

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

Richmond Division

TYRONE HENDERSON, *et al.*
and all others similarly situated,

Plaintiffs,

v.

Civil No. 3:12-cv-97

CORELOGIC NATIONAL BACKGROUND
DATA, LLC

Defendant.

**ORDER GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT, DISMISSAL OF CLAIMS WITH PREJUDICE, AND AWARDING
ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE SERVICE
AWARD**

For the reasons below, Plaintiffs' Motion for Final Approval of Class Action Settlement, Dismissal of Claims with Prejudice, and Award of Attorneys' Fees, Costs, and Class Representative Service Award is hereby GRANTED.

The original Complaint in this matter (the "Lawsuit") was filed on February 9, 2012. Plaintiff, James O. Hines, Jr. ("Hines"), entered the litigation when an Amended Complaint was filed on November 30, 2012. Mr. Hines alleged that CoreLogic National Background Data, LLC ("NBD" or "Defendant") did not comply with § 1681k(a) of the FCRA by providing him and the class members with the requisite notice or by maintaining the procedures mandated by the statute.¹ *See* 15 U.S.C. § 1681k(a).

On December 17, 2012, Defendant filed its Answer denying the allegations therein,

¹ The other plaintiff in the lawsuit, Tyrone Henderson, was determined not to be a class member of the class. Therefore, Mr. Henderson is not a party to the class settlement.

denying that the action was suitable for class certification pursuant to Federal Rule of Civil Procedure 23, and asserting affirmative defenses that Defendant contends are meritorious, notwithstanding its present willingness to enter into the Settlement Agreement. The Amended Complaint was subsequently amended further on July 17, 2015. Defendant likewise filed its Answer denying the allegations against it, and denying the suitability of this action for class treatment.

On August 30, 2017, the Parties filed the Class Action Settlement Agreement and Release, along with Plaintiff's Motion for Preliminary Approval of Class Action Settlement (hereinafter referred to as the "Preliminary Approval Motion"). The Parties filed an amended version of the Class Action Settlement Agreement and Release (the "Agreement") on September 1, 2017. (Dkt. No. 464, Ex. 1.)

On September 6, 2017, upon consideration of the Preliminary Approval Motion and the record, the Court entered an Order of Preliminary Approval of Class Action Settlement (hereinafter referred to as the "Preliminary Approval Order").

Pursuant to the Preliminary Approval Order, the Court, among other things: (1) preliminarily certified (for settlement purposes only) a class of individuals with respect to the claims asserted in the Lawsuit; (2) preliminarily approved the proposed Agreement; (3) appointed the named Plaintiff as the Class Representatives; (4) appointed Consumer Litigation Associates, P.C. and Francis & Mailman, P.C. as Class Counsel; and (5) set the date and time of the Final Fairness Hearing.

On September 27, 2017, the Parties filed their Motion for Approval of the Form of Notice to the Hines Settlement Class Members. The Court granted the Parties' motion by order ("Notice Approval Order") on October 17, 2017.

On February 2, 2018, upon consent of the Parties, the case was reassigned to United States Magistrate Judge David J. Novak for all purposes [Dkt. No. 487].

On February 27, 2018, Plaintiff filed his Motion for Final Approval of Class Action Settlement (the “Final Approval Motion”).

The Parties now request final certification of the settlement class under Fed. R. Civ. P. 23(b)(3) and final approval of the proposed class action settlement.

The Court has read and considered the Agreement, Final Approval Motion, and the record. All capitalized terms have the meanings defined herein and/or in the Agreement.

NOW, THEREFORE, it is ORDERED, ADJUDGED, and DECREED as follows:

The Court has jurisdiction over the subject matter of the Lawsuit and over all settling Parties hereto.

Pursuant to Fed. R. Civ. P. 23(e), the Settlement of this action, as embodied in the terms of the Settlement Agreement, is hereby finally approved. The Settlement Agreement and any capitalized, defined terms are hereby incorporated by reference into this Final Order and Judgment Approving Settlement and Dismissing Action (“Order”). Capitalized terms in this Order shall, unless otherwise defined, have the same meaning as in the Settlement Agreement.

Based upon the terms and conditions set forth in the Agreement and all of the files, records, and proceedings herein, it appears to the Court that the Settlement is fair, reasonable, and adequate. The Court held a hearing on March 20, 2018 at 10:00 a.m., of which the Hines Settlement Class was notified by Court-approved, mailed notice. Counsel for the Parties appeared and no other Class Members were in attendance. Following that hearing, the Court makes the following findings and conclusions.

Pursuant to Federal Rule of Civil Procedure 23(b)(3), the Court finally certifies the following Settlement Class (the “Hines Settlement Class Members” or “Hines Settlement Class”):

All natural persons who were the subject of search results provided by CoreLogic National Background Data (“NBD”) between February 9, 2007 and January 12, 2012, as identified by Class Counsel to Defendant (approximately 75,400 persons), where: (i) NBD’s Results Returned Database shows a criminal record hit from a state Sex Offender Registry; (ii) NBD did not return a date of birth to its customers for the Sex Offender Registry hit; (iii) the data file obtained from Watch Systems, LLP contains a publicly available first, middle name/initial, and last name that matches the first, middle name/initial and last name returned by NBD to its customer from the corresponding state; and (iv) either the date of birth provided for that class member by ADP Screening and Selection Services, LLC did not match the date of birth reflected in the data file obtained from Watch Systems, LLP, or the age provided for that class member by ADP Screening and Selection Services, LLC differed by two (2) years or more from the age contained in the data file obtained from Watch Systems, LLP.

The following individuals are excluded from the Settlement Class: (i) all persons who timely and validly request exclusion from the Hines Settlement Class; (ii) all consumers who would otherwise qualify for membership in the “Hines Settlement Class” for which the consumer previously has released all claims as to the Defendant; (iii) Defendant’s officers, directors, and employees; (iv) Defendant’s attorneys; (v) Plaintiffs’ attorneys; and (vi) any judge who has presided over either mediation or disposition of this case and the members of his or her immediate family.

There are 75,400 individual consumers who comprise this Class.

The Court appoints the Plaintiff, James O. Hines, Jr., as the Class Representative. The Court has previously found adequate and appointed as Class Counsel pursuant to Fed. R. Civ. P. 23(g)(1): Leonard A. Bennett and Matthew J. Erasquin of Consumer Litigation Associates, P.C., and James Francis and David Searles of Francis & Mailman, P.C. The Court reaffirms that appointment of those individuals and firms as Class Counsel.

Relative to the Hines Settlement Class, the Court specifically finds for settlement purposes that:

- a. The Hines Settlement Class Members are so numerous that joinder of all of them in the lawsuit is impracticable;
- b. There are questions of law or fact common to the Hines Settlement Class Members, which predominate over any individual questions;
- c. The claims of the Class Representative are typical of the claims of the Hines Settlement Class Members;
- d. The Class Representative and Class Counsel have fairly and adequately represented and protected the interests of all of the Hines Settlement Class Members; and
- e. The Court finds that as to this Hines Settlement Class, Defendant has acted on grounds generally applicable to the class as a whole. While the Defendant maintains that it has always acted in compliance with the law, the fact that the Settlement modifies Defendant's conduct as to the class as a whole makes it appropriate for certification under Rule 23(b)(3). Consequently, the Court finds that the requirements for certification of a settlement class under Rule 23(b)(3) are satisfied.

In addition, the Court finds that as to this Hines Settlement Class, class treatment of these claims has been efficient and manageable, thereby achieving an appreciable measure of judicial economy, and a class action is superior to other available methods for a fair and efficient adjudication of this controversy. Consequently, the Court finds that the requirements for certification of a conditional settlement class under Rule 23(b)(3) are satisfied.

Through a Court-approved Settlement Administrator, the Parties notified all Hines Settlement Class Members whose addresses could be obtained through reasonable measures of

the terms of the proposed Settlement and the Court's Final Fairness Hearing. The Administrator asserts that this notice is presumed to have reached approximately 91.46% of the Hines Settlement Class Members. The Court finds that this notice program was the best practicable under the circumstances, and satisfies the requirements of Rule 23 and due process.

The Agreement, which shall be deemed incorporated herein, and the proposed settlement are finally approved and shall be consummated in accordance with the terms and provisions thereof, except as amended by any subsequent order issued by this Court. The material terms of the Agreement include, but are not limited to, the following:

- NBD will initially fund the Settlement Fund in the amount of Seven Million Five-Hundred and Forty Thousand Dollars and no cents (\$7,540,000.00) solely and entirely for the payment of first checks in the amount of \$100 to each Hines Settlement Class Member;
- Each Hines Settlement Class Member who cashes his or her first check shall be paid, at minimum, an additional \$50. If the funds remaining of the initial Settlement Fund advance are sufficient to pay at least \$50 more to each Hines Settlement Class Member who cashed their first check, then the existing fund amount shall be paid *pro rata* to these Hines Settlement Class Members. If the funds remaining of the initial Settlement Fund advance are not sufficient to pay at least \$50 more to each Hines Settlement Class Member who cashed their first check, NBD shall pay the difference into the Settlement Fund such that each of these Hines Settlement Class Members will receive an additional \$50;
- Defendant will maintain a website by which the Hines Settlement Class Members may obtain the criminal record data within the Multistate Database that were matched to an inquiry using their name and date of birth as of the date of the search. Defendant will also maintain a dedicated process to receive and investigate disputes and inquiries from Hines Settlement Class Member regarding the electronic data provided in response to these inquiries;
- After the Proposed Injunctive Relief Order is entered, and within 180 days of the Effective Date, Defendant will implement the following changes to its matching procedures: with respect to search queries designated by wholesale background screening customers for "employment," NBD will not include in any results any public records that do not match by either Social Security number, address, or full date of birth; and

- Any excess funds remaining in the Settlement Fund after all distributions have been made in accordance with the Agreement shall be donated to Virginia Legal Aid Justice Center as *cy pres* recipient.
- All reasonable costs of class notice and other reasonable expenses incurred in the administration of the Settlement shall be promptly paid by the NBD after invoice, and shall not come out of the Settlement Fund.
- NBD shall directly pay any Service Award approved by the Court, not to exceed Ten Thousand Dollars and no cents (\$10,000.00), within five (5) days after the Effective Date; and
- NBD shall directly pay any Attorneys' Fees approved by the Court, not to exceed Three Million Two-Hundred and Thirty-One Thousand and Four-Hundred Twenty-Eight Dollars and Fifty-Seven cents (\$3,231,428.57), within five (5) days after the Effective Date.

The Court finds that the terms of the Settlement and the Agreement are fair, reasonable, and adequate, and in the best interest of the Hines Settlement Class. Accordingly, the Agreement is finally approved and shall govern all issues concerning the Settlement and all rights of the Parties, including Hines Settlement Class Members. The Court finds that the Settlement provides Hines Settlement Class Members with genuine cash relief in exchange for a proportionate release of claims.

The Hines Settlement Class Members were given an opportunity to object to the settlement. Only one Hines Settlement Class Member, Samuel Smith, initially objected to the settlement. Mr. Smith having withdrawn his objection, there are no outstanding objections to the settlement.

One Hundred Sixty-Nine (169) Hines Settlement Class Members have timely and validly excluded themselves from the Settlement. Those individuals are listed in Exhibit A to this Order, and will not be bound by the Settlement or any of its terms. This Order is binding on all Hines Settlement Class Members, except those individuals identified in Exhibit A.

Having considered Plaintiffs' request for an agreed-upon Service Award of \$10,000 for the Class Representative, the Court concludes that the award is appropriate. No Hines Settlement Class Members have objected to the request, and Defendant does not oppose it. Such awards are commonplace in class actions in this District and elsewhere, and the Court finds the Class Representative has earned it by prosecuting this case, answering discovery, and keeping up-to-date on the case status through conferences with their Counsel. The Court orders this \$10,000 payment to be made from the Settlement Fund.

With regard to attorneys' fees, the Court finds that a lodestar of \$2,472,244.34 against a fee request of \$3,231,428.57 results in a multiple of 1.31 which is reasonable. The costs of litigation attributed to this settlement total \$101,028.60, which would further lower the multiplier if considered. The Court concludes that an award of \$3,231,428.57 is appropriate, finding that (1) Plaintiffs' counsel expended large amounts of time and labor, demonstrated skill commensurate with their reputations, and achieved an excellent result in this large and complex action; (2) Plaintiff negotiated a Settlement Agreement that provides substantial benefits to consumers; and (3) the Settlement Agreement provides for prospective injunctive relief. *Robinson v. Equifax Info. Servs.*, 560 F.3d 235, 243-44 (4th Cir. 2009). Finally, the Court notes that a multiplier of 1.31 is similar to those applied in similar cases. *See, e.g., Berry v. Schulman*, 807 F.3d 600, 617 (4th Cir. 2015) (approving multiplier of 1.99); *see also In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 768 (S.D. Ohio 2007) (finding that requested fee amount with a lodestar multiplier of 7.89 was not unreasonable "[g]iven the outstanding settlement in this case and the noticeable skill of counsel"). The award is also to be separately paid from the Settlement Fund.

No Hines Settlement Class Member has objected to the proposed award, and the Defendant does not oppose it. Courts in this District and across the country award similar amounts in common-fund class actions, and this case is no different.

In compliance with the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4, Defendant has confirmed that they sent to the appropriate Class Action Fairness Act (“CAFA”) notices on September 27, 2017 on the United States Attorney General and the Attorneys General of all 50 states and the District of Columbia. There were no objections or comments from the government officials to whom CAFA notice was sent. The Court finds that the service of those notices meets the requirements of CAFA.

Pursuant to the final approval of the Settlement, the Class Representative, Hines Settlement Class Members, and their successors and assigns are permanently barred and enjoined from instituting or prosecuting, either individually or as a class, or in any other capacity, any of the Released Claims against any of the Released Parties, as set forth in the Agreement. Pursuant to the release contained in the Agreement, the Released Claims are compromised, settled, released, discharged, and dismissed with prejudice by virtue of these proceedings and this Order’ provided, however, that the Released Claims shall not be construed to limit the right of NBD or any Hines Settlement Class Member to enforce the terms of the Agreement. The Court retains continuing and exclusive jurisdiction over the Parties and all matters relating to the Lawsuit and/or Agreement, including the administration, interpretation, construction, effectuation, enforcement, and consummation of the settlement and this Order.

Plaintiff’s claim based on 15 U.S.C. §1681k and those of the class members not listed in Exhibit A are hereby dismissed with prejudice in accordance with the Settlement Agreement.

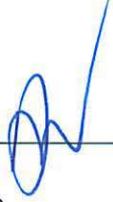
This matter continues as to Plaintiffs' individual claims brought pursuant to 15 U.S.C. §§1681e(b) and/or 1681i(a), and Tyrone Henderson's claim under 15 U.S.C. §1681k(a).

This Order is not, and shall not be construed as, an admission by NBD of any liability or wrongdoing in this or in any other proceeding.

Pursuant to Fed. R. Civ. P. 54, the Court finds that there is no just reason to delay entry of this Order, which resolves and finally disposes of all class claims in this matter. This is a final order.

Let the Clerk file this Order electronically and notify all counsel of record accordingly.

It is so ORDERED.

/s/ 

David J. Novak
United States Magistrate Judge

Richmond, Virginia
Dated: March 22, 2018