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12 *Attorneys for Plaintiffs*

13 **IN THE UNITED STATES DISTRICT COURT**  
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
15 **SOUTHERN DIVISION**

16 TERRI N. WHITE, *et al.*,

17 *Plaintiffs,*

18 *v.*

19 EXPERIAN INFORMATION  
SOLUTIONS, INC.,

20 *Defendant.*

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

**JOINT STATUS REPORT**

Judge: Hon. David O. Carter

21  
22 and related cases:

- 23 05-cv-0173-DOC (MLGx)  
24 05-cv-7821-DOC (MLGx)  
25 05-cv-0392-DOC (MLGx)  
26 05-cv-1172-DOC (MLGx)  
05-cv-5060-DOC (MLGx)

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

1 Plaintiffs José Hernandez, et al. (the “Hernandez Plaintiffs”), Defendants  
2 Experian Information Solutions, Inc., Equifax Information Services, LLC, and Trans  
3 Union LLC, and Plaintiffs Robert Radcliffe, Chester Carter, Maria Falcon, Clifton  
4 C. Seale, III, and Arnold E. Lovell (the “White Plaintiffs”) (the “parties”) file this  
5 Joint Status Report regarding a proposed agreed recalculation of the attorneys’ fee  
6 award.

7 1. On December 12, 2019, the Ninth Circuit Court of Appeals affirmed this  
8 Court’s approval of the Settlement in this action but remanded the case solely for  
9 reconsideration of “the attorneys’ fee award in line with [its] opinion in *Radcliffe*  
10 *II.*” *Radcliffe v. Hernandez*, 794 Fed. App’x 605, 608 (9th Cir. 2019) (“*Radcliffe*  
11 *III*”).

12 2. On February 24, 2020, the Court ordered the parties to submit a Joint  
13 Status Report recommending how the Court should proceed in determining a  
14 recalculation of the attorneys’ fee award. (Dkt. 1179.)

15 3. On March 5, 2020, the parties advised the Court that the White Plaintiffs  
16 planned to file a petition for writ of certiorari in the U.S. Supreme Court and  
17 proposed that briefing on recalculation of the attorneys’ fees should be deferred until  
18 after the Supreme Court ruled on the petition for certiorari. (Dkt. 1180.)

19 4. On March 16, 2020, the White Plaintiffs filed a petition for a writ of  
20 certiorari with the U.S. Supreme Court.

21 5. On June 8, 2020, the Supreme Court denied the petition for certiorari.

22 6. Now that the Supreme Court has ruled, the parties are prepared to  
23 recommend an agreed procedure for recalculation of the attorneys’ fee award.

24 7. The parties note that in *Radcliffe III*, the Ninth Circuit “recognize[d] that  
25 the district court’s fee calculation appears to have taken into account Settling  
26 Counsel’s ‘debt’ to the class in other ways, such that it may be unwarranted for the  
27 district court to simply subtract the \$6 million estimated cost of re-notice from the  
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1 \$8,262,848 fee award currently in place.” *Radcliffe III*, 794 Fed. App’x at 608. The  
2 parties infer that the Court considered the re-notice costs when it found that a 5%  
3 fee reduction below the 25% benchmark was appropriate “given the full history and  
4 context of this Settlement.” Dkt. 1135 at 39. The Hernandez Plaintiffs accordingly  
5 propose, and the Defendants and the White Plaintiffs do not oppose,<sup>1</sup> that the Court  
6 find that Class Counsel’s original fee request, \$11,161,163.06, (Dkt. 1096 at 2), is  
7 the appropriate base fee amount, before any deductions are made to account for re-  
8 notice costs.

9 8. As shown in the Declaration of Jennifer M. Keough Regarding Cost of  
10 Notice Dissemination, attached as Ex. 1 (“Keough Decl.”), the Settlement  
11 Administrator, JND Legal Administration LLC (“JND”), estimates the costs of  
12 dissemination of the 2017 Notice at \$4,901,619.73, including \$48,141.25 in fees and  
13 \$4,853,478.48 in costs of disseminating email and mail notice. Ex. 1, Keough Decl.  
14 ¶ 3.

15 9. Including costs attributed to activities that are not related to the  
16 dissemination of Notice, JND estimates the total costs of Settlement notice and  
17 administration to be \$5,920,122.53. *Id.* ¶ 4. The remaining costs relate to distribution  
18 of settlement funds and non-monetary benefits.

19 10. Counsel for the Hernandez Plaintiffs and Counsel for the White Plaintiffs  
20 have negotiated and agreed to additional deductions of \$122,807.67, resulting in a  
21

22  
23 <sup>1</sup> Consistent with their prior Objections, the White Plaintiffs disagree with the  
24 inclusion of the purported value of Settling Counsel’s creation of an on-line credit  
25 reporting assistance tool as part of the settlement valuation for purposes of  
26 calculating the fee award, but notwithstanding that disagreement, they do not oppose  
27 the award of a base fee amount of \$11,161,363.06. The Hernandez Plaintiffs and  
28 Defendants believe this issue is moot, since appellate review of this issue, in their  
view, has concluded, and all of the parties accept the base attorneys’ fee award as  
the starting point before calculating any deductions to account for re-notice costs.

1 total deduction of \$5,024,427.40 for costs of re-notice. Defendants do not oppose  
2 this amount.

3 11. The parties also agree that an additional \$567,284.91 should be deducted  
4 from the attorneys' fee award to account for costs of the 2010 supplemental notice.

5 12. Accounting for these deductions, the parties agree that a reduced  
6 attorneys' fee award of \$5,569,450.75 is appropriate.

7 13. Attached to this status report is a draft Proposed Order awarding the  
8 reduced attorneys' fee amount.

9 14. Since their fee application was originally filed, (*see* Dkt. 1096), Class  
10 Counsel has incurred additional lodestar in the amount of \$1,247,029.50. This  
11 lodestar represents work performed successfully defending the Settlement at the  
12 Ninth Circuit and the U.S. Supreme Court. *See* Declaration of Michael A. Caddell,  
13 attached as Ex. 2 ("Caddell Decl."); Declaration of Michael W. Sobol, attached as  
14 Ex. 3 ("Sobol Decl."); Declaration of James A. Francis, attached as Ex. 4 ("Francis  
15 Decl."); Declaration of F. Paul Bland, attached as Ex. 5 ("Bland Decl."). The draft  
16 Proposed Order accordingly includes findings recalculating the Court's lodestar  
17 cross-check.

18 15. The draft Proposed Order also awards expenses to Class Counsel in the  
19 amount of \$898,238.12, including the \$838,836.94 awarded in the Court's previous  
20 Final Approval Order, (Dkt. 1135 at 42), as well as \$59,401.18 in additional  
21 expenses which have been incurred from October 2017 to the present. These  
22 additional expenses include expenses for travel and filing fees related to proceedings  
23 before this Court, as well as the Ninth Circuit appeal and petition for certiorari,  
24 which were not included in Class Counsel's previous submissions of their expenses.  
25 *See* Ex. 2, Caddell Decl. ¶ 3; Ex. 3, Sobol Decl. ¶ 3; Ex. 4, Francis Decl. ¶ 3; Ex. 5,  
26 Bland Decl. ¶ 3.

1           16. The draft Proposed Order also reaffirms the provisions for payment of  
2 Injunctive Relief fees and expenses made in this Court’s Amended Judgment. (Dkt.  
3 1161.)

4           17. The draft Proposed Order further provides that to the extent that any fees  
5 may be awarded to White Plaintiffs’ Counsel in connection with their Objections,  
6 those funds will come solely from the Monetary Relief Fees. Pursuant to the parties’  
7 stipulation that any further proceedings, including appeals, concerning the allocation  
8 of the Monetary Relief Fees will not delay the occurrence of the Effective Date,  
9 (Dkt. 1158), the Effective Date will therefore occur 30 days following entry of the  
10 Proposed Order.

11           18. The draft Proposed Order further reaffirms that White Plaintiffs’ Counsel  
12 are entitled to reimbursement for the reasonable pre-objection fees and costs they  
13 incurred in connection with Plaintiffs’ monetary relief claims, (Dkt. 1158), and that  
14 the amount of such fees and costs and their allocation as between White Plaintiffs’  
15 Counsel and Settling Counsel shall be submitted to arbitration in accordance with  
16 any applicable terms of the parties’ Joint Prosecution Agreement and any applicable  
17 terms of any applicable Co-Counsel Agreements. (Dkt. 1158.)

18           19. The draft Proposed Order also reaffirms the Amended Judgment’s  
19 provisions regarding payments to be made following the Effective Date, except that  
20 the three Defendants will each pay \$333,333.33 directly to JND, instead of making  
21 these payments into the Registry of the Court. This change is made solely to avoid  
22 any inconvenience or delay in transferring these funds. All parties agree that nothing  
23 in the draft Proposed Order or this Report will result in the Defendants paying any  
24 amounts in addition to the \$333,333.33 referenced in this paragraph and the  
25 Injunctive Relief fees and expenses made in this Court’s Amended Judgment. (Dkt.  
26 1161).

1           20. Contemporaneously with this filing, JND will post a copy of this Status  
2 Report and the Proposed Order on the Settlement Website.

3           21. The parties stand ready to address these matters and/or provide any further  
4 information at the Court's convenience.

5  
6 Dated: July 16, 2020

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Amy E. Tabor, hereby certify that on July 16, 2020 this document was filed with the Court using the CM/ECF system and thereby served on all counsel of record.

/s/Amy E. Tabor  
Amy E. Tabor

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