

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

FILED

DEC 15 2003

LARRY W. PROPPES, CLERK
U. S. DISTRICT COURT

FRANKLIN E. CLARK
on behalf of himself
and all other similarly situated,

Plaintiffs,

- against -

EXPERIAN INFORMATION
SOLUTIONS, INC.

Defendants.

Civil Action No. 8-00-CV-1217-22

-----X
FRANKLIN E. CLARK and
LATANJALA DENISE MILLER
on behalf of themselves
and all other similarly situated,

Plaintiffs,

- against -

EQUIFAX CREDIT INFORMATION:
SERVICES, INC.,

Defendants.

Civil Action No. 8-00-CV-1218-22 *

-----X
FRANKLIN E. CLARK
on behalf of himself
and all other similarly situated,

Plaintiffs,

- against -

TRANS UNION L.L.C.,

Defendants.

Civil Action No. 8-00-CV-1219-22

-----X
PLAINTIFFS' MEMORANDUM DETAILING THE AMENDMENTS TO THE
MODIFIED STIPULATION OF SETTLEMENT

Introductory Note

In the past two months, various minor modifications to the original Stipulations of Settlement have been negotiated and ultimately agreed upon by all parties to these settlements. In nearly every respect, these modifications were caused in reaction to certain enumerated concerns raised by this Court. In some isolated situations, these changes resulted from the process of reviewing and improving a legal document. That is to say, a roomful of lawyers reading the same document will always strive for perfection.

No one from the Plaintiffs' side can claim that the Modified Stipulations of Settlement are perfect, or that the Agreement to Amend makes it so. We do claim that the Modified Stipulation of Settlement is fair, reasonable, adequate, greatly benefits the class and is in no respect less beneficial than the original. Every change from the original is to the class's benefit. We likewise assert that the changes contained in the Agreement to Amend all inure to the benefit of the class. Taken as a whole, the entire Stipulation of Settlement and all of the subsequent agreements that have been entered into should be approved by the Court.

The Modifications

Subsequent to the Final Fairness Hearing conducted by this Court on September 23-24, 2003, Plaintiffs Counsel entered into additional negotiations with Counsel for the Defendants to specifically address those areas of concern indicated by the Court. This was also done by Plaintiffs Counsel in a continuing and ongoing basis to persuade the Defendants that certain modifications to the Stipulations of Settlement were appropriate and necessary. As a result of these negotiations, Modified Stipulations of Settlement were entered into and filed on November 7, 2003. The most significant of those modifications are described and discussed below.

1. The Elimination of the Option of Reporting “Included In Bankruptcy” Information on Trade Lines for Joint Account Holders.

All three Defendants have now agreed to eliminate the option that would allow them to report joint account bankruptcy information on the credit report of persons who have not filed bankruptcy. Prior to the last fairness hearing, only Experian had agreed to this option and its permanence. Equifax had made the decision to report the information more accurately and Trans Union (who had made the decision not to report the information) had not made up its mind on permanence.

Now, both Equifax and Trans Union have agreed that they will permanently cease reporting joint account bankruptcy information on the credit report of persons who have not filed bankruptcy. This modification insures that there will be uniformity of treatment as between all three of the Defendant credit reporting agencies and Class Members.

2. The Event for Remedy.

Paragraph 20.a was modified in two respects. First, in addition to acceptance of a credit report as proof of an Event for Remedy, the Defendants agreed to accept a consumer disclosure. Second, it was agreed that it was necessary to provide a mechanism for Class Members to contest a decision by a Defendant credit reporting agency to deny a \$500.00 claim for an Event for Remedy. Language was added to provide that a Class Member could contest such a denial by filing for arbitration under the provisions of Paragraph 20.b.

Paragraph 20.b was modified by clarifying how arbitration would be commenced, to specify who would conduct arbitration, to identify the rules under which arbitration would proceed, and to provide for attorneys fees to the Class Member who prevails in an arbitration. As a clarification and explicit recitation of something that was already implicit and understood,

the Stipulation was modified to make it absolutely clear that the remedies in Paragraph 20.b (as well as 20.c) were available upon proof of the occurrence of an Event for Remedy, without proof that the Event for Remedy violated the law.

Paragraph 20.c was modified to make the clarification referenced above and to acknowledge that the remedies under the FCRA include the right of a prevailing Class Member to recover costs and attorneys fees. The modification resolved any hypothetical ambiguity.

3. Permanence.

Paragraph 23 was modified to address the Court's concern over the circumstances in which a change in law or regulation would permit a Defendant credit reporting agency to terminate its obligations under Paragraphs 18-22 of the Stipulations of Settlement. Now, as to any permissive (rather than prohibitory) change in the law, the United States Supreme Court and the Fourth Circuit Court of Appeals are the only courts whose decisions could trigger judicial change or termination. In the event that any other court rules that the manner in which the reporting of information called for in the Stipulation of Settlement is prohibited by law, the Defendants will still have the right to petition this Court for a ruling authorizing it or them to report in accordance with the change in the law.

4. Release Language.

Paragraph 41 of the Stipulation of Settlement was amended to address the Court's concern that the release language was either ambiguous or confusing. To remedy that concern, the previous language referring back to the Complaint was deleted. In its place was inserted language that described more particularly the claims that were being released. The claims released are limited to those that are based on, or related in any manner to the Defendants' having issued reports that disclose an account as having been in bankruptcy where the account

was in bankruptcy as a result of the bankruptcy filing of a person other than the consumer who was the subject of the report.

The Amendments

For ease of reference, the amendments will be addressed in the same order in which they appear, first in the Modified Stipulations of Settlement, and then in Exhibit B (The Claim Form) thereto.

Amendments to Modified Stipulations

1. **Paragraph 20**

To the end of Paragraph 20 is added language that specifies the manner in which a Class Member may report to a Defendant credit reporting agency that it has issued a credit report that violates the terms of the Stipulation of Settlement. The Defendants will be required to file with the Court the mailing address, e-mail address and/or facsimile number to which the Class Member may make such a report. Class Counsel will also be required to post that information on its website. Additionally, a telephone number will be provided on any Consumer Disclosure obtained by a Class Member on which a report of a violation of the Stipulation of Settlement may also be made. In the event the Defendants find it necessary to change any of the contact information, they are required to notify the Court and Class Counsel and keep the old numbers active for at least seven (7) days after giving notice of the change. These amendments clarify the process by which Class Members are to notify the Defendants in the event of a violation of Paragraph 18 of the Stipulation of Settlement.

Paragraph 20.a is amended to add language that will permit a Class Member to submit as proof of an Event for Remedy, and entitlement to the \$500.00 payment, “an adverse action letter

that specifies as a reason for the adverse action that the Class Member's Credit Report referenced the bankruptcy of another, expressly including the 'of another' aspect." Previous to this amendment, a Class Member filing a claim for an Event for Remedy would have been required to submit as proof either a copy of his/her credit report or a copy of a consumer disclosure that demonstrated that the report or disclosure was in violation of the Stipulation of Settlement. By the amendment above, an adverse action notice, so long as it includes language that says the adverse action was taken because the credit report referenced the bankruptcy of another will be sufficient to establish entitlement to the \$500.00 remedy.

Paragraph 20.b of the Modified Stipulation is being amended in two respects. First, the first sentence is being amended to say that a Class Member has to believe he or she has suffered "economic" damages instead of "financial" damages. The purpose of this change is simply to use a word with a more comprehensively understood meaning in the law. The second change is to require the Defendant credit reporting agency to produce, in the arbitration proceeding, all of its relevant documents that pertain to the arbitrating Class Member. Prior to this change it was arguable that the arbitrator might not require such a production.

Paragraph 20.c is amended to strike the \$75,000.00 damage threshold that otherwise would have existed before a Class Member could proceed in federal court where there has been an "Event for Remedy." This is a clarification of, rather than a change to, the Modified Stipulation. As is apparent from the modifications that were made in the Modified Stipulation, it was the intent of the Plaintiffs and Defendants to make arbitration voluntary, rather than mandatory. It is now clear that a Class Member who has suffered an Event for Remedy, and has incurred damages in any amount, can elect to proceed in federal court, without having to prove liability, subject only to being precluded from recovering punitive damages and pursuing non-

FCRA claims. Any Class Member who has been damaged by an Event for Remedy in an amount less than \$75,000.00 will still have the option of arbitration, but will also be free to pursue the claim in federal court instead.

2. Paragraph 23

Paragraph 23 of the Modified Stipulation is being amended to add a requirement that, before petitioning the Court for relief from the provisions of the Stipulation of Settlement on account of a change in the law, court decision or change in regulations, the Defendant credit reporting agency must, as may be required by this Court, notify Class Counsel and objectors' counsel of its request for such relief. The purpose of this amendment is to allow, should the Court so desire, the participation of Class Counsel and objectors' counsel in the proceeding to determine whether the Defendant credit reporting agency is entitled to the relief from the Stipulation of Settlement that it may seek.

3. Amendments to Exhibit B (The Claim Form)

The first sentence of Paragraph 4 of the Claim Form is amended to describe a Defendant credit reporting agency's violation of Paragraph 18 of the Modified Stipulation of Settlement, rather than simply referencing that document. The purpose of this amendment is to arguably make the form easier for a Class Member to understand.

The end of Paragraph 4 of the form is changed to reflect the option of attaching an adverse action letter, as described above.

Paragraph 5 of the Claim Form is amended to add a phrase: "I believe I am a Class Member because either (a) I was included in the mailing of the class notice or (b)..." The effect of this amendment is to allow a Class Member to acquit his or her obligation to assert class

membership by swearing to belief (not to fact) of class membership plus either that he or she received class notice or that the definition of class membership applies to him or her.

4. Further changes to implement entry of stipulation containing amendments:

In the clean copies of the now operative stipulations, which the parties are executing and filing, the following changes have been made from the Former Modified Stipulation:

The title has been changed to "Second Modified Stipulation," and this is also reflected in the first line of Paragraph 1.

"Former Modified Stipulation" has become a defined term, indexed in Paragraph 7.

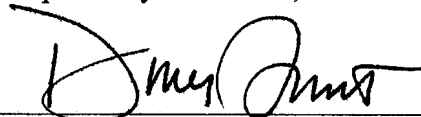
Paragraph 50 has been modified to reflect that the Second Modified Stipulation supersedes the Former Modified Stipulation.

Defendant Experian's counsel has indicated to Plaintiffs' Counsel that Experian has reviewed and joins in this memorandum.

Conclusion

Based upon the foregoing, Plaintiffs respectfully request that this Court approve the Settlement agreement in all respects.

Respectfully submitted,



Doug Smith, Esq., Federal ID #4212
Johnson, Smith, Hibbard &
Wildman, Law Firm, L.L.P.
220 North Church Street
P.O. Drawer 5587
Spartanburg, SC 29304
864-582-8121

William Mullen, Esq.
MULLEN LAW FIRM
P. O. Box 6248
Spartanburg, SC 29304

Jeffrey G. Casurella, Esq.
Law Offices of
Jeffrey G. Casurella
3350 Riverwood Parkway, Ste. 1900
Atlanta, GA 30339

David H. Wilkins, Esq.
Wilkins & Madden, P.A.
408 East North Street
Greenville, SC 29601-3098

L. Hunter Limbaugh, Esq.
Attorney at Law
111 Clark Ridge Road
Columbia, SC 29223

Dated: December 15th, 2003
Spartanburg, South Carolina

Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

I, Dana B. Hawkins, Legal Assistant to Doug Smith of the firm of Johnson, Smith, Hibbard & Wildman Law Firm, L.L.P., do hereby certify that on the 15th day of **December, 2003**, I served a copy of the following documents on counsel for the Defendants, the designated counsel for Objectors and individual Objectors (as shown below) by depositing copies of the same in the United States Post Office at Spartanburg, South Carolina, with proper postage affixed thereto to the addresses shown below:

Documents Served:

Plaintiffs' Memorandum Detailing the Amendments to the Modified Stipulation of Settlement

Counsel Served:

Tom Harney
Kilpatrick Stockton
1100 Peachtree St., Suite 2800
Atlanta, GA 30309

Harold C. Hirshman
Sonnenschein Nath & Rosenthal, LLP
8000 Sears Tower
233 South Wacker Drive
Chicago, IL 60606

Mark E. Kogan
Satzberg Trichon Kogan & Wertheimer, PC
1818 Market St., 30th Floor
Philadelphia, PA 19103

T. English McCutchen
McCutchen Blanton Johnson & Barnette, LLP
P.O. Drawer 11209
Columbia, SC 29211-1209
For All Objectors



Dana B. Hawkins
Legal Assistant to Doug Smith