

FILED

DEC 08 2003

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

LARRY W. PROPPS, CLERK
COLUMBIA, S.C.

att
2-8-03

Franklin E. Clark, on behalf of himself
and all others similarly situated,

Plaintiffs,

vs.

Experian Information Solutions, Inc.,

Defendants.

C/A No. 8:00-1217-22

ORDER

Franklin E. Clark and Latanjala Denise
Miller, on behalf of themselves and
all others similarly situated,

Plaintiffs,

vs.

Equifax, Inc., and Equifax Credit
Information Services, Inc.,

Defendants.

C/A No. 8:00-1218-22

Clark
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Franklin E. Clark, on behalf of himself
and all others similarly situated,

Plaintiffs,

vs.

Trans Union Corporation and
Trans Union L.L.C.,

Defendants.

C/A No. 8:00-1219-22

This order addresses the issue of whether further notice is required as well as a number of administrative matters relating to the hearing set to commence on January 12, 2003. Local and

coordinating counsel are requested to insure immediate dissemination of this order to their co-counsel to facilitate compliance with the deadlines and instructions set forth herein.

I. FURTHER NOTICE TO CLASS.

After reviewing the submissions of the parties and objectors, the court has determined that it is not necessary to provide individualized notice to class members regarding the proposed modifications to the settlement agreements.¹ The court's conclusion is based on the following considerations: (1) the potential for the proposed modifications was discussed in the initial settlement approval hearing; (2) class members had notice and an opportunity to attend the initial settlement approval hearing; (3) various objectors were present or represented by counsel at that hearing; (4) the proposed modifications address concerns raised during the initial settlement approval hearing; (5) the concerns addressed by the proposed modifications were also set forth in an order on October 2, 2003; (6) that order as well as the proposed modifications and objections thereto are available to class members on Class Counsel's website as well as through the court and court's electronic docket; (7) by oral ruling and through the October 2, 2003 order, the court gave class members notice of the schedule for further submissions and hearings in the event that modifications were proposed; (8) by virtue of that notice, class members have had an opportunity to submit written objection and will have the further opportunity to make oral objection at the hearing; (9) the proposed modifications benefit the class by, inter alia, making the remedies stated in the initially

¹ Rule 23(e) of the Federal Rules of Civil Procedure requires the district court to direct the form of notice of settlement. The form of notice "need only satisfy the 'broad "reasonableness" standards imposed by due process.'" *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1153 (8th Cir. 1999)(quoting *Grunin v. International House of Pancakes*, 513 F.2d 114, 122 (8th Cir. 1975)). This notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Petrovic*, 200 F.3d at 1153 (quoting *Mullane v. Central Hanover Bank & Trust, Co.*, 339 U.S. 306,314 (1950)). In light of the factors addressed in the text, this court finds that further notice is not required.

CWC
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proposed settlement agreements and related notice more effective; and (10) the proposed modifications do not remove or reduce any benefits which class members may have anticipated from the initial settlement agreements and notice.

The court will, however, direct Class Counsel to add the following notice to the home page of their website:

IMPORTANT NOTICE: Class Counsel and Defendants have submitted proposed modified settlement agreements for approval by the court. Several objections have been filed to the agreements. Click here for information on the agreements, objections, and the approval process.

This notice should be linked to a page which gives access to: (1) the October 2, 2003 order; (2) the proposed modified settlement agreements; (3) all filed documents either advancing or opposing the proposed modified settlement agreements; (4) this order; and (5) any other documents required or allowed to be submitted by this order except as otherwise noted.

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II. ADDITIONAL MODIFICATIONS OF PROPOSED SETTLEMENT.

Two of the objectors filed memoranda indicating that discussions are ongoing for further modifications of the proposed settlement agreements. Any such negotiations shall be concluded as quickly as possible with any agreed proposed modifications being filed with the court, along with a memorandum explaining the nature and purpose of the changes, no later than **December 14, 2003**.

The filed documents addressed in this section shall be included on the class action website within one day of filing.

III. EXPANDED OPPORTUNITY TO OBJECT AND TO SEEK MODIFICATION OF EXCLUSION STATUS.

In light of the proposed modifications, the court determines that it should provide the following opportunities to persons falling within the class definition.

1. **Any individual class members who did not previously exclude themselves** from the class and who are dissatisfied *with the proposed changes* to the settlement may exercise one or both of the following options by **January 5, 2003**:

- a. they may file an objection specifying the *changes* to which they object and the reason for the objection;
- b. they may seek permission to exclude themselves from the class based on a showing that there are *material changes* to the settlement which work to their disadvantage.

2. **Any individuals who previously excluded themselves** from the class and desire, *based on the modifications*, to withdraw their requests for exclusion, may file a document seeking permission to withdraw the request for exclusion by the same date.

By allowing persons to request a change in their exclusion status, the court does not prejudge whether any requests will be granted. Rather, the court will hear argument on these matters on the date set for the hearing. Further, to the extent any class member requests exclusion (despite not having previously requested exclusion), the burden shall be on that person to demonstrate prejudice *flowing from the change* in the terms of the proposed settlement. Such a showing may be made by written submission supported, if appropriate, by affidavit.

The filings addressed in this section should not be linked on Class Counsel's website to the "IMPORTANT NOTICE" addressed above in Section I of this order.

IV. **WITNESS IDENTIFICATION AND OTHER SUBMISSIONS FOR JANUARY HEARING.**

No later than **December 19, 2003**, Class Counsel, Defendants, and Objectors shall file the following:

1. Affidavits with supporting exhibits as to any testimony or evidence which they intend to submit by affidavit for consideration in support of or in opposition to approval of

Class
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the proposed modified settlement;²

2. Identification of any other witnesses they intend to present along with a summary of that witness' anticipated testimony and specification of any exhibits which might be relied on by or introduced through that witness; and
3. Specification of any other exhibits on which the parties or objectors may rely.

No later than **January 5, 2004**, any person who objects to reliance on an affidavit, or to the accuracy of the testimony therein, shall file a document setting forth the objection or challenge to content with specificity. Any challenges to the qualifications of a witness or admissibility of any specifically designated exhibit shall also be filed by this date. **The filed documents addressed in this section shall be included on the class action website within one day of filing.**

V. ATTORNEYS' FEES.

The court does not intend to address attorneys' fees at the hearing set to commence on January 12, 2004 except in two respects. First, the court will, to the extent appropriate, consider the overall request for fees as that request may reflect on the propriety of approval of the other settlement terms. Second, if the settlement is approved, the court will establish a schedule and procedures for resolution of the issue of attorneys' fees. Counsel should not, therefore, submit any fee requests or arguments in favor of or opposed to any specific fee allocation or amount until further notice.

IT IS SO ORDERED.


CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

December 8, 2003
Columbia, South Carolina

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² The court will accept the submission of affidavits, particularly as to matters such as compliance with prior directives relating to notice. The witness may, however, be required to appear if challenges are made to the adequacy or accuracy of the content of the affidavits.