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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17 **SOUTHERN DIVISION**
18

19
20 TERRI N. WHITE, et al.,
21 Plaintiffs,

22 v.

23 EXPERIAN INFORMATION
SOLUTIONS, INC.,
24 Defendant.

Case No. 05-cv-1070 DOC (MLGx)
(Lead Case)

AND RELATED CASES
05-cv-1073, 05-cv-7821, 06-cv-3924,
05-cv-1172, 06-cv-5060

**SETTLEMENT AGREEMENT
AND RELEASE**

JUDGE: DAVID O. CARTER

25
26 and RELATED CASES
27
28

1 SETTLEMENT AGREEMENT AND RELEASE

2 This Settlement Agreement and Release (“Settlement Agreement”) is made
3 and entered into by and between (1) Plaintiffs, individually and as representatives
4 of the 23(b)(3) Settlement Class as defined below; (2) Equifax Information Services
5 LLC (“Equifax”); (3) Experian Information Solutions, Inc. (“Experian”); and (4)
6 TransUnion LLC (“TransUnion”). Equifax, Experian and TransUnion are
7 collectively referred to as the “Defendants.” Plaintiffs and Defendants are
8 collectively referred to herein as the “Parties.” This Settlement Agreement is
9 intended by the Parties to fully, finally, and forever resolve, discharge, and settle all
10 released rights and claims, to the extent set forth below, subject to the terms and
11 conditions set forth herein.

12 RECITALS

13 A. WHEREAS, on or about October 3, 2005, plaintiff Jose Hernandez
14 filed an action against Defendants in the United States District Court for the
15 Northern District of California, in which he asserted claims on behalf of a putative
16 nationwide class of consumers relating to each of Defendants’ procedures for
17 reporting pre-bankruptcy debts of consumers who have obtained discharges through
18 Chapter 7 bankruptcy proceedings;

19 B. WHEREAS, on or about November 2, 2005, plaintiff Terri N. White
20 filed separate actions¹ against each of the Defendants in this District, in which she
21 asserted claims on behalf of a putative nationwide class of consumers relating to
22 each of Defendant’s procedures for reporting and reinvestigating pre-bankruptcy
23 debts of consumers who have obtained discharges through Chapter 7 bankruptcy
24 proceedings;

25 _____
26 ¹ The original named plaintiffs in the action against Equifax were Terri N.
27 White, Robert Radcliffe, Chester Carter, and Milagros Gabrillo. The original
28 named plaintiffs in the action against Experian were Terri N. White, Robert
Radcliffe, Chester Carter, and Arnold E. Lovell, Jr. The original named plaintiffs
in the action against TransUnion were Terri N. White, Robert Radcliffe, Chester
Carter, and Maria Falcon.

1 C. WHEREAS, on or about August 11, 2006, plaintiff Jose Hernandez
2 and the White plaintiffs filed three separate Second Amended Consolidated Class
3 Action Complaints², one against each Defendant (“Second Amended Complaints”),
4 in which they assert claims for (i) willful and/or negligent violation of Section
5 1681e(b) of the FCRA, and its CCRAA counterpart, California Civil Code Section
6 1785.14(b), for failure to maintain reasonable procedures to assure maximum
7 possible accuracy; (ii) willful and/or negligent violation of Section 1681i of the
8 FCRA and its California counterpart, Cal. Civ. Code Section 1785.16, for failure to
9 reasonably investigate consumer disputes regarding the status of the discharged
10 accounts; and (iii) violation of California’s Unfair Competition law, Bus. & Prof.
11 Code section 17200, et seq.;

12 D. WHEREAS, in or around September 2006, Defendants answered the
13 various Second Amended Complaints, denying the allegations therein, denying that
14 the actions are suitable for certification pursuant to Federal Rule of Civil Procedure
15 23, asserting affirmative defenses that Defendants contend are meritorious
16 notwithstanding their willingness to enter into this Settlement Agreement;

17 E. WHEREAS, plaintiff Jose L. Acosta, Jr., filed an action against
18 TransUnion in California Superior Court on or around May 12, 2003, and later filed
19 a new action against TransUnion in federal court on August 14, 2006 joined by
20 plaintiffs Robert Randall and Bertram Robison,³ and plaintiff Kathryn Pike filed an
21 action in California Superior Court against Equifax on or around October 14, 2005,
22 in which they also assert claims on behalf of a putative California class of
23 consumers relating to TransUnion’s or Equifax’s procedures for reporting pre-

24
25
26 ² The Second Amended Complaints added two new plaintiffs: Clifton C.
27 Seale, III, and Alex K. Gidi. On October 19, 2007, plaintiffs Terri N. White,
Alex K. Gidi, and Milagros Gabrillo were dismissed by court order.

28 ³ Plaintiff Acosta has since been dismissed from the federal court action and
has dismissed his state court action.

1 bankruptcy debts of consumers who have obtained discharges through Chapter 7
2 bankruptcy proceedings;

3 F. WHEREAS, all of these cases have been either filed, transferred, or
4 removed such that they are before the Honorable Judge David O. Carter in the
5 Central District of California under the following case numbers: *Terri N. White, et*
6 *al. v. Experian Information Solutions, Inc.*, Case No. cv 05-01070 (Lead Case
7 number); *Terri N. White, et al. v. Equifax Information Services LLC*, Case No. cv
8 05-7821; *Terri N. White, et al. v. TransUnion LLC*, cv 05-1073; *Jose Hernandez v.*
9 *Equifax Information Services, LLC, et al.*, Case No. cv 06-3924; *Jose L. Acosta et*
10 *al., v. TransUnion LLC, et al.*, Case No. cv 06-5060; and *Kathryn L. Pike v. Equifax*
11 *Information Services, LLC*, Case No. cv 05-1172 (collectively, the “Litigation”);

12 G. WHEREAS, Plaintiffs in the various cases have undertaken substantial
13 investigation and formal discovery in the Litigation (including review of tens of
14 thousands of pages of documents, retention and consultation of numerous experts in
15 the fields of credit reporting and consumer bankruptcies, interviews with numerous
16 consumers, review of thousands of consumer credit reports, creation and review of
17 several credit scoring analyses, creation and review of several accuracy analyses,
18 and about 50 depositions in support of the prosecution of the Litigation and
19 settlement negotiations relating thereto;

20 H. WHEREAS, the Parties have vigorously litigated these matters, which
21 included four rounds of briefing concerning class certification;

22 I. WHEREAS, on or about August 15, 2007, the Court urged the Parties
23 to proceed to mediation and, since then, the Parties have conducted arms-length,
24 contentious, lengthy, and complicated negotiations (with the participation of
25 Defendants’ insurance carriers) that have included at least six in-person mediation
26 sessions with the Honorable Lourdes Baird (Ret.), four in-person mediation
27 sessions with mediator Randall Wulff, and several additional sessions involving
28 counsel for the Parties;

1 J. WHEREAS, on or about April 3, 2008, the parties to the Litigation
2 entered into the Injunctive Relief Settlement Agreement in which Defendants
3 agreed to retroactively update the credit files of 23(b)(2) Settlement Class members
4 to reflect the discharge of certain categories of pre-bankruptcy civil judgments and
5 tradelines. Defendants also agreed to adopt new procedures for the update of
6 certain pre-bankruptcy civil judgments and tradelines when a public record entry of
7 the bankruptcy has been added to the consumer's file. On August 19, 2008, the
8 Court approved these new procedures, found them to be reasonable under the
9 FCRA, and entered an Approval Order Regarding Settlement and Release regarding
10 the injunctive relief pursuant to the Injunctive Relief Settlement Agreement
11 (Docket No. 290, as filed in Lead Case *White v. Experian*, No. 05-cv-1070-DOC);

12 K. WHEREAS, on January 26, 2009, counsel for the parties to the
13 Litigation appeared for a hearing on Plaintiffs' Motion for Class Certification and,
14 prior to the scheduled hearing, the Court issued a tentative ruling denying
15 Plaintiffs' Motion for Class Certification pursuant to Fed. R. Civ. P. 23(b)(3) and
16 directed the Parties to make a final attempt to settle the Litigation;

17 L. WHEREAS, on January 29, 2009, counsel for the parties to the
18 Litigation, Defendants, and Defendants' insurance carriers participated in an
19 additional mediation session before mediator Randall Wulff, but did not reach an
20 agreement;

21 M. WHEREAS, the Court ordered a further mediation with Mr. Wulff at
22 the courthouse on February 5, 2009, and counsel for the parties to the Litigation,
23 Defendants, and Defendants' insurance carriers appeared therefore, at the
24 conclusion of which a settlement was reported to the Court as between plaintiffs
25 and Equifax and Experian without objection from any party to the Litigation or
26 their counsel, and thereafter on February 18, 2009, TransUnion reported to the
27 Court it had also reached a settlement on the same terms;

28

1 N. WHEREAS, this Settlement Agreement was reached only after each
2 Defendant's respective insurance carriers agreed to fund such Defendant's required
3 payments under this Settlement Agreement, subject to such Defendant's exhaustion
4 of any remaining self-insured retention.

5 O. WHEREAS, this Settlement Agreement was reached with the efforts
6 of mediator Randall Wulff;

7 P. WHEREAS, the Parties are willing to enter into this Settlement
8 Agreement to settle the claims of the 23(b)(3) Settlement Class because of, among
9 other reasons, the attendant expense, risks, difficulties, delays, and uncertainties of
10 continued litigation;

11 Q. WHEREAS, Plaintiffs and Proposed 23(b)(3) Settlement Class
12 Counsel believe that this Settlement Agreement provides fair, reasonable, and
13 adequate relief to the 23(b)(3) Settlement Class, and is in the best interests of the
14 23(b)(3) Settlement Class as a whole;

15 R. WHEREAS, Defendants deny all claims asserted against them in the
16 Litigation, deny that class certification would be appropriate if the cases are
17 litigated rather than settled, deny all allegations of wrongdoing and liability, and
18 deny that anyone was harmed by the conduct alleged, but nevertheless desire to
19 settle Plaintiffs' monetary claims on the terms and conditions set forth in this
20 Settlement Agreement solely for the purpose of avoiding the burden, expense, risk
21 and uncertainty of continuing the proceedings on those issues in the Litigation, and
22 for the purpose of putting to rest the controversies engendered;

23 **NOW THEREFORE, IT IS AGREED**, by and among the Parties, without
24 (a) any admission or concession on the part of Plaintiffs of the lack of merit of the
25 Litigation whatsoever, or (b) any admission or concession of liability or
26 wrongdoing or the lack of merit of any defense whatsoever by Defendants, that the
27 Litigation and all claims of the 23(b)(3) Settlement Class for monetary damages be
28

1 settled, compromised, and dismissed on the merits and with prejudice as to
2 Defendants on the terms set forth below, subject to the approval of the Court.

3 The recitals stated above are true and accurate and are hereby made a part of
4 the Settlement Agreement.

5 **I. DEFINITIONS**

6 As used in this Settlement Agreement, the terms defined below shall have the
7 meanings assigned to them when capitalized in the same fashion as in this Part I,
8 and any other terms that relate to the credit reporting industry shall have the
9 customary meaning accorded to those terms in the credit reporting industry.

10 1.1 “Bankruptcy Date” means the month during which—according to an
11 entry in the public records section as reflected in the applicable
12 Defendant’s computer systems—a Consumer filed a bankruptcy
13 petition that later led to a public record in the Consumer’s File of the
14 entry of a discharge order pursuant to Chapter 7 of the United States
15 Bankruptcy Code. The “Bankruptcy Date” may be reflected as the
16 “date filed” in the public records section of a Consumer’s File.

17 1.2 “Claimant” means a proposed 23(b)(3) Settlement Class Member who
18 properly registers or submits a claim pursuant to Subsection 5.1a.

19 1.3 “Closed Account” means that an account is reporting with a zero
20 balance and has a narrative or other code indicating that the account
21 was closed by a consumer or creditor in a month that predates the
22 Bankruptcy Date.

23 1.4 “Consumer” means a natural person residing in the United States of
24 America or its territories whose File in a Defendant’s computer
25 systems includes, or at any time from March 15, 2002 to the present
26 (or for residents of the State of California in the case of Defendant
27 TransUnion, from May 12, 2001 to the present) included, a public
28 record entry reporting an order of discharge pursuant to Chapter 7 of

1 the United States Bankruptcy Code, as determined from the
2 Defendant's current Files and/or archived files as retrieved on an
3 annual basis.

4 1.5 "Court" means the United States District Court for the Central District
5 of California.

6 1.6 "Date of Initial Delinquency" means the first month during which a
7 derogatory event is reported for a tradeline, as shown in the applicable
8 Defendant's records. Based upon differences in reporting methods,
9 each Defendant may, at its option, use such dates as the Purge Date,
10 Date of First Delinquency or Date of Last Activity to determine the
11 Date of Initial Delinquency for purposes of compliance with this
12 Settlement Agreement.

13 1.7 "Defendants" mean Equifax, Experian, and TransUnion.

14 1.8 "Effective Date" is the date on which this Court's entry of the Final
15 Approval Order and this Court's orders regarding Monetary Relief
16 Fees and Injunctive Relief Fees have all become final because either (i)
17 no appeal of the Final Approval Order or the Court's orders referenced
18 above have been filed and the time provided in the applicable rules of
19 procedure within which an appeal may be filed has lapsed, or (ii) if one
20 or more timely appeals have been filed, all such appeals are finally
21 resolved, with no possibility of further appellate review, resulting in
22 final judicial approval of this Settlement. For purposes of this
23 definition, the term "appeal" includes writ proceedings.

24 1.9 "Equifax" means Equifax Information Services LLC.

25 1.10 "Equifax's Counsel" means Kilpatrick Stockton LLP.

26 1.11 "Experian" means Experian Information Solutions, Inc.

27 1.12 "Experian's Counsel" means Jones Day.
28

- 1 1.13 “FCRA” means the federal Fair Credit Reporting Act,
2 15 U.S.C. § 1681, et seq.
- 3 1.14 “FCRA State Equivalents” means any statute or regulation of any state,
4 U.S. territory, the District of Columbia, or Puerto Rico, that has the
5 purpose or effect of regulating the collection or reporting of consumer
6 credit information (including, without limitation, California’s
7 Consumer Credit Reporting Agencies Act (“CCRAA”), Civil Code
8 Sections 1785.1-1785.44, and New York’s Fair Credit Reporting Act,
9 General Business Law Section 380-380-u).
- 10 1.15 “Fee and Expense Award” means the attorneys’ fees and expenses
11 applied for by 23(b)(3) Settlement Class Counsel relating to this
12 Settlement Agreement and approved by the Court.
- 13 1.16 “File” means a “file,” as defined in 15 U.S.C. § 1681a(g), in a
14 Defendant’s computer system.
- 15 1.17 “Final Approval” means the approval of the Settlement Agreement by
16 the Court at or after the Final Approval Hearing, and entry on the
17 Court’s docket of the Final Approval Order.
- 18 1.18 “Final Approval Order” means a final order and judgment entered by
19 the Court giving Final Approval of the Settlement Agreement and
20 dismissing with prejudice Plaintiffs’ claims for monetary relief that is
21 in a form mutually agreeable to the Parties, and entering a judgment
22 according to the terms set forth in this Settlement Agreement.
- 23 1.19 “Final Approval Hearing” or “Final Fairness Hearing” means the
24 hearing at which the Court will consider and finally decide whether to
25 approve this Settlement, enter the Judgment, and make such other
26 rulings as are contemplated by this Settlement. The Final Approval
27 Hearing shall not be scheduled for a date less than 90 days following
28 CAFA Notice as set forth in Section 4.5.

- 1 1.20 “Injunctive Relief Fee Agreement” means a separate settlement
2 agreement addressing the payment of 23(b)(2) Settlement Class
3 Counsel’s fees in connection with the Injunctive Relief Settlement.
- 4 1.21 “Injunctive Relief Fees” means the attorneys fees and expenses,
5 including fees for expert witnesses, incurred by 23(b)(2) Settlement
6 Class Counsel and to be awarded in connection with their efforts in
7 achieving the Injunctive Relief Settlement.
- 8 1.22 “Injunctive Relief Settlement” means the Settlement Agreement and
9 Release filed with the Court in this action on April 3, 2008, pursuant to
10 which on August 19, 2008, the Court entered an Approval Order
11 Regarding Settlement Agreement and Release (Docket No. 290, as
12 filed in Lead Case *White v. Experian*, No. 05-cv-1070-DOC).
- 13 1.23 “Mail Notice” means the notice (in a form substantially similar to that
14 attached hereto as Exhibit A and approved by the Court) that will be
15 mailed to proposed 23(b)(3) Settlement Class Members pursuant to the
16 Notice Plan.
- 17 1.24 “Monetary Relief Fees” means the attorneys’ fees and expenses,
18 including fees for expert witnesses, incurred by Proposed 23(b)(3)
19 Settlement Class Counsel in prosecuting and settling the Litigation, but
20 excluding the Injunctive Relief Fees, as defined in Section 1.24.
- 21 1.25 “Named Plaintiffs” or “Plaintiffs” means the settling plaintiffs,
22 specifically, Jose Hernandez, Robert Randall, Bertram Robison, and
23 Kathryn Pike.
- 24 1.26 “Notice Plan” means the plan for disseminating notice to 23(b)(3)
25 Settlement Class Members as described in Section 4.3 hereof.
- 26 1.27 “Parties” means Plaintiffs, Equifax, Experian, and TransUnion.
- 27
28

- 1 1.28 “Post-bankruptcy Credit Report” means a credit report, as defined in
2 15 U.S.C. § 1681a(d), that is issued by a Defendant in or after the
3 Bankruptcy Date.
- 4 1.29 “Post-bankruptcy Employment Inquiry” means an entry in a
5 Consumer’s File that contains a record of a Defendant’s publication of
6 the Consumer’s Post-bankruptcy Credit Report to a subscriber who has
7 certified an employment eligibility purpose and/or caused the
8 Defendant to mail to the consumer a notice made pursuant to 15 U.S.C.
9 §1681k.
- 10 1.30 “Post-bankruptcy Hard Inquiry” means an entry in a Consumer’s File
11 that contains a record of a Defendant’s publication of the Consumer’s
12 Post-bankruptcy Credit Report to a lender or other prospective creditor
13 for purposes of evaluating a loan or other credit application that was
14 initiated by the Consumer.
- 15 1.31 “Pre-bankruptcy Civil Judgment” means a public record judgment that
16 a Defendant reported in a Consumer’s File with either a month filed or
17 a month of judgment (or both) that predates or is equal to the
18 Bankruptcy Date in such File.
- 19 1.32 “Pre-bankruptcy Collection Account” means an account identified by a
20 Defendant as reflecting the collection activity of a third party
21 collection agency or debt buyer on behalf of the original creditor that is
22 reported with a Date of Initial Delinquency, a date referred to
23 collection, or an date opened month that predates or is equal to the
24 Bankruptcy Date.
- 25 1.33 “Pre-bankruptcy Installment or Mortgage Loan” means an installment
26 or mortgage loan that a Defendant reported in a Consumer’s File with a
27 date opened month that predates or is equal to the Bankruptcy Date in
28 such File.

- 1 1.34 “Pre-bankruptcy Revolving Account” means a revolving account, open
2 account, or line of credit that a Defendant reported in a Consumer’s
3 File with a date opened month that predates or is equal to the
4 Bankruptcy Date in such File.
- 5 1.35 “Preliminary Approval” means the preliminary approval of the
6 Settlement Agreement by the Court, conditional certification of the
7 23(b)(3) Settlement Class, and approval of the method and content of
8 notice to the 23(b)(3) Settlement Class.
- 9 1.36 “Proposed 23(b)(3) Settlement Class Counsel” or “23(b)(3) Settlement
10 Class Counsel” means Leonard A. Bennett, Esq., Consumer Litigation
11 Associates, P.C.; Mitchell A. Toups, Esq., Weller, Green, Toups &
12 Terrell, L.L.P.; Michael Caddell, Esq., Caddell & Chapman; Michael
13 W. Sobol, Esq., Lieff Cabraser Heimann & Bernstein; Charles
14 Delbaum and Stuart T. Rossman, National Consumer Law Center; and
15 Lee A. Sherman, Esq., Callahan, McCune & Willis, APLC.
- 16 1.37 “Publication Notice” means the notice (in a form substantially similar
17 to that attached hereto as Exhibit B and approved by the Court) to the
18 proposed 23(b)(3) Settlement Class under the Notice Plan that will be
19 published.
- 20 1.38 “Released Claims” means and includes any and all duties, obligations,
21 demands, claims, actions, causes of action, suits, damages, rights or
22 liabilities of any nature and description whatsoever, whether arising
23 under local, state or federal law, whether by Constitution, statute
24 (including, but not limited to, the FCRA and FCRA State Equivalents),
25 tort, contract, common law or equity or otherwise, whether known or
26 unknown, concealed or hidden, suspected or unsuspected, anticipated
27 or unanticipated, asserted or unasserted, foreseen or unforeseen, actual
28 or contingent, liquidated or unliquidated, fixed or contingent, that have

1 been or could have been asserted in the Litigation based upon the
2 Defendants' furnishing of consumer reports that contained or were
3 alleged to contain false or misleading reporting of debts, accounts,
4 judgments, or public records, or other obligations, that had been
5 discharged in bankruptcy or their alleged failure to have properly
6 reinvestigated such inaccuracies, by Plaintiffs or the 23(b)(3)
7 Settlement Class Members or any of their respective heirs, spouses,
8 executors, administrators, partners, attorneys, predecessors, successors,
9 assigns, agents and/or representatives, and/or anyone acting or
10 purporting to act on their behalf. Released Claims include, but are not
11 limited to, all claimed or unclaimed compensatory damages, damages
12 for emotional distress, statutory damages, consequential damages,
13 incidental damages, treble damages, punitive and exemplary damages,
14 as well as all claims for equitable, declaratory or injunctive relief under
15 any federal or state statute or common law or other theory that was
16 alleged or could have been alleged based on the facts forming the basis
17 for the Litigation, including but not limited to any and all claims under
18 deceptive or unfair practices statutes, or any other statute, regulation or
19 judicial interpretation. Released Claims further include interest, costs
20 and fees arising out of any of the claims asserted or that could have
21 been asserted in the Litigation. Notwithstanding the foregoing,
22 nothing in this Settlement Agreement shall be deemed a release of the
23 Parties' respective rights and obligations under this Settlement
24 Agreement.

25 1.39 "Released Parties" means and refers to: (a) Equifax and its present,
26 former and future officers, directors, partners, employees, agents,
27 attorneys, servants, heirs, administrators, executors, members, member
28 entities, shareholders, predecessors, successors, affiliates (including,

1 without limitation, CSC Credit Services, Inc.), subsidiaries, parents,
2 representatives, trustees, principals, insurers, vendors and assigns,
3 individually, jointly and severally; (b) Experian and its present, former
4 and future officers, directors, partners, employees, agents, attorneys,
5 servants, heirs, administrators, executors, members, member entities,
6 shareholders, predecessors, successors, affiliates, subsidiaries, parents,
7 representatives, trustees, principals, insurers, vendors and assigns,
8 individually, jointly and severally; and (c) TransUnion and its present,
9 former and future officers, directors, partners, employees, agents,
10 attorneys, servants, heirs, administrators, executors, members, member
11 entities, shareholders, predecessors, successors, affiliates, subsidiaries,
12 parents, representatives, trustees, principals, insurers, vendors and
13 assigns, individually, jointly and severally.

14 1.40 “Settlement” means the agreement between Plaintiffs, on behalf of
15 themselves and as proposed representatives of the 23(b)(3) Settlement
16 Class, and Equifax, Experian, and TransUnion, to settle and
17 compromise all of Plaintiffs’ and the 23(b)(3) Settlement Class’ claims
18 in the Litigation for monetary damages, including without limitation
19 statutory and punitive damages (and all issues relating thereto), fully,
20 finally and forever, as memorialized in this Settlement Agreement and
21 the accompanying documents attached hereto.

22 1.41 “Settlement Administrator” shall mean the administrator for the
23 Settlement Agreement that Proposed 23(b)(3) Settlement Class
24 Counsel will identify and propose as described in Section 3.2.

25 1.42 “Settlement Agreement” means this Settlement Agreement and
26 Release.

27 1.43 “Settlement Fund” means the amount paid pursuant to Section 7.1
28 herein.

1 1.44 “Settlement Web site” means the Internet Web site established by the
2 Settlement Administrator for purposes of facilitating notice to, and
3 communicating with, the 23(b)(3) Settlement Class.

4 1.45 “TransUnion” means TransUnion LLC.

5 1.46 “TransUnion’s Counsel” means Stroock & Stroock & Lavan LLP.

6 1.47 “23(b)(2) Settlement Class” means the same as defined in Section 2.32
7 in the Approval Order Regarding Settlement Agreement and Release
8 entered by the Court in the Litigation on August 19, 2008.

9 1.48 “23(b)(3) Settlement Class” or “23(b)(3) Settlement Class Member”
10 shall mean and refer to all Consumers who have received an order of
11 discharge pursuant to Chapter 7 of the United States Bankruptcy Code
12 and who, any time between and including March 15, 2002 and the
13 present (or, for California residents in the case of TransUnion, any
14 time between and including May 12, 2001 and the present), have been
15 the subject of a Post-bankruptcy Credit Report issued by a Defendant
16 in which one or more of the following appeared:

- 17 a. A Pre-bankruptcy Civil Judgment that was reported as
18 outstanding (i.e., it was not reported as vacated, satisfied, paid,
19 settled or discharged in bankruptcy) and without information
20 sufficient to establish that it was, in fact, excluded from the
21 bankruptcy discharge;
- 22 b. A Pre-bankruptcy Installment or Mortgage Loan that was
23 reported as delinquent or with a derogatory notation (other than
24 “discharged in bankruptcy,” “included in bankruptcy” or similar
25 description) and without information sufficient to establish that
26 it was, in fact, excluded from the bankruptcy discharge;
- 27 c. A Pre-bankruptcy Revolving Account that was reported as
28 delinquent or with a derogatory notation (other than “discharged

1 in bankruptcy,” “included in bankruptcy” or similar description)
2 and without information sufficient to establish that it was, in
3 fact, excluded from the bankruptcy discharge; and/or
4 d. A Pre-bankruptcy Collection Account that remained in
5 collection after the Bankruptcy Date.

6 Provided, however, that “23(b)(3) Settlement Class” and “23(b)(3)
7 Settlement Class Member” shall exclude: (i) all persons who timely
8 and validly request exclusion from the Class; (ii) all Consumers who
9 would qualify for membership in the “23(b)(3) Settlement Class”
10 based solely on a Post-bankruptcy Credit Report for which the
11 Consumer has released all claims as to the issuing Defendant; (iii)
12 Defendants’ officers, directors, and employees; (iv) Defendants’
13 attorneys; (v) Plaintiffs’ attorneys; and (vi) Judge David O. Carter and
14 the members of his immediate family.

15 **II. NO ADMISSION OF LIABILITY OR ELEMENTS OF CLASS**
16 **CERTIFICATION**

17 2.1 Defendants’ Denial Of Wrongdoing Or Liability

18 Defendants have asserted and continue to assert many defenses to this
19 Litigation and have expressly denied and continue to deny any fault, wrongdoing or
20 liability whatsoever arising out of the conduct alleged in the Litigation. Defendants
21 expressly deny any fault, wrongdoing or liability whatsoever, as well as the validity
22 of each of the claims and prayers for relief asserted in the Litigation. The Parties
23 expressly acknowledge and agree that neither the fact of, nor any provision
24 contained in, this Settlement Agreement nor any of the implementing documents or
25 actions taken under them, shall constitute or be construed as any admission of the
26 validity of any claim, any status, or any fact alleged in the Litigation or any fault,
27 wrongdoing, violation of law, or liability of any kind on the part of Defendants, or
28 any admission by Defendants of any claim or allegation made in any action or

1 proceeding against Defendants. Defendants have denied and continue to deny each
2 and all of the claims and allegations in the Litigation. Neither this Settlement
3 Agreement nor any document referred to herein, nor any action taken to carry out
4 this Settlement Agreement and/or the Settlement, or their willingness to enter into
5 this Settlement Agreement, nor any or all negotiations, communications, and
6 discussions associated with them are, or may be construed as, or may be used in
7 any proceeding as, an admission by or against any or all Defendants of any fault,
8 wrongdoing or liability whatsoever, or any infirmity of any defenses asserted by
9 any or all Defendants

10 2.2 No Admission by Defendants of Elements of Class Certification

11 Defendants deny that a class should be certified other than for purposes of
12 this Settlement and reserve their rights to contest any litigation class motion.
13 Defendants contend that this Litigation could not be certified as a class action under
14 Federal Rule of Civil Procedure 23(b)(3) and, indeed, this Court has issued a
15 written tentative ruling denying certification of a litigation class that had been
16 proposed by Plaintiffs. Nothing in this Settlement Agreement shall be construed as
17 an admission by any Defendant that this Litigation or any similar case is amenable
18 to class certification for trial purposes. Furthermore, nothing in this Settlement
19 Agreement shall prevent any Defendant from opposing class certification or
20 seeking de-certification of the conditionally certified 23(b)(3) Settlement Class if
21 Final Approval of this Settlement is not obtained, or not upheld on appeal,
22 including review by the United States Supreme Court.

23 **III. MOTION FOR PRELIMINARY APPROVAL**

24 3.1 On or before April 24, 2009, Proposed 23(b)(3) Settlement Class
25 Counsel shall file this Settlement Agreement with the Court together
26 with a motion for Preliminary Approval that seeks entry of an order
27 that would, for settlement purposes only:
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- 1 a. certify a conditional settlement class under Federal Rule of Civil
 - 2 Procedure 23 composed of the 23(b)(3) Settlement Class
 - 3 Members as described in Section 1.49,
 - 4 b. preliminarily approve the proposed Settlement Agreement,
 - 5 c. approve the proposed Notices to the 23(b)(3) Settlement Class in
 - 6 forms substantially similar to those attached hereto as Exhibits
 - 7 A-C,
 - 8 d. appoint 23(b)(3) Settlement Class Counsel, and
 - 9 e. appoint the Settlement Administrator.
- 10 3.2 Three (3) business days before the hearing for Preliminary Approval
- 11 Proposed 23(b)(3) Settlement Class Counsel shall identify and propose
- 12 to Defendants a Settlement Administrator.

13 **IV. NOTICE PLAN**

14 4.1 Preparation and Production of List of Identified Class Members from

15 Defendants' Archive Files

- 16 a. On or before July 31, 2009, each Defendant shall provide the
- 17 Settlement Administrator with a list of identified 23(b)(3)
- 18 Settlement Class Members prepared pursuant to the procedures
- 19 set forth in this Section in an electronically accessible format.
- 20 In generating these lists, each Defendant shall use commercially
- 21 reasonable procedures to search a selection of their archive files
- 22 to identify each Consumer who, based on the information
- 23 appearing in those archive files, appears to satisfy all of the
- 24 following conditions:
- 25 (i) The Consumer was the subject of a credit report issued by
- 26 such Defendant after the Chapter 7 discharge and on or
- 27 after March 15, 2002 (or, for California residents in the
- 28 case of TransUnion, after May 12, 2001); and

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(ii) The Consumer has at least one tradeline in one of the following categories:

(A) A Pre-bankruptcy Civil Judgment that does not appear with an indicator that it was vacated, satisfied, paid, settled, included in bankruptcy, or any of the following: (1) a judgment obtained by a governmental child support agency or taxing authority; or (2) a tax lien, whether or not reduced to judgment;

(B) A Pre-bankruptcy Installment or Mortgage Loan that does not appear with an account status reflecting a Chapter 7 bankruptcy and that does not appear with a Metro 2 account code type (or such other Defendant-specific or Metro 1 coding equivalent) of 12 (Education), 50 (Family Support), 65, 66, 67, 68, 69, 70, 71 (Government Fine), 72, 73, 74, 75, 93 (Child Support), 94 (Spouse Support per Metro 1) or 95 (Attorney Fees); an indication that the property was voluntarily surrendered or was subject to a deed in lieu of foreclosure; or an indication that the account is a Closed Account;

(C) A Pre-bankruptcy Revolving Account that does not appear with an account status reflecting a Chapter 7 bankruptcy and that does not appear with an indicator that it was reported with a Metro 2 account code type (or such other Defendant-specific or Metro 1 coding equivalent) of 12 (Education), 50 (Family Support), 65, 66, 67, 68, 69, 70, 71 (Government Fine), 72, 73, 74, 75, 93 (Child Support), 94 (Spouse Support per Metro 1) or 95 (Attorney Fees); a code indicating that the Consumer was

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an “authorized user” on the account; or an indication that the account is a Closed Account; or
(D) A Pre-bankruptcy Collection Account that does not appear with an account status reflecting a Chapter 7 bankruptcy and that does not appear with a Metro 2 account code type (or such other Defendant-specific or Metro 1 coding equivalent) of 12 (Education), 50 (Family Support), 65, 66, 67, 68, 69, 70, 71 (Government Fine), 72, 73, 74, 75, 93 (Child Support), 94 (Spouse Support per Metro 1) or 95 (Attorney Fees) or an indication that the account is a Closed Account.

- b. The Parties agree that, in conducting the searches contemplated under Subsection 4.1a, it shall be sufficient for each Defendant to search only both of the following:
 - (i) an archive file created in the month immediately preceding the month each Defendant implemented Section 4.1 of the Injunctive Relief Settlement; and
 - (ii) one (1) set of its archive files for each twelve-month period between March 15, 2002 through September 31, 2008, with such searches to be conducted on a staggered schedule under which Experian will search its archive files for the month of June, Equifax will search its archive files for October, and TransUnion will search its archive files for February. It is not a violation of this provision if a Defendant, due to a legitimate business need, uses archives from the month immediately preceding or immediately following the above-identified months.

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c. Each Defendant shall use commercially reasonable methods to remove from its list of identified class members any repetitious or duplicative listing of any particular Consumer. No Defendant shall be required to make any attempt whatsoever to determine whether any particular Consumer who appears on its list also appears on any other Defendant's list. Nor shall Defendants have any obligation to merge Defendants' respective lists into a single, combined list of identified class members.

d. On or before July 31, 2009, each Defendant shall forward to the Settlement Administrator a list of Consumers who have been identified using the procedures described in this Section, excluding any Consumers who have released any claims against that Defendant as a result of prior litigation or otherwise. With respect to each Consumer, the list shall include the following information:

- (i) the Consumer's name, last known address (to the extent such information is reasonably available in that Defendant's current database), social security number, and date of birth;
- (ii) The date of the Consumer's Chapter 7 discharge order as reflected in the public records section of the Consumer's File;
- (iii) Whether or not (i.e., "yes" or "no") — with respect to each annual archive that the Defendant reviews pursuant to Subsections 4.1a, b — a Post-bankruptcy Hard Inquiry appears on the Consumer's File, and the date of the archival period in which it so appears, together with any of the following:

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- (A) A Pre-bankruptcy Civil Judgment that satisfies the criteria set forth in Subsection 4.1a(ii)(A);
 - (B) A Pre-bankruptcy Installment or Mortgage Loan that satisfies the criteria set forth in Subsection 4.1a(ii)(B);
 - (C) A Pre-bankruptcy Revolving Account that satisfies the criteria set forth in Subsection 4.1a(ii)(C); or
 - (D) A Pre-bankruptcy Collection Account that satisfies the criteria set forth in Subsection 4.1a(ii)(D).
- (iv) Whether or not (i.e., “yes” or “no”) — with respect to the most recent archive file that the Defendant created prior to that Defendant’s implementation of the Retroactive Scrub pursuant to Subsection 3.1 of the Approval Order Regarding Settlement Agreement and Release entered on August 19, 2008 — a Post-bankruptcy Hard Inquiry appears in that archive, and the date or the month of the date such Post-bankruptcy Hard Inquiry so appeared, together with any of the following:
- (A) A Pre-bankruptcy Civil Judgment that satisfies the criteria set forth in Subsection 4.1a(ii)(A);
 - (B) A Pre-bankruptcy Installment or Mortgage Loan that satisfies the criteria set forth in Subsection 4.1a(ii)(B);
 - (C) A Pre-bankruptcy Revolving Account that satisfies the criteria set forth in Subsection 4.1a(ii)(C); or
 - (D) A Pre-bankruptcy Collection Account that satisfies the criteria set forth in Subsection 4.1a(ii)(D).

1 (v) Whether or not (i.e., “yes” or “no”) — with respect to
2 inquiries made within 2 years of the date that each
3 respective Defendant performs the searches pursuant to
4 Subsections 4.1a, b — a Post-bankruptcy Employment
5 Inquiry appears on the Consumer’s File.

6 4.2 Preparation of a Combined List of Identified 23(b)(3) Settlement Class
7 Members

8 The Settlement Administrator shall merge Defendants’ respective lists as
9 described above in Subsection 4.1c into a single, combined list of identified 23(b)(3)
10 Settlement Class Members (the “Class List”). The Settlement Administrator will
11 use commercially reasonable measures to remove any duplication of Consumers
12 appearing on more than one Defendants’ list and to resolve any conflicts relating to
13 a Consumer’s address by using the National Change of Address process as licensed
14 by the U.S. Postal Service.

15 4.3 Notice to Proposed 23(b)(3) Settlement Class by the Settlement
16 Administrator

- 17 a. For purposes of providing Court-approved class notices and
18 establishing that the best practicable notice has been given, the
19 provision of class notice will be accomplished in accordance
20 with the provisions of this Section 4.3.
- 21 b. Mail Notice: On or before August 31, 2009, the Settlement
22 Administrator shall cause the Mail Notice (in a form
23 substantially similar to that attached hereto as Exhibit A) to be
24 sent via U.S. mail, postage prepaid requesting either forwarding
25 service or change service to each Settlement Class Member
26 identified on the Class List. The Mail Notice shall be sent to the
27 last known address reflected in the Class List. For up to forty-
28 five days (45) days following the mailing of the Mail Notice, the

1 Settlement Administrator will re-mail the Mail Notice via
2 standard U.S. Mail, postage prepaid, to updated addresses of
3 23(b)(3) Settlement Class Members to the extent that it received
4 address change notifications from the U.S. Postal Service. Not
5 later than seven (7) days before the Final Fairness hearing, the
6 Settlement Administrator shall cause proof of the mailing of the
7 Mail Notice to be filed with the Court. Neither the Parties nor
8 the Settlement Administrator shall have any further obligation to
9 send notice of the Settlement to 23(b)(3) Settlement Class
10 Members.

- 11 c. Internet Notice: The Settlement Administrator shall establish an
12 internet web site containing information about the Settlement.
13 The Settlement Website will be accessible no later than five (5)
14 days prior to the mailing of the Mail Notice described above.
15 The Settlement Website will set forth the following information:
16 (i) the full text of the Settlement Agreement; (ii) a Long-Form
17 Notice (in a form substantially similar to that attached hereto as
18 Exhibit C and approved by the Court); (iii) the Preliminary
19 Approval Order and other relevant orders of the Court; and (iv)
20 contact information for 23(b)(3) Settlement Class Counsel and
21 the Settlement Administrator. Nationwide access to the
22 Settlement Website will be ensured via the following methods:
23 (i) the Settlement Website will be registered with Google so that
24 appropriate queries on Google will yield a link to the Settlement
25 Website; and (ii) the Mail Notice and Publication Notice will
26 reference the Settlement Website. Not later than seven (7) days
27 before the Final Fairness hearing, the Settlement Administrator
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1 shall cause proof of the establishment and maintenance of the
2 Settlement Website to be filed with the Court.

3 d. The Mail Notice shall include a tear-away, postage pre-paid,
4 pre-addressed (to the Settlement Claims Administrator) Claim
5 Form, and shall bear a stamped claim number unique for each
6 recipient which shall state that each 23(b)(3) Settlement Class
7 Member must return the Claim Form to be eligible for benefits
8 available under the Settlement and shall provide “check box”
9 options for the 23(b)(3) Settlement Class Member to make his or
10 her election, in substantially the following form:

11 **BANKRUPTCY CREDIT REPORTING CLASS ACTION CLAIM FORM**

12 In order to obtain an award from the Settlement, you must select ONE AND
13 ONLY ONE of the options below and return this Claim Form by U.S. mail,
14 postmarked on or before October 15, 2009.

15 Option 1: I cannot make the certification required for Option 2, but I wish to
16 receive a Convenience Award which is estimated to be about \$20, depending on
17 how many people choose this Option. I believe that there have been one or more
18 errors in my credit reports regarding debt discharged in bankruptcy.

19 Option 2: I hereby CERTIFY that I believe I have been damaged by an error in
20 my credit reports regarding debt discharged in bankruptcy with respect to one or
21 more of the following transactions (check as many as apply) and wish to receive an
22 Actual Damage Award, which is estimated to range from \$150 to \$750, depending
23 on the transaction involved and on how many people choose this option.

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|---|------------|
| | Month/Year |
| <input type="checkbox"/> A denial of employment I applied for | _____ |
| <input type="checkbox"/> A mortgage loan or housing rental I sought | _____ |
| <input type="checkbox"/> A credit card, auto loan or other credit applied for | _____ |

24 **IMPORTANT:** you must provide an approximate date (month and year) of the
25 transaction so that your claim can be verified. If you do not do so, your claim will
26 be rejected.

27 **NOTE:** if you do not choose either of these options or you do not return this form
28 postmarked by October 15, 2009, you will get nothing from the Settlement and—
unless you exercise your right to opt-out of the settlement as detailed in the
accompanying Class Notice—you will lose your right to damages based on the
practices that are the subject of the Settlement.

I hereby affirm that the foregoing is true and correct to the best of my knowledge.

[Signature]

- e. Publication Notice: Between August 31, 2009 and September 30, 2009, the Settlement Administrator shall cause the Publication Notice (in a form substantially similar to that attached hereto as Exhibit B and approved by the Court) to be published one time in a nationally distributed newspaper or magazine. Not later than seven (7) days before the Final Fairness hearing, the Settlement Administrator shall cause proof of the publication of the Publication Notice to be filed with the Court.
- f. Telephone Assistance Program: The Settlement Administrator will establish a toll-free telephone number, which will be staffed by the Settlement Administrator, to answer questions from 23(b)(3) Settlement Class Members. The toll-free number will provide access to live support, a voice response unit (“VRU”) or a combination of live support and VRU. Not later than seven (7) days before the Final Fairness hearing, the Settlement Administrator will cause proof of the establishment and maintenance of the Telephone Assistance Program to be filed with the Court.

4.4 Expenses of Notice and Administration

- a. All notice, claims and other administration costs, excluding the costs associated with CAFA Notice as described in Section 4.5, shall be invoiced by the Settlement Administrator and paid promptly from the Settlement Fund.
- b. Within thirty (30) days after the Effective Date, the Settlement Administrator will provide to the 23(b)(3) Settlement Class

1 Counsel and Defendants a detailed statement of the costs that
2 will be incurred in generating and disbursing checks to
3 Claimants. Within sixty (60) days of the Effective Date and
4 subject to Defendants' and 23(b)(3) Settlement Class Counsel's
5 approval, the Settlement Administrator shall retain this amount
6 from the Settlement Fund to pay for such costs. Any disputes
7 relating to this Subsection shall be brought to the Court for
8 resolution.

9 c. The total expenses associated with notice, claims, and
10 administration shall not increase the amount paid by Defendants
11 as part of the Settlement under any circumstances. All payments
12 shall come from the Settlement Fund.

13 4.5 Notice Under Class Action Fairness Act of 2005 ("CAFA Notice")

14 Defendants will send CAFA Notice to the appropriate federal and state
15 officials identified in 28 U.S.C. § 1715(a), not later than ten (10) days after this
16 Settlement Agreement is filed with the Court. Defendants shall bear equal shares of
17 the costs of this CAFA Notice.

18 **V. PROCEDURES FOR SUBMISSION OF CLAIMS, OPT-OUTS, AND**
19 **OBJECTIONS**

20 5.1 Claims Administration

21 a. Claims Procedure

22 23(b)(3) Settlement Class Members may submit claims by no later than
23 October 15, 2009, by either (1) registering for a claim on the Settlement Website; or
24 (2) returning via U.S. mail the registration form that was attached to the Mail
25 Notice to the Settlement Administrator provided they do not opt-out. Such
26 registration shall be permitted commencing on the first day on which notice is
27 disseminated and concluding on October 15, 2009. The electronic registration form
28 shall be simplified, requiring only the 23(b)(3) Settlement Class Member's name,

1 current postal address, current telephone number, and last four digits of the class
2 member's Social Security number. The 23(b)(3) Settlement Class shall also be
3 required to select one of the monetary relief options identified in the Mail Notice.
4 Registrations submitted by U.S. mail shall contain the same information contained
5 in the electronic registration form and the 23(b)(3) Settlement Class Member's
6 signature and shall be mailed to a separate, dedicated post office box established by
7 the Settlement Administrator exclusively for the purpose of receiving such
8 registrations as provided herein.

9 b. Deceased Claimants

10 Claims may be filed by deceased Claimants through representatives of their
11 estate if appropriate documentation is provided. Any claims paid to a deceased
12 Claimant shall be made payable to the estate of the deceased Claimant.

13 c. Determining Adequacy of Claims

14 Registration forms, whether submitted electronically via the Settlement
15 Website or by U.S. Mail, that do not meet the requirements as set forth in this
16 Settlement Agreement and in the registration form instructions shall be rejected.
17 This shall include but is not limited to any failure to provide accurate information,
18 any failure to make the required representations and attestations concerning
19 membership in the 23(b)(3) Settlement Class, and any failure to sign a registration
20 form submitted by U.S. Mail.

21 The Settlement Administrator shall have the authority to determine whether
22 registration by any 23(b)(3) Settlement Class Member is complete and timely. The
23 Settlement Administrator's determinations in this regard shall be final and non-
24 appealable. Any 23(b)(3) Settlement Class Member whose claim is rejected shall
25 be barred from receiving any payment from the Settlement Fund, but shall in all
26 other respects be bound by the terms of this Settlement Agreement and by the Final
27 Approval Order entered in the Litigation, unless such 23(b)(3) Settlement Class
28 Member has submitted a timely request to opt out pursuant to Subsection 5.2a.

1 The Settlement Administrator shall notify, in a timely fashion, any claimant
2 whose claim form has been rejected, setting forth the reasons therefor. The
3 Settlement Administrator shall timely provide copies of all rejection notices to
4 Proposed 23(b)(3) Settlement Class Counsel and to Defendants.

5 d. No Liability for Determinations Relating to Adequacy of Claims

6 No person shall have any claim against Defendants, Plaintiffs, the 23(b)(3)
7 Settlement Class, 23(b)(3) Settlement Class Counsel, Defendants' Counsel, or the
8 Settlement Administrator based on any eligibility determinations made in
9 accordance with this Settlement Agreement.

10 e. Confidentiality

11 The Settlement Administrator (and any person retained by the Settlement
12 Administrator) shall sign a confidentiality agreement in a form agreed to by
13 Defendants' counsel and Proposed 23(b)(3) Settlement Class Counsel. The
14 confidentiality agreement will provide that the Settlement Administrator shall treat
15 as confidential the names, addresses and other identifying information concerning
16 23(b)(3) Settlement Class Members. The confidentiality agreement will further
17 provide that the Settlement Administrator shall use such information only for
18 purposes of fulfilling its duties and responsibility as provided for under this
19 Settlement Agreement.

20 5.2 Opt-Out

21 a. Opt-Out Procedure for Proposed 23(b)(3) Class Settlement Class
22 Member

23 A proposed 23(b)(3) Settlement Class Member may request to be excluded
24 from the 23(b)(3) Settlement Class by sending a written request for exclusion to
25 "Exclusion Requests - White Settlement Administrator." The 23(b)(3) Settlement
26 Class Member's opt-out request must contain the class member's original signature,
27 current postal address and telephone number, and the last four digits of the class
28 member's Social Security number, and a specific statement that the proposed

1 23(b)(3) Settlement Class Member wants to be excluded from the 23(b)(3)
2 Settlement Class. Opt-outs must be postmarked no later than October 15, 2009. In
3 no event shall persons who purport to opt out of the 23(b)(3) Settlement Class as a
4 group, aggregate, or class involving more than one claimant be considered valid
5 opt-outs. Requests for exclusion that do not comply with any of the foregoing
6 requirements are invalid.

7 b. List of Opt Outs

8 No later than seven (7) business days after the deadline for submission of
9 requests for exclusion or opt-out, the Settlement Administrator shall provide to
10 Proposed 23(b)(3) Settlement Class Counsel and Defendants a complete list of all
11 persons who have properly opted-out of the Settlement together with copies of the
12 opt-out requests.

13 5.3 Objections from Proposed 23(b)(3) Settlement Class Members

14 a. Any proposed 23(b)(3) Settlement Class Member who does not
15 opt out, but who instead wishes to object to the Settlement or
16 any other matters as described in the Notice s, may do so by
17 filing with the Court a notice of their intention to object (which
18 shall set forth each objection and the basis therefore and
19 containing the objecting 23(b)(3) Class Member's signed
20 verification of membership in the Settlement Class), with any
21 papers in support of their position, and serve copies of all such
22 papers upon 23(b)(3) Class Counsel and Defendants' Counsel.
23 Objections must be filed and served no later than October 15,
24 2009. Finally, the written objection must indicate whether the
25 class member and/or his lawyer(s) intends to appear at the Final
26 Fairness Hearing. Any lawyer who intends to appear at the
27 Final Fairness Hearing must enter a written Notice of
28 Appearance of Counsel with the Clerk of the Court no later than

1 the date set by the Court in its order preliminarily approving this
2 Settlement Agreement.

3 b. All responses to Objections submitted pursuant to Section 5.3a
4 shall be filed by October 30, 2009.

5 **VI. FINAL FAIRNESS HEARING AND FINAL APPROVAL**

6 6.1 Final Fairness Hearing

7 The Court will hold the Final Fairness Hearing to consider approval of the
8 Settlement of the Litigation as provided for herein on November 9, 2009. On or
9 before October 19, 2009, Proposed 23(b)(3) Settlement Class Counsel shall file a
10 motion for entry of the Final Approval Order. The Parties agree that the Final
11 Approval Order constitutes a dismissal of this Litigation with prejudice.

12 6.2 Final Approval

13 All of the affirmative relief contemplated by this Settlement Agreement is
14 expressly contingent upon the Settlement Agreement receiving the Court's Final
15 Approval.

16 **VII. SETTLEMENT FUND**

17 7.1 Creation of and Deposit Into Settlement Fund

18 a. Within ten (10) days following Preliminary Approval, if by that
19 date the Injunctive Relief Fee Agreement has been signed by the
20 Parties to this Agreement, the Parties will petition the Court for
21 approval to deposit the Settlement Fund with the Registry of the
22 Court, pursuant to Fed. R. Civ. P. 67. By the later of (1) seven
23 (7) days thereafter or (2), June 15, 2009, each Defendant shall
24 cause to be deposited into the Registry of the Court an amount
25 equal to fifteen million dollars (\$15,000,000.00). The
26 Defendants' payments are several, and not joint.

27 b. Until such time as the Settlement Fund shall be used or
28 disbursed as provided in this Settlement Agreement and as

1 approved by the Court, the Settlement Fund shall be held in the
2 Registry of the Court and invested in accordance with 28 U.S.C.
3 § 2041.

4 7.2 Settlement Fund Tax Status

- 5 a. The Parties agree to treat the Settlement Fund as being at all
6 times a “qualified settlement fund” within the meaning of Treas.
7 Reg. § 1.468B-1. In addition, the Settlement Administrator shall
8 timely make such elections as necessary or advisable to carry
9 out the provisions of this Subsection, including the “relation-
10 back election” (as defined in Treas. Reg. § 1.468B-1) back to
11 the earliest permitted date. Such elections shall be made in
12 compliance with the procedures and requirements contained in
13 such regulations. It shall be the responsibility of the Settlement
14 Administrator to timely and properly prepare and deliver the
15 necessary documentation for signature by all necessary parties,
16 and thereafter to cause the appropriate filing to occur.
- 17 b. For the purpose of Treasury Regulation § 1.468B of the Internal
18 Revenue Code of 1986, as amended, and the regulations
19 promulgated thereunder, the “administrator” shall be the
20 Settlement Administrator. The Settlement Administrator shall
21 timely and properly file all informational and other tax returns
22 necessary or advisable with respect to the Settlement Fund
23 (including, without limitation, the returns described in Treas.
24 Reg. § 1.468B-2(k)). Such returns (as well as the election
25 described in Subsection 7.2a above) shall be consistent with this
26 Subsection and in all events shall reflect that all Taxes
27 (including any estimated Taxes, interest or penalties) on the
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income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in Subsection 7.2c hereof.

c. All (a) Taxes (including any estimated Taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that may be imposed upon the Released Parties with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes (“Taxes”), and (b) expenses and costs incurred in connection with the operation and implementation of this Subsection (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in Subsection 7.2b (“Tax Expenses”), shall be paid out of the Settlement Fund; in no event shall the Released Parties have any responsibility for or liability with respect to the Taxes or the Tax Expenses. The Settlement Administrator shall indemnify and hold the Released Parties harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be timely paid by the Settlement Administrator out of the Settlement Fund without prior order from the Court, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas.

1 Reg. § 1.468B-2(l)); the Released Parties are not responsible
2 therefor nor shall they have any liability with respect thereto.
3 The Parties hereto agree to cooperate with the Settlement
4 Administrator, each other, and their tax attorneys and
5 accountants to the extent reasonably necessary to carry out the
6 provisions of this Section.

7 7.3 Monetary Relief Fees

- 8 a. On or before October 19, 2009, Proposed 23(b)(3) Settlement
9 Class Counsel shall file an application or applications to the
10 Court for reimbursement of Monetary Relief Fees from the
11 Settlement Fund. The application or applications shall be
12 noticed to be heard at the Final Fairness Hearing.
- 13 b. The application or applications for Monetary Relief Fees, and
14 any and all matters related thereto, shall not be considered part
15 of the Settlement Agreement, and shall be considered by the
16 Court separately from the Court's consideration of the fairness,
17 reasonableness and adequacy of the Settlement. Plaintiffs and
18 Proposed 23(b)(3) Settlement Class Counsel agree that this
19 Settlement Agreement is not conditional on the Court's approval
20 of Monetary Relief Fees or Injunctive Relief Fees in the
21 requested amount or in any amount whatsoever. The Court's
22 ruling on the application or applications for such fees shall not
23 operate to terminate or cancel the Settlement.
- 24 c. Except as provided under the Injunctive Relief Fee Agreement,
25 Defendants shall have no responsibility for, or any liability with
26 respect to, the payment of attorneys' fees and expenses to
27 23(b)(3) Settlement Class Counsel, and the sole source of any
28 award of Monetary Relief Fees shall be the Settlement Fund.

1 That amount includes not only the payment of all attorneys'
2 fees, costs, and expenses to 23(b)(3) Settlement Class Counsel,
3 but also payment for all attorneys and other persons working
4 under the direction of 23(b)(3) Settlement Class Counsel in the
5 Litigation.

6 7.4 Letter of Credit or Other Suitable Form of Security

7 Monetary Relief Fees, in the amount approved by the Court, shall be paid
8 pursuant to Section 7.6(b) provided that the Defendants receive a Letter of Credit or
9 other form of security suitable to them, in form and substance and from an issuer
10 satisfactory to them. The Letter of Credit or other form of security must ensure the
11 repayment to Defendants and Defendants' insurers, in proportion to their
12 contributions to the Settlement Fund, of any sums paid to 23(b)(3) Settlement Class
13 Counsel, including interest at the 60-day Treasury Bill Rate at the time of the Letter
14 of Credit, if any appeal is timely filed and the settlement approval, the award of
15 attorneys fees and costs, or both, is reversed on appeal. If security is not honored
16 when presented or the issuer fails to perform in accordance with its terms, 23(b)(3)
17 Settlement Class Counsel is immediately jointly and severally obligated to repay to
18 Defendants and Defendants' insurers, in proportion to their contributions to the
19 Settlement Fund any sums paid to 23(b)(3) Settlement Class Counsel, including
20 interest as set forth above, without recourse to the Letter of Credit or other form of
21 security. If no Letter of Credit or other suitable form of security is obtained, the
22 Attorneys' fees and expenses will be paid through distribution from the 23(b)(3)
23 Settlement Class Settlement Fund by the Settlement Administrator within ten (10)
24 days of the Effective Date.

25 7.5 Incentive Awards to the Named Plaintiffs

- 26 a. On or before October 19, 2009, Proposed 23(b)(3) Settlement
27 Class Counsel shall file an application or applications to the
28 Court for an incentive award, to each of the Named Plaintiffs

1 serving as class representatives in support of the Settlement, and
2 each such award not to exceed \$5,000.00.

3 b. Incentive Awards and the other benefits provided by this
4 Settlement will be the only compensation the Plaintiffs will
5 receive for their participation in this Litigation, and will be paid
6 in consideration of their full and complete release of all claims
7 relating to the claims brought in this Litigation.

8 **7.6 Use and Disbursement of Settlement Fund**

9 The Settlement Fund shall be used only in the manner and for the purposes
10 provided for in this Section or in Subsection 7.2c. No portion of the Settlement
11 Fund shall be disbursed except as expressly provided for herein:

12 a. After Preliminary Approval, the Parties shall jointly petition the
13 Court to pay the Settlement Administrator for the costs of notice
14 and related administrative expenses incurred with respect to
15 effecting the Notice Plan as provided in Section 4.3;

16 b. Within ten (10) days of the entry of order granting Final
17 Approval of the Settlement, the Parties shall jointly petition the
18 Court to pay from the Settlement Fund the Monetary Relief Fees
19 as approved by the Court to 23(b)(3) Settlement Class Counsel
20 as provided in Section 7.3 to the extent that 23(b)(3) Settlement
21 Class Counsel has fulfilled the letter of credit or security
22 obligations set forth in Section 7.4

23 c. Within ten (10) days of the Effective Date, the Parties shall
24 jointly petition the Court to pay from the Settlement Fund the
25 Incentive Awards to the Named Plaintiffs as provided in Section
26 7.5; and

27 d. Within ten (10) days of the Effective Date, the Parties shall
28 jointly petition the Court to pay the funds remaining in the

1 Registry of the Court (after payments of amounts pursuant to
2 Sections 7.6(b) and (c)) to the Settlement Administrator in trust
3 for distribution to the Claimants. Within ninety (90) days
4 following the Effective Date, all money remaining in the
5 Settlement Fund may be paid to Claimants, including any and all
6 reasonable and necessary expenses for the administration of
7 such payments (e.g., costs associated with generating and
8 mailing checks to Claimants) pursuant to the Distribution Plan
9 set forth in Section 7.5.

10 7.7 Distribution Plan

- 11 a. Each of the 23(b)(3) Settlement Class Members who return to
12 the Settlement Administrator a properly completed Claim Form
13 postmarked on or before October 15, 2009, shall be entitled to
14 receive an award from the Settlement Fund, as provided herein.
- 15 b. Convenience Awards. The Settlement Administrator shall pay
16 each 23(b)(3) Settlement Class Member who elected to receive a
17 Convenience Award (or “Option 1”) on his or her Claim Form,
18 or who made more than one election for more than one type of
19 monetary award, (“Convenience Award Claimant”) as provided
20 herein:
- 21 (i) The Settlement Administrator shall determine the amount
22 available to pay the total of all Convenience Awards
23 (herein, the “Available Convenience Award Funds”) by
24 subtracting from the total amount that Defendants paid
25 into the Settlement Fund the sum of all (i) Administrative
26 and Notice Costs; (ii) Incentive Awards paid to Plaintiffs
27 (iii) amounts paid for Monetary Relief Fees; and (iv)
28 estimated amounts to be paid for Actual Damage Awards,

1 which shall be calculated by the Settlement Administrator
2 by identifying the highest award to which each Actual
3 Damage Award Claimant may be entitled, multiplying the
4 total number of such claims in each category, and totaling
5 the results for all categories, but in no event shall the
6 Available Convenience Award Funds be less than \$10
7 Million.

8 (ii) The Settlement Administrator shall pay each Convenience
9 Award Claimant an equal *pro rata* share of the Available
10 Convenience Award Funds (*i.e.*, the amount of such equal,
11 *pro rata* share shall be determined by dividing the total
12 amount of Available Convenience Award Funds by the
13 total number of Convenience Award Claimants), via check
14 sent via U.S. mail to the last and best known address of the
15 Convenience Award Claimant.

16 (iii) The Convenience Awards will be distributed within ninety
17 (90) days of the Effective Date of the settlement, and any
18 unclaimed or uncashed Convenience Awards will expire
19 after ninety (90) days from issuance and the amounts
20 thereof added to the amounts available for payment of the
21 Predetermined Actual Damage Awards.

22 c. Actual Damage Awards. The Settlement Administrator shall
23 pay each 23(b)(3) Settlement Class Member who elected to
24 receive an Actual Damage Award (or “Option 2”) on his or her
25 Claim Form (“Actual Damage Award Claimant”) as provided
26 herein:

27 (i) The Settlement Administrator shall review each Claim for
28 an Actual Damage Award and will determine: whether

1 the Defendants' records as provided pursuant to Section
2 4.1 hereof indicate that a Post-bankruptcy Hard Inquiry
3 appears in the Actual Damage Award Claimant's File
4 within six (6) months of the date indicated by the Actual
5 Damage Award Claimant on the Claim Form, or whether
6 the Defendants' records as provided pursuant to Section
7 4.1 hereof indicate that a Post-bankruptcy Employment
8 Inquiry appears in the Actual Damage Award Claimant's
9 File. The Settlement Administrator shall accept all Actual
10 Damage Award Claims which meet these criteria, unless
11 the Settlement Administrator has a basis for believing that
12 any Actual Damage Award Claim is fraudulent or
13 otherwise invalid, in which case the Settlement
14 Administrator should withhold payment of such claims
15 and advise the Court accordingly.

- 16 (ii) Prior to payment of the Actual Damage Award Claims, the
17 Settlement Administrator shall review one thousand
18 (1,000) Actual Damage Award Claims, including, if the
19 Settlement Administrator deems it appropriate, an
20 examination of information appearing in the archived
21 credit files for the Actual Damage Award Claimants in
22 question, to confirm the validity of such claims. The
23 Defendants shall bear the cost of providing such
24 information from its archived credit files, if any, for this
25 limited initial review; provided, however, that this review
26 shall be submitted to each Defendant as a single batch
27 request. If the Settlement Administrator deems it
28 necessary to conduct further review of Actual Damage

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Award Claims, the costs of doing so will be borne by the Settlement Fund and subject to Court approval.

(iii) The Settlement Administrator shall pay all accepted Actual Damage Award Claims via check sent via U.S. mail to the last and best known address of the Actual Damage Award Claimant according to the following schedule:

<u>Type</u>	<u>Amount of Award</u>
1. Employment	If the Actual Damage Claimant’s File, as provided to the Settlement Administrator pursuant to Section 4.1, shows a Post-bankruptcy Employment Inquiry made which is consistent with an employment inquiry, or if there is no other evidence of the lack of such an employment inquiry, then the award shall be \$750.
2. Mortgage/Housing	If the Actual Damage Award Claimant’s File shows a Hard Inquiry made on a date within six (6) months of the date provided by the Actual Damage Award Claimant which is consistent with mortgage loan, landlord or other housing inquiry, then the award shall be \$500.

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<u>Type</u>	<u>Amount of Award</u>
3. Other Credit Inquires	If the Actual Damage Award Claimant's File shows a Post-bankruptcy Hard Inquiry within six (6) months of the date provided by the Actual Damage Award Claimant, and such Claimant has not opted for an Employment or a Mortgage/Housing award, then the award shall be \$150.

(iv) The Settlement Administrator shall pay to the Actual Damage Award Claimant the highest award for which he or she is eligible. Awards hereunder shall not be cumulative. The applicable award for each category will be increased or decreased, *pro rata*, to reflect (i) the number of valid claims in each category of Actual Damage Awards, and (ii) the funds available for distribution to the Actual Damage Award Claimants, including the addition of any unclaimed or uncashed Convenience Awards as set forth in Section 7.7b.

(v) If the Settlement Administrator determines that a Actual Damage Award Claimant is ineligible for a Actual Damage Award, then such Actual Damage Award Claimant's claim shall be converted into a Convenience Award Claim.

7.8 Capped Fund

Except for the costs of CAFA Notice pursuant to section 4.5 hereof, all of the following must be paid from the \$15,000,000.00 (fifteen million dollars) paid into the Settlement Fund by each Defendant: (i) notice and administration costs,

1 including without limitation the costs incurred by each Defendant in providing any
2 additional information requested by Plaintiffs and/or 23(b)(3) Settlement Class
3 Counsel, which shall be reimbursed promptly to each Defendant from the
4 Settlement Fund; (ii) payments to the Claimants; and (iii) payments to 23(b)(3)
5 Settlement Class Counsel for Monetary Relief Fees. The Parties and their
6 respective counsel agree that under no circumstances will each Defendant pay or
7 cause to be paid more than \$15,000,000.00 (fifteen million dollars) pursuant to this
8 Settlement.

9 **VIII. RELEASE OF CLAIMS**

10 8.1 Release of All Claims

11 Upon the Effective Date, Plaintiffs and each member of the 23(b)(3)
12 Settlement Class who has not opted out and his or her respective spouses, heirs,
13 executors, administrators, representatives, agents, attorneys, partners, successors,
14 predecessors and assigns and all those acting or purporting to act on their behalf
15 acknowledge full satisfaction of, and shall be conclusively deemed to have fully,
16 finally and forever settled, released and discharged the Released Parties of and from
17 all Released Claims. Subject to the Court's approval, all 23(b)(3) Settlement Class
18 Members shall be bound by this Settlement Agreement and all of their Released
19 Claims shall be dismissed with prejudice and released as against the Released
20 Parties, even if they never received actual notice of the Settlement prior to the
21 hearing on final approval of the Settlement.

22 8.2 Waiver of California Civil Code Section 1542

23 Plaintiffs, for themselves and for each 23(b)(3) Settlement Class Member,
24 acknowledge that they are aware that they may hereafter discover facts in addition
25 to or different from those that they or 23(b)(3) Settlement Class Counsel now
26 knows or believes to be true with respect to the subject matter of these releases, but
27 it is their intention to, and they do hereby, upon the Effective Date of this
28 Settlement Agreement, fully, finally and forever settle and release any and all

1 Released Claims, without regard to the subsequent discovery or existence of such
2 different or additional facts. Plaintiffs, for themselves and for each 23(b)(3)
3 Settlement Class Member, waives any and all rights and benefits afforded by
4 California Civil Code Section 1542, which provides as follows:

5 A GENERAL RELEASE DOES NOT EXTEND TO
6 CLAIMS WHICH THE CREDITOR DOES NOT KNOW
7 OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
8 THE TIME OF EXECUTING THE RELEASE, WHICH
9 IF KNOWN BY HIM OR HER MUST HAVE
10 MATERIALLY AFFECTED HIS OR HER
11 SETTLEMENT WITH THE DEBTOR.

12 Plaintiffs, each 23(b)(3) Settlement Class Member and 23(b)(3) Settlement
13 Class Counsel understand and acknowledge the significance of this waiver of
14 California Civil Code Section 1542 and/or of any other applicable federal or state
15 law relating to limitations on releases.

16 **IX. TERMINATION AND SUSPENSION**

17 9.1 Rights to Terminate Agreement

18 Defendants' willingness to settle this Litigation on a class-action basis and to
19 agree to the certification of a conditional 23(b)(3) Settlement Class is dependent
20 upon achieving finality in this Litigation, the desire to avoid the expense of this and
21 other litigation, and the ability and willingness of each Defendant's insurers to fund
22 the Settlement Fund. Consequently, each Defendant shall have the unilateral and
23 unfettered right to individually terminate this Settlement Agreement, declare it null
24 and void, and have no further obligations under this Settlement Agreement to the
25 Plaintiffs, 23(b)(3) Settlement Class Members, or Proposed 23(b)(3) Settlement
26 Class Counsel if any of the following conditions subsequently occurs:

- 27 a. The Court fails to grant Preliminary Approval;
- 28

- 1 b. More than 1,000 individuals request exclusion from the
- 2 Settlement pursuant to Section 5.2;
- 3 c. The Court fails to enter the Final Approval Order that is
- 4 mutually acceptable to the parties;
- 5 d. Such Defendant's insurer or insurers refuse to or otherwise fail
- 6 to fund in full the Settlement Fund as provided in Subsection
- 7 7.1, subject to the Defendant's exhaustion of its self-insured
- 8 retention, and such Defendant gives notice of its termination of
- 9 this Settlement Agreement within ten (10) days after the date for
- 10 funding the Settlement Fund as provided in Subsection 7.1;
- 11 e. The Court does not enter an order approving Injunctive Relief
- 12 Fees in an amount equal to or less than the amount set forth in
- 13 the Injunctive Relief Fee Agreement; and
- 14 f. The Effective Date does not occur for any reason, including the
- 15 entry of an order by any court that would require either material
- 16 modification or termination of the Settlement.

17 9.2 Agreement Among Defendants is Not Required

18 In determining whether to exercise its right to terminate this Settlement
19 Agreement pursuant to the circumstances described in Subsection 9.1, each
20 Defendant may act independently and agreement among Defendants to terminate is
21 not required. The Settlement Agreement shall remain in full force and effect as to
22 any settling Defendant who does not want to terminate pursuant to this Section, and
23 the termination of the Settlement Agreement by one or more other Defendants shall
24 not increase any non-settling Defendant's obligations under any provision in this
25 Settlement Agreement.

26 9.3 Plaintiffs' Right To Terminate This Settlement Agreement

27 Plaintiffs shall have the unilateral and unfettered right to terminate this
28 Settlement Agreement, declare it null and void, and have no further obligations

1 under this Settlement Agreement to any of the Defendants in the event that any two
2 of the three Defendants exercises their right to terminate this Settlement Agreement
3 pursuant to Section 9.1 hereof, and Plaintiffs exercise their termination right within
4 thirty (30) days of the second Defendant's exercise of its termination right.

5 9.4 Plaintiffs' Right To Seek Modification Of This Settlement Agreement

6 Plaintiffs shall have the unilateral and unfettered right to seek from the Court
7 a modification of this Settlement Agreement in the event that: (a) one of the three
8 Defendants exercises its right to terminate this Settlement Agreement pursuant to
9 Section 9.1 hereof; or (b) prior to the dissemination of class notice, one or more of
10 the Defendant's class lists provided to the Settlement Administrator pursuant to
11 Section 4.1 hereof exceeds twelve million (12,000,000) class members. Plaintiffs'
12 right to seek such modification extends to, but is not limited to, the amount and
13 manner of payments of Convenience Awards or Actual Damage Awards, the
14 manner and method of notice to the Class, and the general administration of the
15 Settlement, but shall expressly exclude any modification to the scope of the releases
16 provided herein or any modification to the amounts paid by Defendants as provided
17 herein.

18 9.5 The failure of any Court to approve the Monetary Relief Fees or the
19 Injunctive Relief Fees in the requested amounts or any amounts whatsoever, shall
20 not be grounds for Named Plaintiffs or Proposed 23(b)(3) Settlement Class Counsel
21 to terminate this Settlement Agreement.

22 9.6 Effect of Termination on This or Future Litigation

23 If this Settlement Agreement is terminated and only as to those Parties to the
24 extent the Settlement Agreement has been terminated as to them:

- 25 a. the class-certification portions of the Settlement Agreement
26 shall have no further force and effect and shall not be offered in
27 evidence or used in the Litigation or any other proceeding;
28

1 b. counsel for the Parties shall seek to have any Court orders,
2 filings, or other entries in the Court's file that result from this
3 Settlement Agreement set aside, withdrawn, and stricken from
4 the record;

5 c. the Settlement Agreement and all negotiations, proceedings, and
6 documents prepared, and statements made in connection with
7 either of them, shall be without prejudice to any party and shall
8 not be deemed or construed to be an admission or confession by
9 any Party of any fact, matter, or proposition of law; and

10 d. the Parties shall stand in the same procedural position as if the
11 Settlement Agreement had not been negotiated, made, or filed
12 with the Court.

13 9.7 Effect of Termination on Monies Paid by Defendants Pursuant to
14 Settlement Agreement

15 If this Settlement Agreement is terminated and only as to those Defendants to
16 the extent that the Settlement Agreement is terminated as to some of them: The
17 Settlement Fund, including interest earned, less Taxes, Tax Expenses, and notice,
18 claims, and other administration costs (including fees, costs, and other expenses of
19 the Court Registry) that have been properly disbursed pursuant to this Settlement
20 Agreement, shall be returned to such Defendant(s) and such Defendant's insurers in
21 equal proportions to their contributions into the Settlement Fund.

22 **X. PUBLIC STATEMENTS**

23 10.1 The Parties will negotiate and agree upon the language that may be
24 used in press releases and other forms of public statements concerning the
25 Settlement that would be issued prior to entry by the Court of the Final Approval
26 Order.

27 The Parties and/or their counsel shall make no statements to any third party
28 regarding the Settlement prior to entry by the Court of the Final Approval Order,

1 without the reasonable consent of the other Parties or his, her or its counsel, unless
2 such statements are reasonably necessary in effecting the terms of this Settlement
3 Agreement, or are required by law, including, without limitation, any disclosure
4 obligations imposed on Defendants by federal or state securities or tax laws.
5 Subsequent to the entry by the Court of a Final Approval Order, no party shall
6 make any public statements concerning this Settlement or this Litigation that
7 contains disparaging language of any of the Parties or their counsel.

8 10.2 Proposed 23(b)(3) Settlement Class Counsel and all Defendants'
9 Counsel agree that all extra-judicial statements in regard to the Settlement will
10 comport with Rule 5-120 of the California Rules of Professional Conduct.
11 Proposed 23(b)(3) Settlement Class Counsel may communicate with Claimants,
12 23(b)(3) or 23(b)(2) Settlement Class Members, clients, or potential clients.

13 **XI. MISCELLANEOUS PROVISIONS**

14 11.1 Admissibility of Settlement Agreement

15 This Settlement Agreement shall not be offered or be admissible in evidence
16 in any action or proceeding except (1) the hearings necessary to obtain and
17 implement Court approval of this Settlement; or (2) any hearing to enforce the
18 terms of this Settlement Agreement or any related order by the Court.

19 11.2 Successors and Assigns

20 The terms of this Settlement Agreement shall apply to and bind the Parties as
21 well as their heirs, successors and assigns.

22 11.3 Communications Relating to Settlement Agreement

23 All notices or other formal communications under this Settlement Agreement
24 shall be in writing and sent by mail to counsel for the party to whom the notice is
25 directed at the following addresses:
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Equifax:

Craig E. Bertschi, Esq.
Cindy Hanson, Esq.
KILPATRICK STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530

Experian:

Daniel J. McLoon, Esq.
Michael G. Morgan, Esq.
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555 South Flower Street
Fiftieth Floor
Los Angeles, CA 90071-2300

TransUnion:

Julia B. Strickland, Esq.
Stephen J. Newman, Esq.
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Los Angeles, CA 90067

Plaintiffs:

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LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
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San Francisco, California 94111

Michael Caddell, Esq.
CADDELL & CHAPMAN
1331 Lamar, Suite 1070
Houston, TX 77010

Lee A. Sherman, Esq.
CALLAHAN, MCCUNNE & WILLIS, APLC
111 Fashion Lane
Tustin, California 92780-3397

Any Party may, by written notice to all the other Parties, change its designated recipient(s) or notice address provided above.

11.4 Defendants' Communications with Consumers in the Ordinary Course of Business

Defendants reserve the right to continue communicating with their customers and Consumers, including 23(b)(3) Settlement Class Members, in the ordinary course of business. To the extent Consumers initiate communications regarding

1 this Settlement Agreement, Defendants may confirm the fact of a settlement and
2 refer inquiries to the Settlement Administrator. Nothing herein is intended to
3 prohibit Defendants from communicating with Consumers regarding disputes
4 relating to tradelines and the reporting of Chapter 7 bankruptcies.

5 11.5 Efforts to Support Settlement

6 The Parties and their counsel agree to cooperate fully in seeking Court
7 approval for this Settlement Agreement and to use their best efforts to effect the
8 consummation of the Settlement and to protect the Settlement Agreement by
9 applying for appropriate orders enjoining others from initiating or prosecuting any
10 action arising out of or related to facts or claims alleged in the Litigation, if so
11 required.

12 11.6 Procedures for Disputes Between Parties Relating to the Settlement 13 Agreement

14 To the extent any disputes or issues arise with respect to documenting or
15 effecting the Settlement Agreement, the Parties agree to use their best efforts to
16 informally resolve any such disputes or issues; but in the event any such dispute or
17 issue cannot be resolved informally, to bring any such dispute or issue to the Court
18 for resolution.

19 11.7 Entire and Voluntary Agreement

20 The Parties intend the Settlement Agreement to be a final and complete
21 resolution of all disputes between them, except for those disputes relating to the
22 Injunctive Relief Fee Agreement and except as further specifically provided for
23 herein. The Parties agree that the terms of the Settlement Agreement were
24 negotiated at arm's length and in good faith and were reached voluntarily after
25 consultation with competent legal counsel. This Settlement Agreement contains the
26 entire agreement and understanding concerning the subject matter between the
27 Parties, excluding those subjects that relate to the Injunctive Relief Fee Agreement,
28 and supersedes all prior negotiations and proposals, whether written or oral. No

1 other party or any agent or attorney of any other party has made any promise,
2 representation or warranty whatsoever not contained in this Settlement Agreement
3 and the other documents referred to in this Settlement Agreement to induce them to
4 execute the same. The Parties represent that they have not executed this instrument
5 or the other documents in reliance on any promise, representation or warranty not
6 contained in this Settlement Agreement and the other documents referred to in this
7 Settlement Agreement.

8 11.8 Headings for Convenience Only

9 The headings in this Settlement Agreement are for the convenience of the
10 reader only and shall not affect the meaning or interpretation of this Settlement
11 Agreement.

12 11.9 Settlement Agreement Controls

13 All of the exhibits attached hereto are hereby incorporated by reference as
14 though fully set forth. To the extent that there is any conflict between the terms of
15 this Settlement Agreement and the exhibits attached hereto, this Settlement
16 Agreement shall control.

17 11.10 Amendments

18 The Settlement Agreement may be amended or modified only by a written
19 instrument signed by Defendants and 23(b)(3) Settlement Class Counsel, or their
20 respective successors-in-interest.

21 11.11 Authorization of Counsel

- 22 a. Proposed 23(b)(3) Settlement Class Counsel, on behalf of the
23 23(b)(3) Settlement Class, are expressly authorized by Plaintiffs
24 to take all appropriate action required or permitted to be taken
25 by the 23(b)(3) Settlement Class pursuant to the Settlement
26 Agreement to effectuate its terms, and also are expressly
27 authorized to enter into any modifications or amendments to the
28

1 Settlement Agreement on behalf of the 23(b)(3) Settlement
2 Class which they deem necessary or appropriate.

3 b. Each attorney executing the Settlement Agreement on behalf of
4 any Party hereto hereby warrants that such attorney has the full
5 authority to do so.

6 11.12 Confidentiality

7 All agreements made and Orders entered during the course of the Litigation
8 relating to the confidentiality of information shall survive this Settlement
9 Agreement.

10 11.13 Court's Jurisdiction

11 The Court shall retain jurisdiction with respect to implementation and
12 enforcement of the terms of the Settlement Agreement.

13 11.14 Construction

14 Each of the Parties has cooperated in the drafting and preparation of this
15 Settlement Agreement. Hence, in any construction to be made of this Settlement
16 Agreement, the same shall not be construed against any of the Parties. Before
17 declaring any provision of this Settlement Agreement invalid, a court should first
18 attempt to construe the provision valid to the fullest extent possible consistent with
19 applicable precedent so as to find all provisions of this Settlement Agreement valid
20 and enforceable.

21 11.15 No Claims Arising from this Settlement Agreement

22 No person shall have any claim against any Defendant, Defendant's Counsel,
23 or 23(b)(3) Settlement Class Counsel based on distribution of benefits made
24 substantially in accordance with this Settlement Agreement or any Settlement
25 Agreement related order(s) of the Court.

26 11.16 Applicable Law

27 This Settlement Agreement shall, in all respects, be interpreted, construed
28 and governed by and under the laws of the United States of America. To the extent

1 state law applies for any reason, the laws of the State of California shall be applied.
2 All judicial proceedings regarding this Settlement Agreement shall be brought only
3 in the Court. Any notice period set forth in this Settlement Agreement shall be
4 calculated pursuant to the Federal Rules of Civil Procedure and the Central District
5 of California's Civil Local Rules.

6 11.17 Counterparts

7 This Settlement Agreement may be executed in one or more counterparts and
8 by facsimile. All executed counterparts and each of them shall be deemed to be one
9 and the same instrument. Counsel for the Parties shall exchange among themselves
10 signed counterparts and a complete set of executed counterparts shall be filed with
11 the Court.

12 Dated: April __, 2009

LIEFF CABRASER HEIMANN &
BERNSTEIN LLP

14 By: _____
15 Michael Sobol

16 Co-Lead Counsel for Plaintiffs and
17 Proposed 23(b)(3) Settlement Class

18 Dated: April 24, 2009

CADDELL & CHAPMAN

19 By: Michael Caddell
20 Michael Caddell

21 Co-Lead Counsel for Plaintiffs and
22 Proposed 23(b)(3) Settlement Class

23 Dated: April __, 2009

CALLAHAN, MCCUNE & WILLIS
APLC

25 By: _____
26 Lee A. Sherman

27 Attorneys for Plaintiffs and Proposed
28 23(b)(3) Settlement Class


1 state law applies for any reason, the laws of the State of California shall be applied.
2 All judicial proceedings regarding this Settlement Agreement shall be brought only
3 in the Court. Any notice period set forth in this Settlement Agreement shall be
4 calculated pursuant to the Federal Rules of Civil Procedure and the Central District
5 of California's Civil Local Rules.

6 11.17 Counterparts

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8 by facsimile. All executed counterparts and each of them shall be deemed to be one
9 and the same instrument. Counsel for the Parties shall exchange among themselves
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11 the Court.

12 Dated: April 24, 2009

LIEFF CABRASER HEIMANN &
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15 Michael Sobol

16 Co-Lead Counsel for Plaintiffs and
17 Proposed 23(b)(3) Settlement Class

18 Dated: April , 2009


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20 Michael Caddell

21 Co-Lead Counsel for Plaintiffs and
22 Proposed 23(b)(3) Settlement Class

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25 By: 
26 Lee A. Sherman

27 Attorneys for Plaintiffs and Proposed
28 23(b)(3) Settlement Class

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Dated: April 24, 2009

NATIONAL CONSUMER LAW CENTER

By:  
Stuart T. Rossman
Charles M. Delbaum

Attorneys for Plaintiffs and Proposed 23(b)(3) Settlement Class

Dated: April __, 2009

CONSUMER LITIGATION ASSOCIATES, P.C.

By: _____
Leonard A. Bennett

Attorneys for Plaintiffs and Proposed 23(b)(3) Settlement Class

Dated: April __, 2009

WELLER, GREEN, TOUPS & TERRELL, L.L.P.

By: _____
Mitchell A. Toups

Attorneys for Plaintiffs and Proposed 23(b)(3) Settlement Class

Dated: April __, 2009

PLAINTIFF JOSE HERNANDEZ

By: _____

Dated: April __, 2009

PLAINTIFF ROBERT RANDALL

By: _____

Dated: April __, 2009

PLAINTIFF BERTRAM ROBISON

By: _____

1 Dated: April __, 2009

NATIONAL CONSUMER LAW
CENTER

2
3 By: _____
4 Stuart T. Rossman
Charles M. Delbaum

5 Attorneys for Plaintiffs and Proposed
6 23(b)(3) Settlement Class

7 Dated: April __, 2009

CONSUMER LITIGATION
ASSOCIATES, P.C.

8
9 By: _____
10 Leonard A. Bennett

11 Attorneys for Plaintiffs and Proposed
12 23(b)(3) Settlement Class

13 Dated: April ^{24~~th~~} __, 2009

WELLER, GREEN, TOUPS &
TERRELL, L.L.P.

14 By: _____
15 Mitchell A. Toups

16 Attorneys for Plaintiffs and Proposed
17 23(b)(3) Settlement Class

18 Dated: April __, 2009

PLAINTIFF JOSE HERNANDEZ

19 By: _____

20
21 Dated: April __, 2009

PLAINTIFF ROBERT RANDALL

22 By: _____

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25 Dated: April __, 2009

PLAINTIFF BERTRAM ROBISON

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Dated: April __, 2009

NATIONAL CONSUMER LAW CENTER

By: _____
Stuart T. Rossman
Charles M. Delbaum

Attorneys for Plaintiffs and Proposed 23(b)(3) Settlement Class

Dated: April __, 2009

CONSUMER LITIGATION ASSOCIATES, P.C.

By: _____
Leonard A. Bennett

Attorneys for Plaintiffs and Proposed 23(b)(3) Settlement Class

Dated: April __, 2009

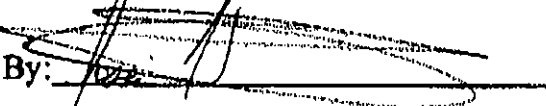
WELLER, GREEN, TOUPS & TERRELL, L.L.P.

By: _____
Mitchell A. Toups

Attorneys for Plaintiffs and Proposed 23(b)(3) Settlement Class

Dated: April 24, 2009

PLAINTIFF JOSE HERNANDEZ

By: _____


Dated: April __, 2009

PLAINTIFF ROBERT RANDALL

By: _____

Dated: April __, 2009

PLAINTIFF BERTRAM ROBISON

By: _____

1 Dated: April __, 2009

PLAINTIFF KATHRYN PIKE

2

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By: _____

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Dated: April 24, 2009

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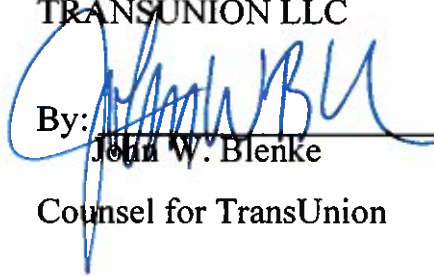
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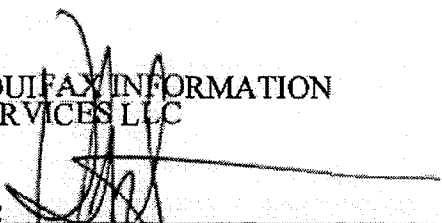
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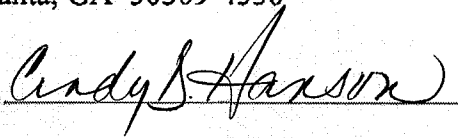
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Dated: April 24, 2009

EQUIFAX INFORMATION SERVICES LLC

By: 
Kent E. Mast

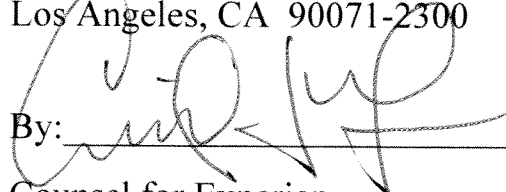
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