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10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
13 **SOUTHERN DIVISION**

14 TERRI N. WHITE, et al.,

15 Plaintiffs,

16 v.

17 EXPERIAN INFORMATION
18 SOLUTIONS, INC.

19 Defendant

CASE NO.:05-CV-1070 DOC
(MLGx) (Lead Case)

ASSIGNED FOR ALL PURPOSES TO:
HONORABLE DAVID O. CARTER
COURTROOM 9D

**DECLARATION OF LEE A.
SHERMAN**

20 AND RELATED CASES:

- 21 05-cv-0173-DOC (MLGx)
- 22 05-cv-7821-DOC (MLGx)
- 23 05-cv-0392-DOC (MLGx)
- 24 05-cv-1172-DOC (MLGx)
- 25 05-cv-5060-DOC (MLGx)

26 I, Lee A. Sherman, declare as follows:

27 1. I am a member in good standing of the California State Bar and I was a
28 partner and shareholder with the law firm, Callahan, McCune & Willis, APLC . I am now
a partner with Callahan Thompson Sherman & Caudill, LLP, which continued handling
this matter on behalf of Plaintiffs, Robison, Randall and Pike and the settlement classes
after the dissolution of Callahan, McCune & Willis, APLC in 2009. The Court has
appointed me as one of the class counsel to represent the 23(b)(3) Settlement Class in this



1 action. I also serve as class counsel for the 23(b)(2) Settlement Class. I have personal
2 knowledge of the matters set forth herein, and could and would testify competently thereto
3 if called upon to do so. I submit this Declaration in Support of Plaintiffs' Motion for Order
4 Granting Plaintiffs' Application for Attorneys' Fees for Monetary Relief Settlement.

5 2. With regard to my background, I received my law degree from Western State
6 University and my bachelor's degree from University of California, Irvine. I have been a
7 member of the California Bar in good standing since 1994 and I am admitted in all the
8 Courts of the State of California, the United States District Courts for the Central District
9 of California, the Northern District of California, the Eastern District of California, the
10 Southern District of California and the Northern District of Illinois. I am also admitted to
11 the United States Supreme Court and have been admitted pro hac vice to the United States
12 District Courts for the District of Minnesota, the Western District of Washington, the
13 Eastern District of Pennsylvania and the Southern District of Florida.

14 3. I have been handling class actions and representative actions for
15 approximately seventeen years and co-chair my law firm's Complex Litigation
16 Department, which consists of 5 lawyers dedicated primarily to class action litigation with
17 over 50 years of class action experience collectively. I have personally litigated numerous
18 nationwide class action matters, and have class action trial experience and am an author of
19 the firm's Auto Dealership newsletter, which is circulated to approximately 1,500
20 automobile dealerships throughout California. I have also served as lead Plaintiffs' counsel
21 and lead Defense counsel in class action matters.

22 4. As part of the Callahan firm Complex Litigation Department, I have
23 participated in the litigation of numerous class actions resulting in millions of dollars in
24 recoveries for my clients and class members.

25 **THE LITIGATION**

26 5. Plaintiffs in the consolidated and coordinated actions pending in this Court
27 ("the Litigation") allege that Defendants Experian Information Solutions, Inc.
28 ("Experian"), Equifax Information Services, LLC ("Equifax"), and Trans Union LLC

1 ("TransUnion") recklessly or negligently violated and continue to violate the Fair Credit
2 Reporting Act ("FCRA"), 15 U.S.C. § 1681 et seq., by failing to maintain reasonable
3 procedures to assure the accurate reporting of debts that have been discharged in
4 bankruptcy.

5 6. This Litigation has been pending before this Court since the fall of 2005. The
6 cases have been vigorously litigated; the parties have engaged in extensive motion practice
7 and have attended several management conferences and multiple-day hearings on
8 settlement approval and summary judgment. This Court has presided over the hearings and
9 executed numerous minute entries, entered at least fifty signed orders, and authored
10 multiple published opinions.

11 7. In the Court's rulings and comments to counsel, the Court urged the parties
12 to proceed to mediation. Since the appointment of the Hernandez counsel (my group) as
13 interim class counsel, the parties again conducted arm's-length, contentious, lengthy, and
14 complicated negotiations (with the participation of Defendants' insurance carriers)
15 including two sessions through JAMS, the first with the Hon. Daniel Weinstein and the
16 second with the Hon. Dickran Tevrizian, resulting in the instant settlement. This is in
17 addition to seven prior in-person sessions with the Hon. Lourdes Baird (Ret.), and five
18 prior in-person mediation sessions with mediator Randall Wulff, as well as several
19 additional in- person or telephonic sessions involving counsel for the parties. The
20 negotiations involved attorneys on both sides who have extensive experience in the
21 prosecution, defense, trial and settlement of class action litigation, including as it relates to
22 FCRA, bankruptcy, and other consumer cases, and who are well-versed in the legal and
23 factual issues implicated in this action.

24 8. In the litigation process leading to the Settlement Agreement, Plaintiffs'
25 counsel undertook substantial investigation, fact-gathering, and formal discovery to
26 evaluate the merits of Plaintiffs' case. This discovery included review of over 30,000 pages
27 of documents produced by Defendants, the retention and consultation of credit reporting
28 and consumer bankruptcy experts (who have each filed several declarations with this

1 Court), interviews with numerous consumers, review of thousands of consumer credit
2 reports, the production of over 10,000 pages of documents by Plaintiffs, and 28 depositions
3 taken and defended in support of the litigation.

4 9. On or about April 3, 2008, the parties entered into the Injunctive Relief
5 Settlement Agreement, by which Defendants agreed to retroactively update the credit files
6 of 23(b)(2) Settlement Class members to reflect the discharge of certain categories of pre-
7 bankruptcy civil judgments and tradelines. Defendants also agreed to adopt new procedures
8 for the update of certain pre-bankruptcy civil judgments and tradelines when a public
9 record entry of the bankruptcy is added to the consumer's file. On August 19, 2008, the
10 Court approved these new procedures, found them to be reasonable under the FCRA, and
11 entered an Approval Order Regarding Settlement and Release for the Injunctive Relief
12 Settlement Agreement (Dkt. 338). The 23(b)(2) Settlement Class Counsel will be seeking
13 approval of an award of fees and expenses for their efforts in connection with obtaining
14 this Injunctive Relief Settlement. In a separate, independently negotiated agreement,
15 Defendants have agreed to pay up to six million dollars for the injunctive relief fees and
16 expenses.

17 10. The parties' initial efforts to resolve the monetary relief portion of the
18 Litigation resumed after the successful completion of the 23(b)(2) Injunctive Relief
19 Settlement. The parties proceeded with several mediation sessions, but without success.
20 On January 26, 2009, the parties appeared for a hearing on Plaintiffs' Motion for Class
21 Certification of a 23(b)(3) damages class. Prior to the scheduled hearing, the Court issued
22 a tentative ruling denying Plaintiffs' Motion for Class Certification pursuant to Fed. R. Civ.
23 P. 23(b)(3), decided not to hear the Motion at that time, and directed the parties to make a
24 final attempt to settle the monetary claims raised in the Litigation. The parties and
25 Defendants' insurance carriers participated in an additional mediation session before
26 mediator Wulff three days later, but did not reach an agreement. The parties and
27 Defendants' insurance carriers then participated in a mandatory settlement conference at
28 the courthouse on February 5, 2009. At that conference, Plaintiffs, Equifax, and Experian

1 reached agreement as to the principal terms of a settlement of all of Plaintiffs' claims in the
2 Litigation for monetary damages, including statutory and punitive damages. TransUnion
3 agreed to the settlement terms on February 18, 2009. The Settlement established a
4 significant fund to provide damage award payments to Class members who submitted
5 claims to confirm their eligibility. In accordance with the preliminary approval of the
6 settlement, the fund was used to pay costs of notice and administrative costs associated
7 with the proposed settlement.

8 11. The settlement was approved by the Trial Court on a motion for final
9 approval over objection, but was reversed on appeal because the Ninth Circuit Court of
10 Appeals found that the language of that agreement's service award provision created a conflict of
11 interest for the Class Representatives. The Ninth Circuit, however, did not comment on or
12 reject the value of the settlement or its substantive terms. Rather, the court addressed the
13 conflict issue that arose after the material terms of settlement had been reached.

14 12. Thereafter, the matter was remanded to the Trial Court wherein two groups,
15 the Hernandez Counsel (my group) and the White Counsel (the prior objectors) filed
16 dueling motions seeking appointment as interim class counsel pursuant to Rule 23(g)(3).
17 The Trial Court considered all papers filed in support and opposition of the cross motions
18 and held a two day hearing with all counsel. During the hearing, the Trial Court heard
19 from counsel for all parties and posed an extensive list of detailed questions to be addressed
20 by both the Hernandez Counsel and the White Counsel. And, after two full days of hearings
21 including responses to the Trial Court's questions; in March of 2016, the Trial Court issued
22 an order appointing the Hernandez Counsel (my group) as interim class counsel pursuant
23 to Rule 23(g)(3). In its detailed written order, the Trial Court cited the addition of new
24 counsel to the Hernandez Counsel group (Francis & Mailman and Public Justice, P.C) and the
25 significant FCRA experience of the Hernandez counsel as well as the lack thereof in the
26 White Counsel group.

27 13. Following the appointment of the Hernandez Counsel, we continued to
28 litigate the matter on behalf of the putative class including engaging in the aforementioned

1 mediations with the Hon. Daniel Weinstein and then the Hon. Dickran Tevrizian
2 (referenced in ¶7 above) that resulted in the instant settlement. The instant settlement,
3 which was executed after extensive negotiation on or about April 14, 2017, provides a new
4 package of Non-Monetary Relief in the form of consumer credit reporting assistance and
5 an optional free file disclosure and two free VantageScore credit scores. Defendants will
6 also contribute an additional \$1 million to the approximately \$37 million that remains on
7 deposit with the clerk from the 2009 Proposed Settlement, after payment of notice and
8 administration costs. The instant settlement also includes a new notice program. The
9 approximately \$38 million cash fund will be use to provide damage awards to Class
10 members who choose a monetary ward and will also be used to pay costs of notice,
11 settlement administration, and any court-approved attorney's fees and service awards.

12 14. In this Settlement, no service award is contingent on a named plaintiff's
13 support for the proposed Settlement.

14 COUNSEL'S TIME AND EXPENSES

15 15. I was the shareholder at CMW and now am the partner at CTSC that
16 supervises its associates, paralegals, and litigation support personnel in connection with
17 their work regarding the Litigation. In addition, I have personally conducted discovery,
18 attended and defended depositions, reviewed documents, appeared at conferences and
19 motion hearings before the Court, and actively participated in the mediation sessions
20 concerning the Litigation. Since around the time that the White and Hernandez actions
21 were consolidated with the Acosta and Pike actions, I have effectively served as lead
22 counsel on behalf of the Acosta/Pike Plaintiffs and have worked closely together with other
23 settling counsel including Jim Francis, Michael Sobol and Michael Caddell, co-lead
24 counsel in the White/Hernandez matters.

25 16. My previous firm, CMW and my new firm CTSC have spent significant time
26 on this litigation that could have been spent on other matters. At various times during the
27 litigation of this class action, this lawsuit has consumed a substantial percentage of my
28 billable time that could otherwise have been spent on other fee-generating work. In addition

1 to a substantial percentage of my time, this case has also required work by other lawyers
2 in my firm, as well as by our paralegals, investigators, and computer database personnel.

3 17. The time my firm has spent on this case has been completely contingent on
4 the outcome of the action. CMW and CTSC have not been paid for any of the time spent
5 on the action.

6 18. In connection with the Litigation, the attorney and staff timekeepers at CMW
7 and CTSC billed a total of 3,410.20 hours from inception to October 15, 2017. The total
8 lodestar for that time amounts to \$1,798,445.00. A summary of timekeepers, rates and
9 hours is attached hereto as Exhibit A.

10 19. However, as this Court is aware, some of this time was incurred prosecuting
11 and resolving the injunctive relief claims resulting in the 23(b)(2) Settlement. I refer the
12 Court to my prior declaration submitted in accordance with our motion for fees on the
13 injunctive relief settlement. While both sets of claims were pending, the work performed
14 with respect to those claims was substantially indistinguishable from one another. In fact,
15 as this Court remarked, "[t]hese fees and costs are so intertwined with the injunctive relief
16 portion of the lawsuit, and this Court would spend an inordinate amount of time in
17 disagreements about what portion of plaintiffs' counsel's hours were billed to strictly
18 injunctive relief and what the carryover is to class cert and the remaining claims." (August
19 19, 2008 Hearing Tr. at 19.) Accordingly, one-half of the time incurred from inception
20 through April 3, 2008, was previously allocated to the 23(b)(2) Injunctive Relief Settlement
21 and is backed out of the current lodestar referenced herein for purposes of this motion.
22 This amounts to 1179.25 hours and a lodestar of \$584,866.25, which is backed out of the
23 current figure submitted herein.

24 20. Additionally, in accordance with the representations the Hernandez Counsel
25 made to this Court, we have also backed out of the calculation all hours and lodestar during
26 the conflict period of April 1, 2009 through May 1, 2013, which amounts 437.6 hours and
27 a lodestar figure of \$256,545.00. A summary of the timekeepers, hours and rates for this
28 period is attached hereto as Exhibit B.

1 21. After backing out both the 23(b)(2) Injunctive Relief Settlement fees and the
2 fees during the conflict period of April 1, 2009 through May 1, 2013, my firms have a
3 lodestar figure of \$957,033.75 in connection with these actions.

4 22. As noted above, attached hereto as Exhibit A is a summary listing each
5 lawyer, law clerk, and legal assistant for which CMW/CTSC is seeking compensation for
6 legal services in connection with the instant 23(b)(3) Settlement, the hours each individual
7 expended, and the hourly rate at which compensation is sought for each individual. For
8 individuals who have left the employ of CTSC, the hourly rate at the time when
9 employment concluded is used.

10 23. Based upon my experience with other class action matters, I believe that the
11 time expended by my firms and co-counsel in connection with this litigation, when
12 compared to the result achieved for the Class, is reasonable in amount and was necessary
13 to ensure the successful injunctive relief obtained on behalf of the Class.

14 24. CMW/CTSC's customary rates, which were used for purposes of calculating
15 lodestar here, are based on prevailing fees in this District and have been submitted
16 previously in the Central District of California in connection with other fee requests that
17 were approved. See, e.g., *Reid v. Diedrich Coffee, Inc.*, No. SACV 06-888-AG (MLGx);
18 *Raphael, et al. v. Ameriquest, et al*, No SACV 05- 0228-JVS (ANx)- approving attorneys'
19 fees of \$575,000 applying the same lodestar rates as here; *Clark v. LG Electronics U.S.A.,*
20 *INC.*, No. 13-cv-0485 JM (JMA)

21 25. CMW and now CTSC set their hourly rates according to prevailing market
22 rates. For instance, CTSC regularly purchases and reviews the National Law Journal's
23 annual billing rate survey and uses the survey to ensure that the rates it charges are
24 competitive for comparable work by comparable attorneys. In a recent NLJ survey, for
25 Partner/Principals, Cooley God ward reported charging \$700 per hour, Oreck, Harrington
26 & Sutcliffe reported charging \$715 per hour, and Manatt, Phelps and Phillips reported
27 charging \$650 per hour. Our lawyers have litigated class action cases against all of these
28 firms. The billing rates here are comparable to the rates reflected in the aforementioned

1 National Law Journal survey.

2 26. CMW/CTSC has expended a total of \$78,386.80 in un-reimbursed expenses
3 that were necessarily incurred in connection with the prosecution of the Litigation from
4 inception through the present. CMW/CTSC previously requested certain of those costs
5 (\$36,698.12) in connection with the 23(b)(2) settlement and as such, those costs are backed
6 out of the instant request. CMW/CTSC also incurred \$3,004.28 in costs during the conflict
7 period, which are also backed out of the instant request. Therefore, the total amount of
8 CMW/CTSC expenses that can be allocated to the 23(b)(3) Settlement is \$38,684.40.

9 27. The foregoing expenses were incurred solely in connection with this
10 Litigation and are reflected on CMW/CTSC 's books and records as maintained in the
11 ordinary course of business. These books and records are prepared from invoices, receipts,
12 expense vouchers, check records and other records, and are an accurate record of the
13 expenses incurred in this case. The rates charged for all internal expenses incurred by my
14 firm (e.g., photocopying) are the same irrespective of whether the case is billable or
15 contingent. As a result, the rates charged are necessarily market-sensitive and market-
16 competitive since they are subject to and controlled by an overriding "check" imposed by
17 the firm's cost paying clients.

18 28. The attorneys' fees are expressly provided for in the 23(b)(3) Settlement
19 Agreement and Defendants do not contest the award requested by Class Counsel.

20 I declare under penalty of perjury, under the laws of the United States of America,
21 that the foregoing is true and correct.

22 Executed this 30th day of October, 2017 at Irvine, California.

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/s/ Lee A. Sherman
LEE A. SHERMAN