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13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 (SOUTHERN DIVISION)

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

17 Plaintiffs,

18 v.

19 EXPERIAN INFORMATION
20 SOLUTIONS, INC.,

21 Defendant.

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

**DECLARATION OF JENNIFER
KEOUGH ON SETTLEMENT
ADMINISTRATION**

22 and Related Cases:

23 05-cv-1073-DOC (MLGx)
24 05-cv-7821-DOC (MLGx)
25 06-cv-0392-DOC (MLGx)
05-cv-1172-DOC (MLGx)
06-cv-5060-DOC (MLGx)

Date: May 14, 2010
Time: 4:30 p.m.
The Honorable David O. Carter

1 I, Jennifer Keough, hereby declare as follows:

2 1. I am the Executive Vice President, Operations of The Garden City
3 Group, Inc. ("GCG"). The following statements are based on my personal
4 knowledge and information provided to me by other GCG employees working
5 under my supervision in connection with GCG's role as Settlement Administrator
6 in this action. If called upon to do so, I could and would testify competently to the
7 facts contained in this Declaration.

8 2. GCG has certain authority and responsibilities under the Settlement
9 Agreement and Release ("Agreement") that are relevant to the subject matter of this
10 Declaration. Pursuant to the Agreement, GCG shall pay all Actual Damage Award
11 Claims which meet certain criteria "unless the Settlement Administrator has a basis
12 for believing that any Actual Damage Award Claim is fraudulent or **otherwise**
13 **invalid.**" Agreement §7.7(c)(i) (emphasis added). The Agreement further
14 authorizes GCG to perform an analysis of 1,000 Actual Damage Award Claims to
15 "confirm the validity of such claims." Agreement §7.7(c)(ii). In accordance with
16 the Agreement, subject to Court approval, if GCG "deems it necessary," it can
17 "**conduct further review of Actual Damage Award Claims.**" Agreement
18 §7.7(c)(ii) (emphasis added). Finally, if GCG "determines that a Actual Damage
19 Award Claimant is ineligible for a Actual Damage Award, then such Actual
20 Damage Award Claimant's claim shall be converted into a Convenience Award
21 Claim." Agreement §7.7(c)(v).

22 3. Pursuant to its authority under the Agreement, GCG performed a
23 threshold level of analysis regarding the Actual Damage Award Claims. GCG then
24 conducted a review of 1,000 claims, which took place from December 2009
25 through early May 2010 with a core team of 14 people and approximately 1900
26 hours of work at a cost of \$140,526 (excluding expenses). This work required
27 painstaking manual, visual inspection of seven years of individual credit files from
28 each Defendant. Though the review is not yet final, it has led GCG to conclude that

1 of the 1,000 claims, information from the Defendants' archived credit files indicates
2 that more than 34% of Employment claims are invalid, more than 25% of the
3 Mortgage/Housing claims are invalid, and more than 22% of the Other Credit
4 claims are invalid. Considering the results of the review of the 1,000 Actual
5 Damage Award Claims, it can be expected that a significant portion of the total
6 pool of Actual Damage Award Claims would be invalid and GCG currently lacks
7 sufficient information to determine which Claims would be invalid. In order for
8 GCG to "conduct further review of Actual Damage Award Claims," it would be
9 necessary for GCG to have access to additional information and/or documentation.
10 Agreement §7.7(c)(ii). With the Court's approval, GCG could request that
11 Claimants provide documentation which substantiates the validity of their Claim.
12 The request to Claimants could inform them that absent such additional
13 substantiating documentation, their Actual Damage Award Claim would be
14 converted to a Convenience Award, pursuant to Section 7.7(c)(v) of the Agreement.

15 **A. Threshold Invalid Actual Damage Claims**

16 Attached as Exhibit A to this Declaration is GCG's Bankruptcy Discharge
17 Settlement Statistics as of March 14, 2010. This document contains cumulative
18 statistics for this project. As an initial matter, GCG determined that more than 30%
19 of the Actual Damage Award Claims were invalid based on several threshold levels
20 of analysis: 35,926 Claimants chose the Actual Damage Award but the award
21 requested and/or date provided does not comport with Defendants' data, 17,490
22 Claimants failed to provide date information, and 97,015 Claimants indicated a
23 2009 date (*i.e.*, after the implementation of the injunctive relief). Therefore, a total
24 of 150,431 Actual Damage Award Claims were preliminarily invalidated (30.34%
25 of the total) before any individual claims files were reviewed. GCG treated the
26 remaining 345,268 Actual Damage Award Claims as "initially valid," pending
27 review of the individual credit files.
28

1 **B. Audit Of 1,000 Actual Damage Award Claims**

2 In light of the high percentage of invalid Actual Damage Award Claims
3 resulting from the initial review, GCG has exercised its discretion, pursuant to the
4 Agreement, to require Defendants to produce the archived credit files of 1,000
5 Actual Damage Award Claimants to confirm the validity of such claims.
6 Agreement § 7.7(c)(ii).

7 To conduct the review, GCG randomly selected a statistical sampling of
8 1,000 Actual Damage Award Claims that appeared initially valid (for example,
9 excluding claims with a date after the implementation of the injunctive relief).
10 GCG provided a unique identification number for each of the 1,000 claims, and
11 information was provided by at least one Defendant for all 1,000 claims. By
12 necessity, because of the nature in which their respective data is recorded, each of
13 the Defendants provided GCG with data for the 1,000 claim audit in a different
14 format.

15 Pursuant to the joint instructions of Class Counsel and Counsel for
16 Defendants, GCG reviewed and attempted to validate any and all of the categories
17 claimed by the Claimant on the claim form rather than following the hierarchy of
18 categorical validation for a given claim as outlined in the Settlement Agreement
19 (whereby a claim will be paid for the highest award for which it is eligible).

20 **1. Employment Claims**

21 Four hundred twenty-two (422) of the 1,000 claims in the audit claimed a
22 denial of employment. For each of these, GCG searched each Defendant's data
23 files to confirm the existence of an employment inquiry "flag" and then reviewed
24 the data as directed by each Defendant to determine whether the Employment
25 claims were valid. For the Employment claims for which one of the Defendants
26 had the Claimant on its respective list of employment inquiry flags, GCG thereafter
27 confirmed that the date of the employment inquiry occurred after the bankruptcy
28 discharge date. Where GCG confirmed an inquiry after the discharge date, those

1 claims were validated.

2 Essentially, for any Claimant who had a post-bankruptcy employment flag –
3 no matter how many years after discharge and without respect to the date identified
4 by the Claimant – their Employment claim was validated. Despite this permissive
5 criteria, more than one-third of the Employment claims were invalidated.
6 Nonetheless, in accordance with the Agreement, for the remaining two-thirds of the
7 Employment claims, GCG is conducting further review. Agreement §7.7(c)(ii).
8 One Defendant’s results for valid Employment claims were significantly higher
9 than the other two Defendants. When GCG examined the overlapping validated
10 Employment claims among the three Defendants, the number of overlapping
11 validations between any set of two Defendants was less than half the total for the
12 anomalous Defendant. Therefore, it is GCG’s understanding that the Defendant is
13 re-examining the methods by which it reported employment inquiries. After this re-
14 review, either the number of invalid claims will increase even more as the
15 anomalous Defendant’s claims fall more in line with the other two Defendants or
16 will remain the same if the review of the Defendant’s data confirms its accuracy or
17 does not provide any basis to dispute it. Thus, at a minimum, over a third of the
18 initially valid Employment claims in the audit have been invalidated, and that
19 number could increase.

20 **2. Mortgage/Housing Claims**

21 For claims related to Mortgage/Housing and Other Credit, GCG reviewed the
22 archive data provided by the Defendants with the class lists which it was told
23 contained indicators of qualifying tradelines and hard inquiries going back one if
24 not two years.¹ After looking for this indicator, GCG examined the archived
25 individual credit files maintained by each Defendant to determine whether the
26 inquiry in question from their claim form fell within the relevant time period under

27 ¹ Each Defendant provided one archive in each year, and the months of the archives
28 provided were staggered to include a broader range of information from all three
Defendants.

1 the Agreement, allowing a seven-month window on either side to be inclusive of
2 claims that may fall just before or after the date of the archived credit file within the
3 requisite months (“within six (6) months of the date indicated by the Actual
4 Damage Award Claimant on the Claim Form,” Agreement § 7.7(c)(i)).

5 For example, if Claimant A was solely provided by Experian and Claimant A
6 claimed a Mortgage/Housing denial in January 2006, GCG was looking for a hard
7 inquiry sometime between July 2005 and July 2006 (six months on either side of
8 the claimed date). Because Experian provided reports as of June of each year, and
9 each of the Defendant’s reports provided inquiries for a two-year period, Experian’s
10 2006 report would include inquiries for June 2004 through June 2006. Therefore,
11 Experian’s reports for 2006, 2007, or 2008 could possibly contain a qualifying hard
12 inquiry for Claimant A. Furthermore, in order to review any of those files, a hard
13 inquiry flag was required to exist in either Experian's 2006, 2007, or 2008 initial
14 data. Finally, in order for Claimant A’s claim to be validated, there must exist a
15 hard inquiry on the credit report(s) with the appropriate Kind of Business
16 Classification (“KOB”) and/or type code within the seven-month window claimed
17 by this Claimant (*e.g.*, prior or subsequent to sometime between July 2005 and July
18 2006).

19 The coding for the Mortgage/Housing claims is much less definitive than the
20 Employment inquiries. GCG was advised by Counsel for the Defendants that a
21 complete list of relevant or validating Mortgage/Housing KOBs/codes does not
22 exist. Further, GCG was advised that there would be certain inquiries for which
23 Defendants would not be able to identify the inquiry as a certain Mortgage/Housing
24 inquiry versus some other type of credit inquiry. As a result, each Defendant
25 provided separate direction with respect to the identification of the KOBs/codes
26 which validate or possibly validate a given claim within their respective data.
27 There remain a small number of KOBs/codes which may validate
28 Mortgage/Housing and/or Other Credit claims that two of the Defendants are

1 continuing to research.

2 Where a hard inquiry flag was present for the Claimant within the requisite
3 timeframe, GCG reviewed the specific inquiry coding from each Defendant's credit
4 file, looking for an industry code or KOB that would indicate a Mortgage or
5 Housing rental inquiry. If there was a "hit," GCG confirmed that the inquiry and
6 the date claimed by the Claimant fell within the time period required by the
7 Settlement. GCG looked at the inquiries in all three Defendants' credit files to see
8 if they could validate the claim.

9 Though there are a few codes still being investigated by two Defendants, at
10 this time more than 25% of the total of eight hundred ninety-nine (899) "initially
11 valid" Mortgage/Housing claims are in fact invalid and another 17% are only
12 "possibly valid" because of indeterminate coding. GCG understands that mortgage
13 applications typically use tri-merge reports (*i.e.*, credit reports from all three major
14 Credit Reporting Agencies). Of the total population of valid Mortgage/Housing
15 claims (*i.e.* 520 claims validated by at least one CRA), 57% were validated by all
16 three CRAs. In light of the prevalent use of tri-merge reports relative to mortgage
17 applications, and given that the remaining 43% of the validated Mortgage/Housing
18 claims were not validated across all three CRAs, there is some doubt as to the
19 validity of these claims. It is GCG's understanding, however, that other housing
20 applications do not typically utilize the tri-merge reports (*e.g.* apartment rental
21 applications).

22 **3. Other Credit Claims**

23 GCG engaged in a similar review procedure for the Other Credit claims as
24 the Mortgage/Housing claims. GCG examined the claims to see if they matched
25 credit inquiry codes in the credit files of Defendants. Where a hard inquiry flag
26 was present for the Claimant within the requisite timeframe, GCG reviewed the
27 specific inquiry coding from each Defendant's credit file, looking for an industry
28 code or KOB that would indicate an Other Credit inquiry. If there was a "hit,"

1 GCG confirmed that the inquiry and the date claimed by the Claimant fell within
2 the time period required by the Agreement. Only one Defendant's validating
3 inquiry was required to validate an Other Credit claim.

4 Eight hundred sixty-six (866) of the 1,000 "initially valid" claims in the audit
5 claimed Other Credit. Of those, more than 22% were invalid, and another 6% were
6 only "possibly valid" because of indeterminate coding. Two of the CRAs are
7 conducting further research on these codes which possibly validate these claims.

8 **C. Actual Damage Award Claimants And Next Steps**

9 The 1,000 claim audit of "initially valid" claims indicates that there are a
10 significant number of Actual Damage Award Claimants who do not meet the
11 criteria for any of the three categories of Actual Damage Awards. Accordingly, if
12 the Settlement Administrator proceeded to pay the remaining population of Actual
13 Damage Award Claims deemed to be "initially valid," it can be reasonably
14 anticipated that a significant number of invalid claims would receive payment. As
15 an example, of the 495,699 Actual Damage Award Claimants, there were 57,040
16 "initially valid" Employment claims (with some Claimants selecting employment
17 and one or more other categories). Projecting from the 1,000 claim audit that
18 showed 34% of those "initially valid" Employment claims were actually invalid,
19 that would mean 19,393 "initially valid" Employment claims were invalid. The
20 Settlement provides for Employment claims to be paid out at the highest level.

21 As discussed above, based on the results of the review of the 1,000 claims,
22 pursuant to §7.7(c)(ii) of the Agreement, GCG "deems it necessary to conduct
23 further review of Actual Damage Award Claims." Additional information would
24 be needed for GCG to be able to validate or invalidate the Actual Damage Award
25 Claims. An option to conduct "such further review" is to request more information
26 from the Claimants so that GCG can accurately validate the Actual Damage Award
27 Claims.

28 Though there are still a few claims that are being re-reviewed and a few

1 codes are still being interpreted by two of the Defendants (which additional
2 information will be given to GCG), the audit has already demonstrated that a
3 substantial number of the Actual Damage Award Claims are clearly or potentially
4 invalid. Even in the broadest, most easily validated category of Other Credit, more
5 than one-fifth of the “initially valid” claims are invalid. Even if pro-rated down,
6 payment of the initially invalid Employment claims and the projected invalid
7 Employment claims would result in substantial amounts paid out for invalid
8 Employment claims.

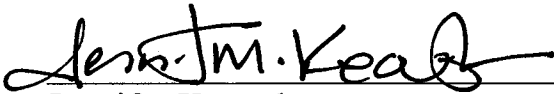
9 Examining all of the Actual Damage Award Claims on an individual basis
10 following a similar procedure as the audit appears to be impractical. The audit of
11 1,000 claims has taken place from December 2009 through early May 2010 and
12 involved approximately 1900 hours of work by GCG, at a cost of \$140,526,
13 excluding expenses. The cost of providing the data to GCG was borne by
14 Defendants, who, pursuant to the Agreement, only committed to turn over the files
15 for the 1,000 claims. If GCG had to undertake the same detailed level of analysis
16 of seven-year time periods for all three Defendants for the almost half a million
17 Actual Damage Award Claims, it would require several hundred thousand hours of
18 work at an estimated cost in excess of one million dollars.

19 After the almost-complete analysis by GCG of the 1,000 claims, information
20 from the Defendants’ archived credit files indicates that approximately 34% of the
21 Employment claims are invalid, 25% of the Mortgage/Housing claims are invalid,
22 and 22% of the Other Credit category are invalid. GCG believes that the continuing
23 analysis will, if anything, increase the number of invalid claims. Projecting these
24 same percentages onto the 345,268 “initially valid” Actual Damage Award Claims
25 for illustrative purposes only, a similar pattern of validations would result in more
26 than 19,000 invalid Employment claims (out of a total of 57,040), more than 45,000
27 invalid Mortgage/Housing claims (and more than 30,000 claims only “possibly
28 valid” out of a total of 181,389), and more than 69,000 invalid Other Credit claims

1 (and more than 18,000 only “possibly valid” claims out of a total of 310,546 Other
 2 Credit claims). If half of the “possibly valid” claims were validated, it would result
 3 in over 61,000 invalid Mortgage/Housing claims and over 78,000 invalid Other
 4 Credit claims. Absent consideration of claim overlap, more than 158,000² total
 5 “initially valid” claims would actually be invalid. When added to the number of
 6 claims invalidated as a result of the initial review (150,431), there would be more
 7 than 308,431 invalid claims, or 62.2% of the total Actual Damage Award Claims.

8 Even if the effect of claim overlap evidenced by the 1,000 claim review holds
 9 true for the remaining “initially valid” claims, the audit reflects that 13.7% of the
 10 “initially valid” Actual Damage Award Claims are not valid in *any* category.
 11 Again, assuming that one half of the “possibly valid” claims are in fact invalid
 12 (another 11.5%), and including the 150,431 claims that were invalidated as part of
 13 the initial review process, this would still mean that approximately just under 50%
 14 of the Actual Damage Award Claims would be invalid.

15
 16 I declare under penalty of perjury that the foregoing is true and correct.
 17 Executed this 13th day of May, 2010.

18
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 20 
 21 Jennifer Keough

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 28 ² Of all initially valid claims, over 57,000 claimed Employment, 181,000 claimed
 Mortgage/Housing, and 310,000 claimed Other Credit, for a total of nearly 549,000
 potential awards.

EXHIBIT A



The Garden City Group, Inc.

Bankruptcy Discharge Settlement

Cumulative
Stats for Project

Statistics as of March 14, 2010

Mail Notice: September 28, 2009 (NCOA complete prior to mailing)	15,143,724
Publication Notice: October 15, 2009 in USA Today	
Telephone Assistance Program: (866) 237-3432	
Number of Calls to the IVR	87,636
Total IVR Minutes	338,576.00
Total Calls Requesting Live Support	22,420
Web Site: www.BankruptcyDischargeSettlement.com	
Number of Visits to the Website	93,118
Emails: BankruptcyDischargeSettlement@gardencitygroup.com	
Number of Emails Received	2,246
Claim Forms:	
Number of Claim Forms received via mail at GCG, prepped and scanned	768,585
Number of Claims Submitted Online	18,932
Total Claims Received	787,517
Total Claims Processed	787,428
Number of Claimants who failed to Sign Claim Form	25,860
Number of Claims postmarked after November 30, 2009 deadline	16,759
Total Timely and Signed Claim Forms	744,809
Timely and Eligible Claimant Award(s) Requested:*	
Number of Claimants Who Chose Convenience Award or Did Not Select an Option	249,110
Number of Claimants Who Chose Actual Damage Award(s)	495,699
Chose Actual Damage Award(s) but Award Requested and/or Date Provided does not Comport with Defendants' Data	35,926
Failed to provide date information	17,490
Date Indicated was in 2009	97,015
Employment	1,940
Mortgage Loan or Housing Rental	29,854
Credit Card, Auto Loan, or Other Credit	144,691
Employment and Mortgage Loan or Housing Rental	2,928
Employment and Credit Card, Auto Loan or Other Credit	17,248
Mortgage Loan or Housing Rental and Credit Card, Auto Loan or Other Credit	113,683
All Three Options Selected	34,924
Total	744,809
Returned Mail:	
Number of Notices Returned With New Address (COA) - to be remailed through November 12, 2009	30,255
Notices Returned With No Forward Address Information (UD)	1,062,956
Exclusions/Objections: (Postmarked No Later Than November 30, 2009)	
Number of Timely Requests for Exclusion Received	1,050
Number of Requests for Exclusion postmarked after the November 30, 2009 deadline	199
Number of Objections Received	19
Claimant Correspondence: (Excluding Requests for Exclusion and Objections)	
Number of Admin Opened, Prepped and Processed	5,480

* These totals represent the one or more options checked by Claimants on the Claim Form. These selections have not yet been validated by the Settlement Administrator.