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Settlement Class*

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

17 TERRI N. WHITE, *et al.*,
18 Plaintiffs,
19 v.
20 EXPERIAN INFORMATION
21 SOLUTIONS, INC.,
22 Defendant.

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

**SUPPLEMENTAL REPORT ON
SETTLEMENT ADMINISTRATION**

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

23 and Related Cases:
24 05-cv-01073-DOC (MLGx)
25 05-cv-7821-DOC (MLGx)
26 06-cv-0392-DOC (MLGx)
27 05-cv-1172-DOC(MLGx)
28 06-cv-5060-DOC (MLGx)

1 Settling Plaintiffs Jose Hernandez, Bertram Robison, Kathryn Pike, and
2 Robert Randall hereby submit a Supplemental Report on Settlement Administration
3 regarding the 23(b)(3) Settlement (“Settlement”). The Supplemental Report
4 outlines the Settlement Administrator’s analysis of the claims data and its “audit” of
5 1,000 actual damage award claims provided for by the Settlement and described in
6 detail in the Interim Report.

7 The Settlement Administrator, The Garden City Group, Inc. (“GCG”),
8 processed 787,428 total claims. Of those, there were 744,809 timely and signed
9 claim forms. Almost 500,000 claimants – 495,699 – claimed an Actual Damage
10 Award on their claim forms and 249,110 chose a Convenience Award or did not
11 select an option. Of the 495,699 Actual Damage Award claims, 150,431 were
12 determined to be invalid based on the first level of analysis, triggering an audit of
13 1,000 individual credit files as provided in the Settlement.

14 The audit of 1,000 claims has taken place from December 2009 through early
15 May 2010 and involved approximately 1900 hours of work by GCG at a cost of
16 \$140,526 (excluding expenses). The audit required the painstaking manual, visual
17 inspection of seven years of individual credit files from each Defendant for 1,000
18 claims. The audit is not yet final but the process thus far has led to the conclusion
19 that of the 1,000 Actual Damage claims in the audit, more than 34% of the
20 employment claims are invalid, more than 25% of the mortgage claims are invalid,
21 and 22% of the other credit claims are invalid.

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

23 As an initial matter, more than 30% of the Actual Damage Award claims
24 were determined to be invalid based on several threshold levels of analysis: 35,926
25 claimants chose the Actual Damage Award, but the award requested and/or date
26 provided does not comport with Defendants’ data, 17,490 claimants failed to
27 provide date information, and 97,015 claimants indicated a 2009 date (*i.e.*, after the
28 effective date of the injunctive relief). Therefore, a total of 150,431 Actual Damage

1 Award claims were invalidated (30.34% of the total) before any individual claims
2 files were reviewed. The remaining 345,268 Actual Damage Award claims were
3 therefore treated by the Settlement Administrator as “initially valid,” pending
4 review of the individual credit files.

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

6 In light of the high percentage of invalid actual damage award claims
7 resulting from the initial review, the Settlement Administrator has exercised its
8 discretion, pursuant to the Settlement Agreement and Release (“Agreement”), to
9 require Defendants to produce the archived credit files of 1,000 Actual Damage
10 Award claimants to confirm the validity of such claims. Agreement § 7.7(c)(ii).

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

19 GCG reviewed and attempted to validate any and all of the categories
20 claimed by the claimant on the claim form rather than following the hierarchy of
21 categorical validation for a given claim as outlined in the Settlement Agreement
22 (whereby a claim will be paid for the highest award for which it is eligible).

23 **1. Employment Claims**

24 Four hundred twenty-two (422) of the 1,000 claims in the audit claimed a
25 denial of employment. For each of these, GCG searched each Defendant’s data
26 files to confirm the existence of an employment inquiry “flag” and then reviewed
27 the data as directed by each Defendant to determine whether the employment
28 claims were valid. For the employment claims for which one of the Defendants had

1 the claimant on its respective list of employment inquiry flags, GCG thereafter
2 confirmed that the date of the employment inquiry occurred after the bankruptcy
3 discharge date. Where GCG confirmed an inquiry after the discharge date, those
4 claims were validated.

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

21 **2. Mortgage/Housing Claims**

22 For claims related to mortgage/housing and other credit, GCG reviewed the
23 archive data provided by the Defendants with the class lists and looked for
24 qualifying tradelines and a hard inquiry in the archive files going backward at least
25 one, if not two, years.¹ GCG then examined the archived individual credit files
26 maintained by each Defendant to determine whether the inquiry in question from

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

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

6 For example, if Claimant A was solely provided by Experian and Claimant A
7 claimed a Mortgage/Housing denial in January 2006, GCG was looking for a hard
8 inquiry sometime between July 2005 and July 2006 (six months on either side of
9 the claimed date). Because Experian provided reports as of June of each year, and
10 each of the Defendant’s reports provided inquiries for a two-year period, Experian’s
11 2006 report would include inquiries for June 2004 through June 2006. Therefore,
12 Experian’s reports for 2006, 2007, or 2008 could possibly contain a qualifying hard
13 inquiry for Claimant A. Furthermore, in order to review any of those files, a hard
14 inquiry flag was required to exist in either Experian's 2006, 2007, or 2008 initial
15 data. Finally, in order for Claimant A’s claim to be validated, there must exist a
16 hard inquiry on the credit report(s) with the appropriate Kind of Business
17 Classification (“KOB”) and/or type code within the seven-month window claimed
18 by this Claimant (*e.g.*, prior or subsequent to sometime between July 2005 and July
19 2006).

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

1 Mortgage/Housing and/or Other Credit claims that two of the Defendants are
2 continuing to research.

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

10 Though there are a few codes still being investigated by two Defendants, at
11 this time more than 25% of the total of eight hundred ninety-nine (899) "initially
12 valid" mortgage/housing claims are in fact invalid and another 17% are only
13 "possibly valid" because of indeterminate coding. There is also some doubt as to
14 the validity of even some of the apparently validated claims, because only 57% of
15 those were validated by all three Defendants, which is somewhat surprising given
16 the pervasive use of the tri-merge reports (*i.e.*, credit reports from all three major
17 Credit Reporting Agencies) in connection with mortgage applications.

18 **3. Other Credit Claims**

19 GCG engaged in a similar review procedure for the Other Credit claims as
20 the Mortgage/Housing claims. GCG examined the claims to see if they matched
21 credit inquiry codes in the credit files of Defendants. Where a hard inquiry flag
22 was present for the claimant within the requisite timeframe, GCG reviewed the
23 specific inquiry coding from each Defendant's credit file, looking for an industry
24 code or KOB that would indicate an Other Credit inquiry. If there was a "hit,"
25 GCG confirmed that the inquiry and the date claimed by the claimant fell within the
26 time period required by the Settlement. Only one Defendant's validating inquiry
27 was required to validate an Other Credit claim.

28 Eight hundred sixty-six (866) of the 1,000 "initially valid" claims in the audit

1 claimed Other Credit. Of those, more than 22% were invalid, and another 6% were
2 only “possibly valid” because of indeterminate coding.

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

4 The 1,000 claim audit of “initially valid” claims demonstrates that there are a
5 significant number of damage award claimants who do not meet the criteria for any
6 of the three categories of actual damage awards. Settling Plaintiffs believe the only
7 viable option in proceeding with Settlement Administration and the validation of
8 the 495,699 actual damage claims is to request more information from the claimants
9 to validate their claims. In order to practically serve the best interests of the Class
10 and to avoid depleting the Settlement fund on the validation of claims, a second
11 round of Notice is needed to reach out to the actual damage claimants and obtain
12 more information from them. *See, e.g.,* Manual for Complex Litigation (Fourth) §
13 21.66 (2004) (“it may be appropriate to require substantiation of the claims (*e.g.*,
14 through invoices, confirmations, or brokers records”); *Tarlecki v. Bebe Stores,*
15 *Inc.*, 2009 U.S. Dist. LEXIS 40774, at *12 (N.D. Cal. May 13, 2009)
16 (acknowledging that parties could undertake a further round of claim notices before
17 settlement proceeds); *In re Shell Oil Refinery*, 136 F.R.D. 588, 591 (E.D. La. 1991)
18 (court established two-step claims process that included first step of gathering
19 preliminary information about claimants’ identities and general nature of each
20 claim and second proof of claims process of gathering detailed information about
21 each claim).

22 Though there are still a few claims that are being re-reviewed and a few
23 codes are still being interpreted by two of the Defendants (which additional
24 information will be given to GCG), the audit has already demonstrated that a
25 substantial number of the actual damage claims are clearly or potentially invalid.
26 Even in the broadest, most easily validated category of Other Credit, more than
27 one-fifth of the “initially valid” claims are invalid. If GCG were to pay out all the
28 claims according to what is stated on the actual damage claim forms, they would be

1 paying out millions of dollars in invalid claims at a huge cost to the Class. As an
2 example, of the 495,699 actual damage claimants, there were 57,040 “initially
3 valid” employment claims (with some claimants selecting employment and one or
4 more other categories). Projecting from the 1,000 claim audit that showed 34% of
5 those “initially valid” employment claims were actually invalid, that would mean
6 19,393 “initially valid” employment claims were invalid. The Settlement provides
7 for employment claims to be paid out at the highest level. Even if pro rated down,
8 payment of the initially invalid employment claims and the projected invalid
9 employment claims would result in potentially millions of dollars being paid out for
10 invalid employment claims. Such a result is not tenable for the Class.

11 Examining all of the actual damage claims on an individual basis following a
12 similar procedure as the audit is also not feasible. The audit of 1,000 claims has
13 taken place from December 2009 through early May 2010 and involved
14 approximately 1900 hours of work by GCG, at a cost of \$140,526. The cost of
15 providing the data to GCG was borne by Defendants, who only committed to turn
16 over the files for the 1,000 claims in the audit. Even five months later, there are
17 still codes that are being determined by two of the Defendants at the request of
18 GCG. If GCG had to undertake the same detailed level of analysis of seven-year
19 time periods for all three Defendant for the almost half a million actual damage
20 claims, it would take years and would be cost-prohibitive.

21 After the almost-complete analysis by GCG, approximately 34% of the
22 employment claims are invalid, 25% of the mortgage/housing claims are invalid,
23 and 22% of the Other Credit category are invalid. The parties believe that the
24 continuing analysis will, if anything, increase the number of invalid claims.
25 Projecting these same percentages onto the 345,268 “initially valid” actual damage
26 claims for illustrative purposes only, a similar pattern of validations would result in
27 more than 19,000 invalid employment claims (out of a total of 57,040), more than
28 45,000 invalid mortgage/housing claims (and more than 30,000 claims only

1 “possibly valid” out of a total of 181,389), and more than 69,000 invalid other
2 credit claims (and more than 18,000 only “possibly valid” claims out of a total of
3 310,546 other credit claims). If half of the “possibly valid” claims were validated,
4 it would result in over 61,000 invalid mortgage claims and over 78,000 invalid
5 other credit claims. Absent consideration of claim overlap, more than 158,000 total
6 “initially valid” claims would actually be invalid, an unacceptably high number.
7 When added to the number of claims invalidated as a result of the initial review
8 (150,431), there would be more than 308,431 invalid claims, or 62.2% of the total
9 Actual Damage Award claims. Thus, *more than half* of the actual damage claims
10 would be invalid.

11 Even if the effect of claim overlap evidenced by the 1,000 claim audit holds
12 true for the remaining “initially valid” claims, the audit reflects that 13.7% of the
13 “initially valid” Actual Damage Award claims are not valid in *any* category. Again,
14 assuming that one half of the “possibly valid” claims are in fact invalid (another
15 11.5%), and including the 150,431 claims that were invalidated as part of the initial
16 review process, this would still mean that 47.9% of the Actual Damage Award
17 claims would be invalid – still far too many.

18 Though the 1,000 claim audit is still ongoing, Settling Plaintiffs believe the
19 actual damage claims cannot be validated without further scrutiny. Moreover, it
20 would be cost-prohibitive for the Settlement Administrator to conduct a detailed
21 analysis of the almost half a million actual damage claims in a similar manner as
22 the audit. Therefore, Settling Plaintiffs believe it is necessary to allow claimants to
23 provide additional documentation to try to prove their claims. If they cannot or do
24 not submit such documentation, these claimants will have their claims converted to
25 a Convenience Award, pursuant to the Agreement § 7.7(c)(v), with a notification
26 accompanying their claim payment that informs them that their claim was
27 inconsistent with the data in their credit file.
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Dated: May 7, 2010

Respectfully submitted,

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