

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

TYRONE HENDERSON, *et al.*, on behalf
of themselves and others similarly situated,

Plaintiffs,

v.

CORELOGIC NATIONAL BACKGROUND
DATA, LLC, f/k/a National Background Data,
LLC,

Defendant.

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Civil Action No. 3:12-cv-97

PRELIMINARY APPROVAL ORDER

WHEREAS, the Court has been advised that the Parties to this action, James O. Hines, Jr. (“Plaintiff”), and CoreLogic National Background Data, LLC (“Defendant”), through their respective counsel, have agreed, subject to Court approval following notice to the Hines Settlement Class Members and a hearing, to settle the above-captioned lawsuit (the “Litigation”) upon the terms and conditions set forth in the Amended Class Action Settlement and Release (the “Settlement Agreement”). The Settlement Agreement has been filed with the Court and the definitions set forth in the Settlement Agreement are incorporated by reference herein.

Based upon the Settlement Agreement and all the files, records, and proceedings herein, it appears to the Court that, upon preliminary examination, the proposed settlement is fair, reasonable, and adequate. A hearing will be held on January 24, 2018, at 10:00 A.M. after notice to the proposed Hines Settlement Class Members to confirm that the proposed settlement is fair, reasonable, and adequate, and to determine whether a Final Approval Order should be entered in the Litigation.

NOW, THEREFORE, IT IS HEREBY ORDERED:

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

2. **Rule 23(b)(2) and 23(b)(3) Settlement Class:** Pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3), the matter is hereby preliminarily certified, for settlement purposes only, as a class action on behalf of the following class of plaintiffs (the “Hines Settlement Class Members” or “Hines Settlement Class”):

All natural persons who were the subject of search results provided by 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) Plaintiff’s 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.

3. **Class Representative Appointment:** Pursuant to Fed. R. Civ. P. 23, the Court preliminarily certifies James O. Hines, Jr. as the Class Representative for the Hines Settlement Class.

4. **Class Counsel Appointment:** Having considered the work that Class Counsel has done in investigating potential claims in this action, counsel’s experience in handling class actions and other complex litigation, counsel’s experience in handling claims of the type asserted in this

action, counsel's knowledge of the applicable law, and the resources counsel will commit to representing the class, the following attorneys are preliminarily appointed as Class Counsel under 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.

5. **Preliminary Certification of the Class:** The Court preliminarily finds that this matter and the Hines Settlement Class satisfy the applicable prerequisites for class action treatment under Fed. R. Civ. P. 23. Namely, the Court preliminarily finds 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 and 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)(2). Consequently, the Court finds that the requirements for certification of a conditional settlement class under Rule 23(b)(2) are satisfied.
- f. In addition, the Court finds that as to this Hines Settlement Class, class treatment of these claims will be 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.

6. **Class Action Administration:** RSM US, LLP is approved as the Settlement Administrator. The Settlement Administrator shall oversee the administration of the settlement and the notification to proposed Hines Settlement Class Members as directed in the Settlement Agreement. Notice and Administration Expenses shall be paid in accordance with the Settlement Agreement. The settlement checks shall issue from the Settlement Fund only and the Settlement Administrator will verify that the settlement checks were mailed.

7. **Class Notice:** The parties will submit the proposed the Class Notice on or before September 20, 2017, which the Court will consider by separate order.

8. **Exclusions from the Settlement Class:** The Hines Settlement Class Members shall be given the opportunity to opt out of the Hines Settlement Class. All requests by the individuals within the Hines Settlement Class to be excluded must be in writing, sent to the Settlement Administrator and postmarked no later than thirty (30) days prior to the Final Fairness Hearing. To be valid, a request for exclusion must be personally signed and must include: (i) the name, address, telephone number, and Unique Code; and (ii) language as in or similar to the following statement: "I request to be excluded from the class settlement in *James Hines, et al. v. CoreLogic National Background Data, LLC*, United States District Court, Eastern District of Virginia, Case No. 3:12cv97-REP." No person within the Hines Settlement Class, or any person acting on behalf of or in concert or participation with that person, may exclude any other person within the Hines Settlement Class from the Hines Settlement Class.

9. **Objections:** Any individual within the Hines Settlement Class, who has not previously opted-out in accordance with the terms of Paragraph 8 above, may appear at the Final

Fairness Hearing to argue that the proposed Settlement should not be approved and/or to oppose the application of Class Counsel for an award of attorneys' fees and costs and the service award to Plaintiff; provided, however, that no individual within the Hines Settlement Class shall be heard, and no objection may be considered, unless the individual files with this Court a written statement of the objection postmarked no later than thirty (30) days before the Final Fairness Hearing. All objections must include: (1) the objector's name, address, telephone number, and the Unique Code; (2) a sentence stating that to the best of his or her knowledge he or she is a member of the Hines Settlement Class; (3) the grounds for the objection to the Settlement; and (4) whether the Objector has been assisted or represented by someone else in preparing the Objection, as well as the identity of any such person and whether they are an attorney.

Hines Settlement Class Members who do not timely make their objections in this manner will be deemed to have waived all objections and shall not be heard or have the right to appeal approval of the Settlement. Hines Settlement Class Members who file exclusions, if applicable, may not object to the Settlement.

10. **Final Approval:** The Court shall conduct a Final Fairness Hearing on January 24, 2018, at 701 East Broad Street, Richmond, VA 23219, commencing at 10:00 A.M., to review and rule upon the following issues:

- a. Whether the proposed settlement is fundamentally fair, reasonable, adequate, and in the best interests of the Hines Settlement Class Members and should be approved by the Court;
- b. Whether the Final Approval Order should be entered, dismissing the Litigation with prejudice and releasing the Released Claims against the Released Parties; and
- c. To discuss and review other issues as the Court deems appropriate.

11. Hines Settlement Class Members need not appear at the Final Fairness Hearing or take any other action to indicate their approval of the proposed class action Settlement. Hines Settlement Class Members wishing to be heard regarding their objection are, however, required to indicate in their written objection whether or not they intend to appear at the Final Fairness Hearing. The Final Fairness Hearing may be postponed, adjourned, transferred, or continued without further notice to the Hines Settlement Class Members.

12. An application for attorneys' fees and reimbursement of costs and expenses by Class Counsel, as well as an application for the Class Representative service award, shall be made in accordance with Section 7 of the Settlement Agreement and shall be filed with the Court no later than twenty-one (21) days before the Final Fairness Hearing. Further submissions by the Parties, including memoranda in support of the proposed settlement and responses to any objections, shall be filed with the Court no later than twenty-one (21) days prior to the Final Fairness Hearing. The Court will permit the supplementation of any filings by objectors as to attorneys' fees and costs at any date up to seven (7) days after the filing of a motion for such fees to address additional information or materials in the motion. The Parties may respond to this supplementation.

13. All proceedings in this Litigation are stayed pending final approval of the Settlement, except as may be necessary to implement the Settlement or comply with the terms of the Agreement.

14. Pending final determination of whether the Settlement should be approved, Plaintiff, all Hines Settlement Class Members, and any person or entity allegedly acting on behalf of Hines Settlement Class Members, either directly, representatively or in any other capacity, are preliminarily enjoined from commencing or prosecuting against the Released Parties any action or proceeding in any court or tribunal asserting any of the Released Claims; provided, however, that

this injunction shall not apply to individual claims of anyone who timely excludes themselves from the Settlement in a manner that complies with Paragraph 8 above. This injunction is necessary to protect and effectuate the Settlement, this Order, and this Court's flexibility and authority to effectuate the Settlement and to enter Judgment when appropriate, and is ordered in aid of this Court's jurisdiction and to protect its judgments pursuant to 28 U.S.C. § 1651(a).

15. If the Settlement Agreement and/or this Order are voided per Section 10 of the Settlement Agreement:

- a. The Settlement Agreement shall have no further force and effect and shall not be offered in evidence or used in the Litigation or in any other proceeding;
- b. Counsel for the Parties shall seek to have any Court orders, filings, or other entries in the Court's file that result from the Settlement Agreement set aside, withdrawn, and stricken from the record;
- c. The Settlement Agreement and all negotiations, proceedings, and documents prepared, and statements made in connection with either of them, shall be without prejudice to any party and shall not be deemed or construed to be an admission or confession by any party of any fact, matter, or proposition of law; and
- d. The Parties shall stand in the same procedural position as if the Settlement Agreement had not been negotiated, made, or filed with the Court.

16. Defendant(s) are hereby ordered to send out the notice set forth at 28 U.S.C. § 1715(b) within 10 days of the entry of this Preliminary Approval Order.

17. The Court retains continuing and exclusive jurisdiction over the action to consider all further matters arising out of or connected with the settlement, including the administration and enforcement of the Settlement Agreement.

IT IS SO ORDERED.

Dated: September 6, 2017 _____ /s/ REP

Robert E. Payne
Senior United States District Judge