settlement Class Members. Joinder of all such persons is impracticable. *See* FED. R. CIV. P. 23(a)(1); *see also Gorsey v. I.M. Simon & Co.*, 121 F.R.D. 135, 138 (D. Mass. 1988) (800 to 900 member class made joinder impracticable). Indeed, "[no] minimum number of plaintiffs is required to maintain a suit as a class action, but generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met." *Garcia-Rubiera v. Calderon*, 570 F.3d 443, 460 (1st Cir. 2009).

The commonality requirement is satisfied because the proposed class members "have suffered the same injury." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350; 131 S. Ct. 2541, 2551 (2011). In other words, commonality requires that the claims of the class "depend upon a common contention…of such a nature that it is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id*. Even so, "commonality is a low hurdle." *Southern States Police Benevolent Ass'n v. First Choice Armor & Equip., Inc.*, 241 F.R.D. 85, 87 (D. Mass. 2007). Here, many common questions of law and fact exist, but in particular, commonality is satisfied by the following question: whether MIB was obligated to disclose the identities of the "service providers" that supplied information contained in its files when it provided file disclosures to consumers. *See* FED. R. CIV. P. 23(a)(2); *Duhaime*, 177 F.R.D. at 63 (each class member treated in similar manner).

The typicality requirement of Rule 23(a)(3) is satisfied because the same conduct applied

to Michalski also was applied to other class members. *See Barry v. Moran,* No. 05-10528-RCL, 2008 WL 7526753, at *11 (D. Mass. Apr. 7, 2008). Specifically, MIB applied uniform procedures for preparing its responses to consumer file disclosure requests, and never identified the specific "service providers" that supplied information associated with an "R" coded item of information.

As set forth above, Plaintiff and Class Counsel have satisfied the adequacy requirement of Rule 23(a)(4).

The predominance requirement of Rule 23(b)(3) is satisfied because the common questions present a significant aspect of the case and can be resolved for all members of each Settlement Class in a single adjudication. *See* FED. R. CIV. P. 23(b)(3); *Waste Mgt. Holdings, Inc. v. Mowbray*, 208 F.3d 288, 296 (1st Cir. 2000) (predominance requirement satisfied by "sufficient constellation of common issues [that] bind class members together" and "cannot be reduced to a mechanical, single-issue test"); *Duhaime*, 177 F.R.D. at 64 (D. Mass. 1997) (requirement is "readily met in cases alleging consumer . . . fraud" where claim alleges single course of conduct) (*quoting Amchem*, 521 U.S. at 625). The predominance element has been met here because the claims of the Settlement Class Members and the circumstances under which these claims arise are substantially the same.

Rule 23(b)(3) contains four factors a court must analyze in determining whether a class action is superior to individual litigation. These are whether individuals have a strong interest in controlling potentially separate actions; a class action's effect on competing litigation involving members of the class; whether resolution of the case in a single forum is desirable; and the potential difficulties that management of a class action presents. FED. R. CIV. P. 23(b)(3). A class action is the superior method of resolving large scale claims if it will "achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without

sacrificing procedural fairness or bringing about other undesirable results." *Amchem*, 521 U.S. at 615. One reason that a class action is the superior method of proceeding in a case of this type is that it allows the plaintiffs "to pool claims which would be uneconomical to litigate individually." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985). Here, because each Settlement Class Member's claim is relatively insignificant, it is uneconomic for individuals to pursue these claims on their own, and therefore unlikely they will do so. *See Grace v. Perception Technology, Inc.*, 128 F.R.D. 165, 171 (D. Mass. 1989); *Randle v. SpecTran*, 129 F.R.D. 386, 393 (D. Mass. 1988).

Finally, any possible difficulties of managing a class action are vitiated by the fact of this Settlement Agreement. When "confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial." *Amchem*, 521 U.S. at 620. For these reasons, it is likely that the Settlement Class will be certified for settlement purposes upon final approval.

C. The Proposed Notice Program Is Constitutionally Sound

Rule 23(e)(1) states that "[t]he court must direct notice in a reasonable manner to all class members who would be bound by" a proposed settlement, voluntary dismissal, or compromise. Class members are entitled to the "best notice that is practicable under the circumstances" of any proposed settlement before it is finally approved by the Court. FED. R. CIV. P. 23(c)(2)(B). The amendments to Rule 23(c)(2)(B) provide that "notice may be by one or more of the following: United States mail, electronic means, or other appropriate means." To comply with due process, notice must be "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." *Amchem*, 521 U.S. at 617. The notice must state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter

an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3). FED. R. CIV. P. 23(c)(2)(B).

The proposed notice plan complies with these requirements. It provides for individual notice to be sent to each Settlement Class Member identified in MIB's business records. The notice program also provides for individual notice via U.S. Mail for any class member for whom MIB does not possess an email address, or whose email notice is undeliverable.

The language of the proposed notices is plain and easily understood, providing neutral and objective information about the nature of the settlement. The notice includes the definition of the Class, a statement of each Class Member's rights (including the right to opt-out of the Settlement Class or object to the settlement, and the time to do so), a statement of the consequences of remaining in the Settlement Class, an explanation of how members can exclude themselves from the respective Class or object to the settlement, and methods for obtaining more information, including directions to log on to a dedicated Settlement Website. Agreement at Exhibits C-D. The Long-Form Notice that will be on the Settlement Website provides further detail and explains how class members may enter an appearance through an attorney in connection with an objection. Ex. E.

Plaintiff submits that the notice program outlined in the Settlement Agreement is the best practicable notice under the circumstances of this case and will be highly effective.

D. Scheduling a Final Approval Hearing Is Appropriate

After notice is given to Settlement Class Members of the terms of the proposed settlement and they have an opportunity to object, opt out, and make claims, the final step in the settlement approval process is a Final Approval Hearing at which the Court may hear all evidence and

argument necessary to make its settlement evaluation. Proponents of the Settlement Agreement may explain the terms and conditions of the Settlement Agreement and offer argument in support of final approval. The Court will determine after the Final Approval Hearing whether the Settlement Agreement should be approved, and whether to enter a final order and judgment under Rule 23(e). Plaintiff requests that the Court set a date for a hearing on final approval at the Court's convenience, but no earlier than 110 days after an order directing notices to the Settlement Class is entered.

V. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant the instant Motion and enter the proposed order filed herewith.

Dated: July 30, 2025

Respectfully submitted,

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