IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

YAAKOV CINNER, on behalf of himself and all others similarly situated, Plaintiff, v. XACTUS, LLC, and CREDIT PLUS, LLC, individually and as successor in interest to CREDIT PLUS, INC. Defendants.	No. 2:23-cv-4531-JMY

PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT

Pursuant to FED. R. CIV. P. 23(e), Plaintiff Yaakov Cinner moves this Court for an Order preliminarily approving the Settlement Agreement submitted herewith, and requests that the Court (1) find that it will likely be able to approve the proposed settlement under FED. R. CIV. P. 23(e)(2), as amended, and certify the proposed Settlement Class for purposes of judgment on the Settlement; (2) approve the form, content, and method of delivering notice to the Class as set out in the Settlement Agreement; and (3) schedule a final approval hearing. In support thereof, he submits the attached memorandum of law.

Dated: May 22, 2026

Respectfully submitted,

YAAKOV CINNER, *by his attorneys*,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was electronically filed on this date with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to all counsel of record.

Date: May 22, 2026

/s/ Lauren KW Brennan
Lauren KW Brennan

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MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT

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I. INTRODUCTION

Following two and a half years of contested litigation, Plaintiff Yaakov Cinner, ("Plaintiff" or the "Class Representative") and Defendants Xactus, LLC and Credit Plus, LLC ("Xactus" or "Defendants") (together, the "Parties"), have reached a class-wide settlement in this matter, subject to Court approval consistent with FED. R. CIV. P. 23(e). To that end, Plaintiff respectfully submits this memorandum of law in support of his Motion for Preliminary Approval of the Class Action Settlement pursuant to FED. R. CIV. P. 23(e) and asks the Court to direct notice of the settlement to the Class. The Parties' Settlement Agreement ("Settlement") and accompanying papers are attached hereto.

The Settlement resolves the claims of a Settlement Class consisting of approximately 28,416 consumers who were the subjects of Defendants' "Merged Infile Credit Reports" that were sold to creditors for underwriting purposes. Defendants' reports contained the Settlement Class Members' charged off accounts with a non-$0 balance and a non-$0 calculated monthly payment amount despite the fact that two of the three national consumer reporting agencies reported a $0 balance account to Defendants.

Plaintiff and the Settlement Class assert that each of these reports was inaccurate and misleading in violation of section 1681e(b) of the Fair Credit Report Act, and that Defendants willfully violated the FCRA by selling such reports. Defendants asserted multiple defenses to these claims and even if Plaintiff's pending Motion for Class Certification (ECF 65) was granted, Defendants would be expected to vigorously contest both merits and evidentiary issues if not for the Settlement.

The Settlement provides a non-reversionary cash fund of $2,400,000 which will be used to provide settlement checks to Settlement Class Members and to pay all administrative costs, attorneys' fees, litigation expenses, and a service award to the named Plaintiff. S.A. at § 4. Settlement Class Members that submit a claim form attesting to harm as a result of Defendants' conduct will receive a *pro rata* payment, expected to be in excess of $500 depending upon the number of Claimants. *Id.* at § 11.1(a).

The Settlement was reached after a day long mediation session supervised and managed by the experienced mediator Noah J. Hanft, and represents a strong result for the Settlement Class. Moreover, the settlement here satisfies FED. R. CIV. P. 23(e), as amended in 2018, which provides that grounds exist to give notice of a proposed class action settlement to class members where the parties show that "the court will likely be able to (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." FED. R. CIV. P. 23(e)(1)(B). That is the case here. Accordingly, Plaintiff requests that the Court: (1) grant preliminary approval of the proposed Settlement Agreement; (2) schedule a final approval hearing; (3) approve the proposed forms of notice; and (4) set dates for dissemination of notice to Class Members. Each of these matters is discussed below. Defendants do not oppose the relief sought in this motion.

II. NATURE AND HISTORY OF THE LITIGATION

Defendants are classified as a consumer reporting agency ("CRA") regulated by the FCRA, and specialize in selling credit reports to mortgage lenders. At issue in this case is Defendants' "Merged Infile Credit Report" product which includes data from multiple sources, including the "Big Three," National Credit Reporting Agencies ("CRAs"), Trans Union, Experian, and Equifax. In preparing these reports, Defendants combine or "merge" the credit histories of mortgage loan applicants originated by the Big Three onto a single report for review by a mortgage lender evaluating a consumer's loan eligibility.

This case addresses Defendants' practice of reporting a "calculated monthly payment" on certain charged-off revolving credit accounts (denoted with an "R9" status code), even where two out of the Big Three CRAs reported a $0 balance for the account - a strong indication that no balance was owed and no monthly payment existed. Plaintiff asserts that this practice results in the systematic reporting of inaccurate information, in violation of Defendants' obligation to follow "reasonable procedures to assure maximum possible accuracy" when reporting consumer information. 15 U.S.C. § 1681e(b).

Plaintiff filed his Class Action Complaint on November 16, 2023. ECF 1. Defendants moved to dismiss (ECF 13), and Plaintiff responded by filing a First Amended Complaint on January 24, 2024. ECF 18. Defendants filed an Answer to the First Amended Complaint (ECF 24), and the Parties then embarked on discovery, including 2 depositions, the production of interrogatory responses, admissions, documents and data stretching well over 1,000 pages and across multiple data sets, including credit report data. The Parties also exchanged 2 detailed expert reports and took an expert deposition. Armed with this discovery, Plaintiff moved for Class Certification on September 5, 2025. ECF 65. Defendants filed their opposition brief on October 17, 2025. ECF 71. In light of the additional evidence attached to Defendants' opposition, and because the Parties agreed to attend a mediation to discuss resolution of the case, Plaintiff requested and was granted relief from certain remaining deadlines. ECF 75.

The Parties attended a full day mediation with Noah J. Hanft on December 16, 2025. They were not able to reach a resolution at the mediation, and following their joint status report, the Court set further deadlines for the completion of briefing and discovery. ECF 80.

However, the Parties continued to discuss the possibility of settlement, and on March 16, 2026 informed the Court that they had reached a settlement in principle to resolve the case. ECF

89. Since then, the Parties exchanged drafts of a Class Action Settlement Agreement and ancillary documents (proposed orders, class notice, claim form, etc.), which was finally executed on May 22, 2026. That Agreement is attached hereto and is submitted instantly for preliminary approval.

III. TERMS OF THE PROPOSED SETTLEMENT

A. Payments to Settlement Class Members

Defendants will pay the sum of $2,400,000.00 to create a Settlement Fund that will be used to provide monetary relief to Settlement Class Members, to pay Class Counsel's approved attorneys' fees and litigation expenses, to pay a service award to the Class Representative, and to pay the costs of notice and administration of the settlement, all subject to approval by the Court. S.A. at § 4.

To receive a payment from the Settlement Fund, Settlement Class Members will be required to submit a valid claim form, which will be made available to them on the Settlement website. *Id.* at § 5.3, 9.1. Settlement Class Members making a valid claim ("Claimants") will receive a *pro rata* share of the Net Settlement Fund. *Id.* § 11.1(a).

Based on estimates derived from similar litigation as well as from typical claims rates data for similar cases obtained from the settlement administrator, Plaintiff expects that Claimants will receive payments of approximately $500 each. The exact amount cannot be known before claims are actually submitted, so therefore the actual recovery of Class Members may differ from the figure stated on the Class Notice, however this estimate is based upon the best historical data available now.

If, after distribution of the Settlement Fund, any funds remain that would allow $5.00 or more to be paid to all Settlement Class Members who cashed their previous check (and also fund Notice and Administration Expenses), there will be a second distribution. S.A. at § 11.1(d). After the second distribution, or if there is no second distribution, any remaining funds will be distributed by the Settlement Administrator as a *cy pres* to a *cy pres* recipient to be agreed upon by the parties and submitted to the Court for approval in the Final Approval Motion. *Id.* at § 4.2(d).

B. Attorney Fees & Costs; Service Award to Named Plaintiff

Plaintiff and Class Counsel will seek an award of attorneys' fees of one-third of the Settlement Fund, or $800,000, and litigation costs not to exceed $25,000, to be paid out of the Settlement Fund, subject to approval of the Court. *Id*. at § 10.1. Plaintiff will also seek a one-time Individual Settlement and Service Award for the Class Representative in the amount of $15,000, subject to approval of the Court. *Id*. at § 10.2.

C. Class Notice and Administration

The Parties have agreed to use Continental DataLogix, LLC, an experienced class administrator. Settlement Notice shall be delivered to Settlement Class Members via U.S. Mail, based upon the most recent address available in Defendants' records, updated by the Settlement Administrator via the USPS National Change of Address system, or any other appropriate database the Settlement Administrator regularly uses for updating mailing addresses. *Id*. at § 5.4(a-b). The administrator will establish the Settlement Website, www.CinnerFCRAClassAction.com, containing details about the Settlement, as well as the Agreement, Settlement Notice, the preliminary approval order, and other relevant documents. *Id*. at § 5.3. It will also manage a toll-free telephone number for the settlement. *Id*. The cost of issuing the Settlement Notice and all administration expenses (including claims-processing and payments) is projected to be $80,000.00 and will be pulled from the Settlement Fund promptly after preliminary approval. *Id.* at § 4.1(a).

D. Right to Object or Request Exclusion

The Agreement provides an opportunity for Settlement Class Members to object by serving a Notice of Objection before the Objection Deadline upon Class Counsel, counsel for Defendants, and the Court. *Id.* at § 8.1(a). Objectors are to include a statement of each objection asserted, including the grounds for the objection together with any supporting documentation the Settlement Class Member wishes to bring to the Court's attention, and any other evidence the Settlement Class Member wishes to include in support of the objection. *Id.* at § 8(b).

Alternatively, all Settlement Class Members have the opportunity to request exclusion from the Settlement Class by submitting a valid Request for Exclusion to the Settlement Administrator. *Id.* at § 7.

E. No Reverter

No unclaimed, undelivered, or uncashed funds will revert to Defendants. *Id*. at § 4.2 (c). If there are any funds remaining after the first distribution to Settlement Class Members and it is feasible to make a disbursement of at least $5.00 each to those who cashed their payments, the Settlement Administrator will disburse another round of payments. *Id*. at § 11.1(d). If there are any funds remaining thereafter, the Agreement calls for the Settlement Administrator to make a *cy pres* distribution as approved by the Court. *Id*. at 4.2(d).

F. Release

Class Members shall release Defendants from any and all claims that were or could have been asserted in the Complaint concerning FCRA Section 1681e(b) claims regarding the claims alleged in this case. *Id.* § 12.1. For himself only, the Class Representative agrees to a general release. *Id*. at § 12.2.

IV. LEGAL ARGUMENT

A. Standard for preliminary approval of proposed class settlement

Under Federal Rule of Civil Procedure 23(e), "the claims … of a class proposed to be certified for the purpose of settlement . . . may be settled . . . only with the court's approval." As all the Settlement Class Members would be bound by the proposed Agreement, the Court must direct reasonable notice of the settlement if the Parties show "that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." FED. R. CIV. P. 23(e)(1)(B). In making class settlement determinations, courts must remain mindful that "there is an overriding public interest in settling class action litigation, and it should therefore be encouraged." *In re Warfarin Sodium Antitr. Litig.*, 391 F.3d 516, 535 (3d Cir. 2004).

The Court may approve a class settlement "only after a hearing and only on finding that it is fair, reasonable, and adequate[.]" FED. R. CIV. P. 23(e)(2). In 2018, the settlement provisions of Rule 23 were substantially revised with the goal of directing courts to consider a targeted "list of core concerns" when determining whether to approve a proposed settlement. 2018 Advisory Committee Notes to FED. R. CIV. P. 23. Courts are to consider whether:

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:
>> (i) the costs, risks, and delay of trial and appeal;
>> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
>> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
>> (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

FED. R. CIV. P. 23(e)(2).[1] Additionally, prior to the 2018 Amendments, the Third Circuit in *Girsh* provided a list of factors to consider as a guide. *Somogyi*, 495 F. Supp. 3d at 348 (citing *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975)). These factors include:

> (1) the complexity, expense and likely duration of the litigation;
> (2) the reaction of the class to the settlement;
> (3) the stage of the proceedings and the amount of discovery completed;
> (4) the risks of establishing liability;
> (5) the risks of establishing damages;
> (6) the risks of maintaining the class action through trial;
> (7) the ability of the defendants to withstand a greater judgment;
> (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and,
> (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Girsh, 521 F.2d at 157 (cleaned up). The Third Circuit in *Prudential* points the Parties to other considerations to address as well. *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 323 (3d Cir. 1998).[2] Nearly all of the *Girsh* and *Prudential* factors are subsumed by the Rule 23(e)(2) factors (except for the "reaction of the class," which is considered at the final approval hearing). Plaintiff accordingly begins the analysis with the considerations required by Rule 23(e)(2), mindful of the related considerations specified in *Girsh* and *Prudential*.

[1] "Subparagraphs (a) and (b) of Rule 23 address the 'procedural fairness' of the settlement, while subparagraphs (c) and (d) address 'substantive fairness.'" *Somogyi v. Freedom Mortg. Corp.*, 495 F. Supp. 3d 337, 348 (D.N.J. 2020).

[2] The Advisory Committee Notes to the 2018 Amendments caution that the "lengthy list of factors" applicable in each Circuit "can take on an independent life, potentially distracting attention from the central concerns that inform the settlement-review process." Sometimes factors may not be relevant to a particular case. *Id.* "The sheer number of factors can distract both the court and the parties from the central concerns that bear on review under Rule 23(e)(2)." *Id.*

B. <u>The Settlement is fair, reasonable, and adequate</u>

1. Plaintiff and Class Counsel have adequately represented the Class.

Plaintiff Yaakov Cinner has ably represented the Class since this case was filed in November of 2023. He sat for a deposition, answered discovery, and remained in consistent contact with Class Counsel throughout the litigation. Plaintiff has no interests antagonistic to the Class.

Additionally, the firms of Francis Mailman Soumilas, P.C. and Zemel Law, LLC have zealously represented the Class from the outset of the case. These firms have been certified to represent classes under the FCRA, as well as other consumer protection laws, by this Court and by courts in other districts, and have tried consumer cases and class actions to verdict as well. ECF 65-16 (Firm Biography – Francis Mailman Soumilas, P.C); ECF 65-17 (Firm Biography – Zemel Law). Plaintiff and Class Counsel have adequately represented the Class.

2. The Agreement was negotiated at arm's length.

The Court must consider whether the settlement was negotiated at arm's length. FED. R. CIV. P. 23(e)(2)(B). "Black's Law Dictionary defines 'arm's length' as '[o]f, relating to, or involving dealings between two parties who are not related or not on close terms and who are presumed to have roughly equal bargaining power.'" *McRobie v. Credit Prot. Ass'n*, No. 5:18-CV-00566, 2020 WL 6822970, at *4 (E.D. Pa. Nov. 20, 2020). *Girsh* also directs courts to consider "the stage of the proceedings and the amount of discovery completed," *Girsh*, 521 F.2d at 157, which both relate to Plaintiff's bargaining power in reaching the Agreement.

This case involved fact-intensive, technical litigation that spanned nearly two and half years, including production and review of a large volume of data, as well as numerous depositions and the production of over a thousand pages of documents. Defendants waged a vigorous defense to the class, initially moving to dismiss (ECF 13), and later seeking to amend its answer to include additional defenses (ECF 70), as well as vigorously opposing class certification on contest (ECF 71). Armed with this discovery and knowledge of their respective positions derived from litigating the case, the Parties engaged in arms-length settlement negotiations, eventually including a full day mediation on December 16, 2025 with the assistance of Noah J. Hanft, an experienced neutral. Although the case did not reach settlement, the Parties' discussions were productive and led to continued negotiations even when the case returned to a litigation posture. The Parties eventually reached an agreement in principle to settle the case on a class-wide basis in March 2026. In the weeks that followed, the Parties continued to engage in negotiations on the additional and technical points of a class action settlement, and after exchanging drafts, the Parties were able to reach the signed Agreement on May 22, 2026.

In other words, prior to reaching the Agreement, Plaintiff had engaged in extensive discovery on the FCRA claims and briefing on class certification. By the time the Parties were negotiating settlement terms, there had been nearly two and half years of contested litigation, and briefing discussing issues including liability, willfulness, and class certification. Therefore, the stage of the proceedings and the ample discovery completed demonstrate that Plaintiff and Class Counsel have an adequate appreciation of the case. The hard-fought litigation and the effort spent to resolve it amply demonstrate the arm's-length nature of the settlement.

3. The relief to the Settlement Class is adequate considering all relevant circumstances.

This factor requires consideration of whether the class relief is adequate when considering costs, risks, and delay of trial and appeal, the effectiveness of any proposed method of distributing relief to the class, the terms and timing of any proposed award of attorney's fees, and any agreement required to be identified under Rule 23(e)(3). FED. R. CIV. P. 23(e)(2)(C). All of these considerations support approval of the settlement here.

a. The costs, risks, and delay of trial and appeal.

This case involved substantial risk for Plaintiff and Class Counsel. The case was filed in November 2023 and has been litigated at considerable expense of time and manpower and involved complex questions regarding the reporting of credit accounts, comparisons across data reported by different credit reporting agencies, and technical procedures in the credit reporting industry.

But for this Agreement, the Parties would face the risks associated with class certification decided on contest. Although Plaintiff is confident that certification of the proposed class is appropriate under Rule 23, Plaintiff would have to maintain through trial, over Xactus's objection, that class certification should remain intact and that Plaintiff and the Class are entitled to a finding of liability and damages. Regardless of the outcome on liability or damages at trial, there would almost certainly be an appeal, and the post-trial and appeal process in this case could span many more months or even years with a very uncertain outcome, not to mention millions of dollars in attorney time and bills for all parties.

All of these factors weighed into Plaintiff's decision to agree to settle the case, which provides for real relief to each Settlement Class Member now of approximately $500, after payment of approved attorney fees, litigation expenses, service awards, and administrative costs. In light of the substantial risks involved and the expenditure of time associated with further litigation, this settlement is an outstanding result.

b. The effectiveness of any proposed method of distributing relief to the Class.

As detailed above, the Settlement provides for substantial monetary relief for Settlement Class Members. Claimants will receive a payment estimated to be $500, and only need to submit a Claim Form consisting of a simple attestation that they were harmed as a result of the conduct alleged in the case. S.A. at Ex. E (Claim Form). No supporting documentation is necessary. This is a clear-cut way for the class member to receive monetary relief.

After the first round of checks are mailed, the Agreement calls for a second distribution to Settlement Class Members so long as the remaining Settlement Fund would allow $5.00 or more to be paid to all Settlement Class Members who cashed their previous check. *Id*. at § 11.1(d). After the second distribution, or if there is no second distribution, any remaining funds will be distributed to a *cy pres* recipient to be proposed in connection with Final Approval and approved by the Court. *Id*. at § 4.2(d).

The Settlement Administrator will distribute Notice (Ex. C) to each member of the Settlement Class. *Id.* at § 5.4(a). The Settlement Administrator will update all mailing addresses provided on the Class List by Defendants prior to sending notice. *Id.* Settlement Class Members will also be able to obtain complete information regarding the litigation and the Settlement on the Settlement Website. *Id.* § 5.3

c. The terms and timing of the award of attorney's fees.

Plaintiff will ask the Court to award his attorneys' fees from the common fund. In such cases, the preferred method of awarding fees is the "percentage of recovery" method. *See Mehling v. New York Life Ins. Co.*, 248 F.R.D. 455, 464 (E.D. Pa. 2008) (the percentage of recovery method "rewards counsel for success and penalizes it for failure"). "In common fund cases, fee awards generally range from 19% to 45% of the settlement fund." *Sorace v. Wells Fargo Bank, N.A.*, No. 20-4318, 2024 WL 643229, at *13 (E.D. Pa. Feb. 15, 2024). The Agreement provides for payment of attorney fees of $800,000, *i.e.*, one-third of the Settlement Fund, and reimbursement of litigation costs and expenses[3] of up to $25,000.00 in a total amount not to exceed $800,000.00. S.A. at § 10.1 This is an amount that fits squarely within the range set by courts. The Settlement Notice proposed advises the Settlement Class Members of these amounts. *See Id.* at Ex. C (Notice), and Ex. D (Long-Form/Website Notice).

There was no independent nor simultaneous discussion of Class Counsel fees. Negotiations were based on an "all-in" figure, and Class Counsel seek attorneys' fees solely as a percentage of the common fund they helped to create. For now, it is enough to demonstrate that attorneys' fees and the costs reimbursement are *prima facie* fair in this hard-fought, nearly two and half year old case. However, Plaintiff will apply for such awards in more detail via separate Motion prior to the Objection Deadline. S.A. at §§ 2.4, 10.1.

d. Any ancillary agreements under Rule 23(e)(3).

Plaintiff has not entered into any agreements other than those embodied in the Agreement for which he seeks Court approval. This factor supports approval.

e. The settlement treats Settlement Class Members equitably.

The Agreement provides meaningful relief to the Settlement Class and treats all Settlement Class Members equitably relative to each other by providing them with the same *pro rata* payment upon submission of a valid claim form.

Based upon data available from the settlement administrator and claims rates from similar litigation, Class Counsel estimates that Class Member-Claimants will receive approximately $500. These payments are within the $100-$1,000 range of statutory damages available if the Class were

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3 "[A]n attorney who has created a common fund for the benefit of the class is entitled to reimbursement of his reasonable litigation expenses from that fund." *Sorace*, 2024 WL 643229, at *14 (quoting *McDonough v. Toys R Us, Inc.*, 80 F. Supp. 3d 626, 665 (E.D. Pa. 2015)) (emphasis omitted).

to prevail at trial and compare favorably to other settlements of FCRA section 1681e(b) claims. *See McIntyre v. RealPage, Inc.*, No. 18-CV-03934, ECF 156 (E.D. Pa. Mar. 24, 2023) (finally approving settlement of FCRA § 1681e(b) claim in which class members received automatic payments of approximately $300); *Martinez v. Avantus, LLC,* No. 3:20-cv-1772-JHC, ECF 112 (D. Conn. Feb. 27, 2024) (finally approving settlement of FCRA § 1681e(b) claim in which class members received automatic $100 payment and could also submit a claim form to receive an additional payment of approximately $1,600). These benefits are fair and reasonable in light of the risks of continued litigation, and the method of distribution is effective here.

Additionally, all Settlement Class Members to whom payment is sent will provide the same limited release of claims.

f. Other relevant *Girsh* factors support approval.

The Third Circuit in *Girsh* directed parties to consider factors such as the range of reasonableness of the settlement fund in light of the best possible recovery and the ability of the defendants to withstand a greater judgment. *Girsh*, 521 F.2d at 157.

For negligent violations, the FCRA's remedies are limited to actual damages. 15 U.S.C. § 1681o(a). For willful violations, as relevant here, the Act also provides for actual damages of up to $1,000 plus punitive damages. 15 U.S.C. § 1681n(a). As noted, the Agreement creates a Settlement Fund of $2,400,000, and will provide meaningful recovery for each Settlement Class Member who makes a valid claim.

The settlement is reasonable because it provides this recovery while avoiding the risks associated with trial, including the risk that the jury will find that Defendants did not act willfully. In such a situation, damages will at best be limited to actual damages, but at worst would create substantial challenges to class certification and recovery.

Assuming that Plaintiff could prove willfulness at trial, and therefore be entitled to statutory damages for himself and the class, damages would be expected to fall somewhere between $100-$1,000 per person. 15 U.S.C. § 1681n(a). In this case, that would lead to a range of $2,841,600 to $28,416,000. Compare this to the net Settlement Fund remaining for payments to Settlement Class Members, after accounting for counsel fees, expenses, administrative costs, and Plaintiff's service award, and the Settlement Fund for this case is just short of that range.

This amount is particularly reasonable given the expected payments to class members, and the fact that the class has not been certified on contest. Accordingly, the relevant *Girsh* factors (that are not subsumed by the Rule 23(e) factors) also support approval.

C. The Court will be able to certify the class for purposes of judgment on the proposed Agreement

In considering the proposed settlement, the first question for the Court is whether a settlement class may be conditionally certified for settlement purposes. *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (trial court may disregard management issues in certifying a settlement class, but the proposed class must still satisfy the other requirements of Rule 23); *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 296 (3d Cir. 2011) (*en banc*) ("[B]efore approving a class settlement agreement, a district court first must determine that the requirements for class certification under Rule Fed. R. Civ. P. 23(a) and (b) are met." (internal quotation marks omitted)); *In re Cmty. Bank of N. Va.*, 418 F.3d 277, 300 (3d Cir. 2005) ("[R]egardless of whether a district court certifies a class for trial or for settlement, it must first find that the class satisfies all the requirements of Rule 23.").

For the reasons set forth below, the Settlement Class meets the requirements for certification under Rule 23(a) and (b)(3).

1. The Settlement Class Is Numerous

In applying this rule, it has consistently been held that joinder is impracticable where the class is composed of hundreds of potential claimants; indeed, impracticability of joinder has often been found where the class is composed of less than 100 members. *See, e.g., Eisenberg v. Gagnon*, 766 F.2d 770, 785-86 (3d Cir. 1985) (90 class members meets numerosity requirement); *Weiss v. York Hospital*, 745 F.2d 786, 808 (3d Cir. 1984) (92 class members meets the numerosity requirement). Here, Defendants have represented that the Settlement Class includes approximately 28,000 members, more than sufficient to satisfy Rule 23(a)(1) numerosity.

2. Questions of Law and Fact Are Common to the Class

A putative class satisfies Rule 23(a)'s commonality requirement if "the named plaintiffs share at least one question of fact or law with the grievances of the prospective class." *Baby Neal v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994). As this Circuit reiterated recently, "that bar is not a high one. We have acknowledged commonality to be present even when not all plaintiffs suffered an actual injury, *id*., when plaintiffs did not bring identical claims, …, and, most dramatically, when some plaintiffs' claims may not have been legally viable, …. In reaching those conclusions, we explained that the focus of the commonality inquiry is not on the strength of each plaintiff's claim, but instead is 'on whether the defendant's conduct was common as to all of the class members.'" *Rodriguez v. National City Bank*, 726 F.3d 372, 382-83 (3d Cir. 2013) (citations omitted) (reviewing commonality standard in light of *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011), and concluding that while "*Dukes* is an intervening and pointedly clear explication of the law, it did not announce any change in the test for determining commonality." *Rodriguez*, 726 F.3d at 381, n. 2)). There are at least three fact questions common to the class. The first question common to the class asks whether Defendants' Merged Infile Credit Report accurately reflects each class member's payment obligations. Second, whether Defendants' practice of generating a monthly payment on charged off accounts is a reasonable procedure under §1681 e(b) of the FCRA even though two out of three national CRAs report a zero-balance on charged off accounts. Lastly, whether any alleged violation of FCRA § 1681 e(b) was negligent or willful? These common issues mirror those in FCRA cases in which several other courts have found commonality satisfied. *McIntyre v. RealPage, Inc.*, 336 F.R.D. 422, 434-35 (E.D. Pa. 2020) (certifying FCRA section 1681e(b) class action addressing inaccurate reporting of public record information); *Miller v. Trans Union, LLC*, No. 3:12-cv-1715, 2017 WL 412641, at *8-11 (M.D. Pa. Jan. 18, 2017) (report and recommendation certifying FCRA statutory damages case for class treatment); *Soutter v. Equifax Info. Servs., LLC*, 307 F.R.D 183, 201-02 (E.D. Va. 2015) (finding commonality satisfied on the following subjects: "the inaccuracy of the consumer reports, the reasonableness of the procedures alleged to cause these inaccuracies, whether Equifax's conduct was willful, and the determination of statutory damages."). The commonality element of Rule 23(a) is satisfied here.

3. Plaintiff's Claim is Typical of the Claims of the Class

This requirement is "designed to align the interests of the class and the class representatives so that the latter will work to benefit the entire class through the pursuit of their own goals." *Prudential*, 148 F.3d at 311. The threshold for establishing typicality is low. Typicality does not require that the claims of the class members be identical. Rather, a plaintiff's claims are typical when the nature of the plaintiff's claims, judged from both a factual and a legal perspective, are such that in litigating his personal claims he can reasonably be expected to advance the interests of absent class members. *See, e.g., Gen. Tel. Co. of Sw v. Falcon*, 457 U.S. 147, 156-57 (1982).

Plaintiff is a member of the Settlement Class, has the same interest in resolution of the issues as other members of the Settlement Class, and was affected by Defendants' practices in the same manner: Defendants reported a calculated payment amount on a charged-off revolving account, despite the fact that two out of the three CRAs reported no balance at all, thus misrepresenting Plaintiff's monthly obligations. Plaintiff's complaint sought uniform statutory damages under FCRA §1681n for himself and other class members. The issue is uniform across all class members in that Defendants failed to "assure" the "maximum possible accuracy" of the credit reports it prepared and this contention is shared across the entire class. The claim and relief sought are the same for all class members, therefore typicality is satisfied.

4. Plaintiff Will Fairly and Adequately Protect the Interests of the Class

As discussed above, the adequacy of representation requirement is met here because Plaintiffs have retained qualified and experienced counsel and have no interest antagonistic to those of the Settlement Class. Rule 23(a)(4) is therefore satisfied.

5. Rule 23(b)(3) Predominance and Superiority Exist Here

A money-damages class must satisfy Rule 23(b)(3), namely that (1) "questions of law or fact common to the members of the class predominate over any questions affecting only individual members" and (2) "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." FED. R. CIV. P. 23(b)(3). The proposed Settlement Class meets these requirements.

a. Common Questions of Law and Fact Predominate over Individual Ones

The predominance requirement set forth in Rule 23(b)(3) "focuses on whether essential elements of the class's claims can be proven at trial with common, as opposed to individualized, evidence." *Taha v. Cnty. of Bucks*, 862 F.3d 292, 308–09 (3d Cir. 2017). Common issues predominate over individual issues where plaintiffs have alleged a common course of conduct on the part of a defendant. *Prudential*, 148 F.3d at 314-15. Particularly, predominance is established where common facts about the willfulness of a defendant's conduct provide for a statutory damage remedy. *Taha*, 862 F.3d at 309.

Here, the merits of Plaintiff's claim and those of the Settlement Class can be resolved based upon the same core evidence and legal issues: evidence regarding Defendants' practices for determining whether to report an outstanding balance and/or a monthly payment owed on charged-off credit accounts in collection where two of the three national credit bureaus report a $0 balance, and none reports a monthly payment owed.

b. Class Treatment Is A Superior Method of Resolving These Claims

Under the second criterion of Rule 23(b), this Court must find that a "class action is superior to other available methods for fairly and efficiently adjudicating the controversy." FED. R. CIV. P. 23(b). The superiority element requires courts "to balance, in terms of fairness and efficiency, the merits of a class action against those of 'alternative available methods of adjudication.'" *Community Bank of Northern Virginia,* 418 F.3d at 309.

Separately litigating the common issues that bind the Settlement Class would be a practical impossibility, even assuming it were economically feasible to pursue these claims on their own. Where the alternative to a class action is likely to be no action at all for most of the class members, there is a strong presumption in favor of a finding of superiority. *Cavin v. Home Loan Ct., In*c., 236 F.R.D. 387, 396 (N.D. Ill. 2006). Even if just a small fraction of the members of the Settlement Class were to bring individual suits, the resolution of common issues in a single proceeding here would be infinitely more efficient than the separate adjudication of individual claims in separate lawsuits across the country.

c. The Proposed Notice Program Is Constitutionally Sound

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

The notice must state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3). FED. R. CIV. P. 23(c)(2)(B).

The proposed Notice plan complies with these requirements. The Notice plan provides for individual notice to be sent to each Settlement Class Member identified from Defendants' business records. Because Defendants do not maintain Settlement Class Member emails in their business records, direct notice via U.S. mail is an appropriate and efficient method of providing notice here. Furthermore, the Settlement Administrator will update all mailing addresses provided by Defendants on the class list prior to sending notice to ensure that the best available address is used. S.A. at § 5.4. If such mail Notice is returned undeliverable, the Settlement Administrator will perform skip-tracing and remail a Notice to the updated address. *Id.* at 5.4(b).

The Settlement Administrator will also create a Settlement Website to host information about the settlement, important documents, procedural information about the approval process, and contact information for Plaintiff's counsel. *See* S.A. at § 5.3.

The language of the proposed Notice is plain and easily understood, providing neutral and objective information about the nature of the settlement. S.A. at Ex. C. It includes the definition of the Settlement Class, a statement of each settlement Class Member's rights (including the right to opt-out of the Class or object to the settlement and the time to do so), a statement of the consequences of remaining in the Class, an explanation of how members can exclude themselves from the Class or object to the settlement, and methods for obtaining more information, including directions to a dedicated Settlement Website. *Id*.

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

V. PROPOSED SCHEDULE

Plaintiff proposes, and the Parties' Agreement contemplates, the following schedule for the approval process. If the Court grants preliminary approval, these time frames and key deadlines will be triggered by the entry of the accompanying proposed Order Preliminarily Approving Class Action Settlement.

Event	Date
Entry of Preliminary Approval Order	Day 0
Settlement Fund established with initial payment of $80,000 for class administration (S.A. at § 4.1 (a))	Day 7
Settlement Notice issued to the Settlement Class (*Id*. a § 5.4 (a))	Day 45
Class Counsel to file Petition for Award of Attorneys' Fees and Expenses (*Id.* at §§ 2.4, 10.1)	Day 95
Claims Submission Deadline / Exclusion Deadline / Objection Deadline (*Id.* at §§1.6, 1.18, 1.32)	Day 105

Deadline for filing intent to appear at Final Approval Hearing (*Id.* at § 8.1(c))	No later than 10 Days before Final Approval Hearing
Deadline for Plaintiff's Counsel to file Motion for Final Approval of Class Action Settlement (*Id.* at § 2.3)	20 Days before Final Approval Hearing
Final Approval Hearing	Day 145, or thereafter as ordered by the Court

VI. CONCLUSION

The proposed Agreement of the Parties is prima facie fair, reasonable, and adequate. Accordingly, the Court should direct notice to the class in accordance with the proposed notice program. See FED. R. CIV. P. 23(e)(1)(B).

Dated: May 22, 2026

Respectfully submitted,

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