

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF SOUTH CAROLINA  
Anderson/Greenwood DIVISION

3 Clark, et al., ) Ca. NO. 8:00-1219  
4 plaintiffs, ) COLUMBIA, SC  
5 ) January 12, 2004  
6 VERSUS )  
7 Trans Union Corporation, et )  
8 al., )  
9 Defendants. )

10 BEFORE THE HONORABLE cameron mcgowan currie  
11 UNITED STATES DISTRICT COURT JUDGE  
12 settlement HEARING

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STENOTYPE/COMPUTER-AIDED TRANSCRIPTION

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1           THE COURT:   Thank you for coming to columbia.  
2   There a few good reasons why we needed to do this in  
3   Columbia.   We are here this morning in the case of Franklin  
4   E. Clark and others versus Experian information solutions,  
5   incorporated; Equifax; and Equifax credit information  
6   services, incorporated; and trans union corporation; and,  
7   trans union LLC.   These are case numbers 8:00-1217, 1218,  
8   1219.   We are here to reconvene the settlement hearing that  
9   took place in Spartanburg.   We were not able to complete the  
10  process at that point.

11          Since the last hearing, there have been a great many  
12  documents filed, correspondence between the Court and  
13  counsel.   A lot has been done.   It is my understanding, from  
14  what the clerk has advised me of her checking with you this  
15  morning, that there are no individual objectors here today  
16  who are not represented by counsel.   If there is anyone here  
17  today who is here as an individual objector and who is not  
18  represented by an attorney, I would definitely like to know  
19  that now.

20          And we had previously, at the last hearing, an individual  
21  objector who was a lawyer but not appearing as counsel, but  
22  rather appearing pro se, and that was Ms. Wheelahan, and I  
23  don't see her here today.   Has anyone heard from her?

24          I have reviewed everything that has come, including Mr.  
25  Harney's letter this morning.   I want to say that it is

1 probably my fault that the whole furor concerning the  
2 abbreviated class definition occurred. We were trying to  
3 find a way to make it simpler and shorter. We were working  
4 on that, and my law clerk contacted his office and spoke with  
5 the paralegal and asked if counsel could try to come up with  
6 a shorter definition that was a little easier to manage, and  
7 they made an effort to do that. We then later, in studying  
8 the matter more carefully, realized that we could not --  
9 there are some things you can't simplify. And so we have  
10 gone with the other definition that was previously in judge  
11 Seymour's order with some minor modifications that we thought  
12 were important.

13 And I just have a few questions, and I sent the letter  
14 out to you last week with the one remaining issue that I  
15 thought we did need to discuss today.

16 So, let me just, in general, so that we can save some  
17 time give you a -- give you some impressions that I have and  
18 some concerns that I have, and then perhaps we can be more  
19 efficient in the way we use our time today.

20 I have tentatively decided to approve the settlements.  
21 There are some minor issues that we need to work out.  
22 Basically there is a little bit of language that needs to be  
23 tweaked in a few places. And there are just a few questions  
24 that I need to -- I need some answers to so that I will be

25 able to complete an order approving the settlements. I have

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1 not heard or seen anything in the written -- good morning,  
2 Ms. Wheelahan.

3 I have not heard anything or seen anything in the written  
4 objections that have been filed that has changed my mind  
5 about my impressions that I gave you at the end of the  
6 hearing last time. There have been some restated  
7 objections. Most of the objections that were restated had  
8 been made before, and I had already given you my initial  
9 comments on those. I have looked at these now more  
10 carefully. And in light of the revised stipulations, am even  
11 more convinced now, having done more research and looked at  
12 it more carefully, that the objectors' contentions concerning  
13 the settlement are not well-founded. And so, as I said, I  
14 am inclined to approve the settlements.

15 I have set up a procedure in anticipation of this hearing  
16 under which affidavits would be filed and folks would be  
17 required to set forth opposition to information in  
18 affidavits, if they wish to contest it. And so that we  
19 would know whether witnesses would be necessary. No  
20 opposition to any fact in any affidavit was filed. And,  
21 so, it is my interpretation of that, that the affidavits may  
22 be accepted in lieu of live testimony. And it is not  
23 necessary for us to listen to someone say on the stand what  
24 they have already said by way of affidavit, and I have

25 already reviewed. No one has requested the opportunity to

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1 cross-examine any of those witnesses. And so, it is my  
2 impression that we can go forward with the details of the  
3 concerns that the Court has and discuss those.

4 Before I do that, I want to say that one area that I do  
5 not intend to get into at this hearing in any way is  
6 attorneys' fees. The only way that I will address  
7 attorneys' fees is by setting up a plan for the submission of  
8 information and further briefing on the issue of attorneys'  
9 fees provided I do approve the settlement. And I have a  
10 proposed plan to give to you as part of an order. I also  
11 plan to do this in a two-stage proceeding in which final  
12 judgment would not be entered until after the attorneys' fees  
13 portions of the case has been resolved so that there would be  
14 two orders here. There will be an initial order approving  
15 settlements, but then that would not be immediately followed  
16 by a judgment. It would be immediately followed by a  
17 schedule under which there would be briefing submissions and  
18 determination of attorneys' fees. And then, final judgment  
19 entered so that any appeal taken could encompass all issues  
20 in one appeal. And so, that is what we envision at this  
21 time.

22 There are, as I said, a number of issues that I wish to  
23 go through with you this morning to be clear on and to  
24 confirm some things with you. And I am going to run through  
25 these with you and tell you what I think about certain of

1 these things and ask you if I am wrong about one or more of  
2 these items for you to let me know.

3 As I understand it, I want to confirm the following:  
4 The coordinated objectors. When I refer to "coordinated  
5 objectors," all objectors who filed anything other than what  
6 I refer to as Zupan, Murphy, and Wheelahan. Now, all the  
7 coordinated objectors now fully support the settlement. That  
8 is my understanding; is that correct?

9 Mr. Caddell: Yes, Your Honor, that is correct.

10 THE COURT: I will ask you, if you will,  
11 Ms. Jernigan has not seen all of you before. Please give her  
12 your name before you speak.

13 While conceding some improvements, the objectors are  
14 represented by -- the objectors Murphy and Zupan,  
15 represented by Mr. Cochran, and Wheelahan still oppose the  
16 settlements. And that there are no claims by the Murphy,  
17 Zupan, Wheelahan objectors that the various modifications  
18 have not improved the terms for the class. The objections  
19 are the basic settlement terms and most critically the  
20 imposition of limits on remedies for future violations. If  
21 anyone representing the Murphy, zupan or, wheelahan objectors  
22 disagrees with what I just said, please let me know.

23 MS. WHEELAHAN: I do dispute the modified settlement  
24 as approved for class members.

25 THE COURT: So, you believe that it has not

1 improved the terms for the class? You have other objections  
2 that you have not submitted in writing?

3 MS. WHEELAHAN: No. The objections that I did  
4 submit in writing, particularly the discovery provisions  
5 with respect to arbitration and the limits on attorneys' fees  
6 with respect to arbitration, I think those are actually a  
7 step down from what was put forth in earlier. Although it  
8 improves in other ways, the arbitration provision, that is a  
9 step down.

10 THE COURT: Okay. But you have submitted  
11 everything in writing?

12 MS. WHEELAHAN: Yes, Your Honor.

13 Mr. Cochran: Ed Cochran for objectors Murphy and  
14 Zupan. Two points. Number one, we do not share  
15 representation of the same objectors. We represent only  
16 Murphy and Zupan, Your Honor. And, number two, our  
17 objections go both to the issue of future claims and the  
18 conflicts of interest among class members that are related  
19 thereto.

20 THE COURT: All right.

21 MR. COCHRAN: I will, Your Honor, I only require  
22 five or ten minutes of the Court's time when we get to that  
23 point. It will not be lengthy at all.

24 THE COURT: So, you just have an oral presentation  
25 you wish to make yourself?

1 MR. COCHRAN: Correct, Your Honor.

2 THE COURT: Have you set forth all of these matters  
3 in your previous submissions?

4 MR. COCHRAN: Your Honor, we were of the opinion  
5 that we did not have Court permission to file a response, a  
6 sur reply to the reply to our objections. And there are some  
7 matters raised by the response that are in addition to what  
8 we filed.

9 THE COURT: All right.

10 MS. WHEELAHAN: Your Honor, if I could briefly  
11 address Mr. Hendricks affidavit I would ask that please and  
12 not more than five minutes.

13 THE COURT: All right.

14 I would like to -- it seems to me that we have no new  
15 objectors or any opt-out requests based on the changes. We  
16 are not aware of anyone who has now sought to object or opt  
17 out who is new, who had not previously objected or opted out  
18 based on the changes. Does anyone dispute that? And,  
19 again, we have no objections to the adequacy of the  
20 affidavit or declaration testimony and no filed demands to  
21 have any witnesses present for cross-examination. Does  
22 anyone dispute that?

23 All right. Now, I have received no new objections that  
24 were not raised previously in or prior to the first hearing  
25 regarding class treatment, the issue of class treatment.

1 Does anyone dispute that?

2 All right. We will come back to the class definition  
3 issue as to the adequacy of the notice. I have no  
4 objections which seem to challenge the adequacy of notice in  
5 any sense in a -- in the sense of any noncompliance with  
6 judge Seymour's prior order. Is anyone aware of any  
7 objections challenging the propriety of or the adequacy of  
8 the notice?

9 All right. Now, I have a question on this. When each  
10 defendant came up with its original list, the numbers per  
11 defendant ranged from 1.9 to 2.3 million for a total of over  
12 6 million. These lists were then combined and they were  
13 de-duplicated. And then the list had slightly over 4  
14 million. And all doubts regarding duplication were resolved  
15 in favor of not missing anyone. In other words, people  
16 were not eliminated if the defendants were not sure that they  
17 were duplicated.

18 I am wondering if there is any information which might  
19 help me understand how many people are actually covered by  
20 the slightly over 4 million notices? It appears to me that  
21 there may have been some overinclusion in the selection of  
22 names who would go on the notice. And I am trying to figure  
23 out whether -- how many of the folks on the actual list fit  
24 all the criteria of the class, or is it possible that a  
25 number of people who are actually not class members received

1 notice?

2 Mr. Harney.

3 Mr. Harney: I will sort of unwind that. There are  
4 several aspects to it. But, number one, is that each  
5 defendant included some people on the list who are not  
6 members of the class. That is because of the fact that we  
7 couldn't match up date of inquiry with when they were in  
8 bankruptcy, exactly. That was contemplated under Judge  
9 Seymour's order. So, that was step one.

10 Step two, as to each defendant, probably had some  
11 duplicative people on its own list because we are constantly  
12 purging and putting that together. But at any point in time,  
13 there is going to be some people that have two different  
14 records. So, that is each defendant had some duplicative  
15 records.

16 Now, we think that the best estimate of the number of  
17 people in the class is probably the number that each of us  
18 had or something even slightly less than that because really  
19 each defendant has the same people out there for the most  
20 part. So, we think that the class size is something in the  
21 2 million range, not in the 4 million range. Does that  
22 answer each part of that?

23 THE COURT: I think so. That is what I suspected.  
24 I wanted to make sure I was getting the right implication  
25 from the information disk. Does either defendant, either

1 of the other two defendants wish to speak to that or add  
2 anything?

3           Mark kogan:   Mark Kogan, Your Honor, for trans  
4 union.   A part of this difference in the numbers is as a  
5 result of the requirement of the class period to require that  
6 we mail to addresses from five years earlier than the mail  
7 date.   So that what we believe is that, when we interrogate  
8 our respective databases for all of the bankruptcies today,  
9 that number, given economic cycles, is generally a constant.  
10 At the beginning of the case, we represented to Judge  
11 Seymour that we identified about a million eight of such  
12 persons. We believe -- and then we had some economic hard  
13 times during this period. And that number, we believe, as a  
14 result, rose up about 10 percent. However, based on the  
15 duplication methodology that we elected, the people from the  
16 earliest end of the class, the ones most difficult to update  
17 and de-dup, a disproportionate number of those folks, who  
18 are the same folks, ended up getting a mailing to an old  
19 address that we couldn't exclude.

20           So, it is not that people -- the wrong people got  
21 anything. I just wanted to make that clear. We didn't send  
22 anything to the wrong people except to the extent that the  
23 original order contemplated that we did not match up the  
24 inquiry criteria.

25           THE COURT:   Now, anyone have anything else to say

1 about the number in the class?

2 As to the issues that the Court must consider as to the  
3 fairness and adequacy of the settlement, during the initial  
4 period of objections and the earlier hearing, there were  
5 some objections raising the issue of the adequacy of  
6 presettlement discovery. I then ordered some discovery  
7 after the last hearing concerning that matter. And I  
8 believe that the only objection that we have received after  
9 the required disclosure of the discovery since the last  
10 hearing was done was from Ms. Wheelahan. And, however, in  
11 that objection, Ms. Wheelahan was not specific regarding what  
12 she believed should have been done.

13 So, at this point, I don't have any specific objection  
14 from anyone after the required disclosures or required  
15 discovery was made as to what they think should have been  
16 done but was not done in the way of presettlement discovery.  
17 And, Ms. Wheelahan, I will let you address that when you  
18 speak in a few moments. But is there anyone else who  
19 disagrees with what I have said?

20 Now, as to the issue of adequacy of the actual  
21 stipulations of settlement as they now read, the Court  
22 believes that no objector has presented the Court with any  
23 legal authority imposing either a penalty or awarding damages  
24 where the sole alleged wrong was the inclusion of the type of  
25 bankruptcy reference at issue in this action.

1           Class counsel, by contrast, have directed the Court to  
2 case law suggesting a contrary result in jurisdictions which  
3 have addressed very similar issues. But if there is anyone  
4 who has presented to the Court or is aware of any legal  
5 authority imposing any penalty or awarding any damages where  
6 the sole alleged wrong was inclusion of the type of  
7 bankruptcy reference at issue in this case, we need to know  
8 about that.

9           Now, I want to confirm on some math here. By what we  
10 have received from you, this is what we think has happened.  
11 Somewhere between 3,342 to 3,651 individuals have opted out.  
12 Now, as of the hearing in September, we were using the  
13 number 3,342; the garden city group later revised that to  
14 3,651; and, then there is another group of 50 that were  
15 filed late and are not being considered as opt-out. This  
16 number, then, if we are looking at the number 3,651,  
17 represents one-tenth of one percent of those who received the  
18 notices. When you take the notices, it is our understanding  
19 that 3,190,389 received notices because there were over 4  
20 million notices mailed, and there were about 873,900 which  
21 were returned as undeliverable. So, we are dealing with  
22 about one-tenth of one percent individuals who have opted out  
23 of the class. Does anyone dispute that?

24           MR. SMITH: Doug Smith, Your Honor, on behalf of  
25 the class counsel. Very quickly, I would like to hand up a

1 new declaration from the garden city group. It does not  
2 change the math, I assure you, because the percentages  
3 basically would still be the same. But for an absolute  
4 number, the number of opt-outs is about 50 percent more THAN  
5 what you indicated. It is 3,718. With the untimely, you  
6 said 50. I believe it was 51. That changed since last  
7 week. There was an additional box that was handed in to us  
8 and, quite frankly, we had not looked at that. But as it  
9 turns out, it moved the numbers to 3,718.

10 THE COURT: And that 51 that you said were late, is  
11 that part of that 3718?

12 MR. SMITH: No, ma'am.

13 THE COURT: That is in addition?

14 MR. SMITH: Yes, ma'am.

15 THE COURT: So, you got proper opt-outs from 3,718;  
16 you got late opt-outs from 51.

17 MR. SMITH: Yes, ma'am.

18 MR. HARNEY: May I ask A question? Does the  
19 opt-out list that was filed by the plaintiffs include all  
20 3,718 people?

21 MR. SMITH: No, there is an additional that is  
22 supplemented. It is right here. We will file that today  
23 along with the declarations. I will be happy to hand those  
24 up.

25 Mr. Bennett: Leonard Bennett. Actually, as Your

1 Honor may know, we filed a separate motion to intervene on  
2 behalf of two opt-outs: One, Nancy Ayers; the other one,  
3 Cynthia Byerson. Cynthia Byerson is not listed in Mr.  
4 Smith's document he previously provided to the Court. And i  
5 assume that, when Ms. Byerson's case is ripe for litigation  
6 in District Court in Virginia, that that would be an issue we  
7 would have to litigate with the defendant, whether or not she  
8 properly, and her testimony would be, of course, that she did  
9 mail it in prior to the cutoff date, and there their argument  
10 would be to the contrary.

11 So, To the extent that Your Honor asks is there a  
12 position regarding the number of opt-outs, certainly we  
13 don't believe that there is -- there has been a  
14 determination of the exact amount of opt-outs. And until  
15 that issue has been litigated, the presence of a particular  
16 individual in an opt-out with the omission of that individual  
17 being an opt-out, we believe is still up in the air.

18 MR. SMITH: Your honor, again doug Smith on behalf  
19 of class counsel. To relieve Mr. Bennett's ongoing concern,  
20 Ms. Byerson is in the opt-out list. And, unfortunately, is  
21 in that last one -- but fortunately now is in that last group  
22 that was filed.

23 THE COURT: So, she is not one of the late ones?

24 MR. SMITH: She was one of the late ones -- I  
25 believe -- I'm sorry.

1 THE COURT: She was a timely, she filed a timely  
2 opt-out?

3 MR. SMITH: Yes, ma'am.

4 MR. BENNETT: Leonard Bennett. She will be  
5 relieved, Your Honor.

6 MR. HARNEY: Your Honor, it is really the  
7 defendants who are going to have to rely on somebody whether  
8 they opted out or not. But under the order the plaintiffs  
9 have done it, have we got something of record now that is  
10 absolutely clear as to who opted out on time?

11 THE COURT: Well, it is my understanding THAT what  
12 Mr. Smith is about to file is a complete list of everyone who  
13 opted out on time, plus the names of the 51 whose opt-out  
14 notices were received but were late.

15 MR. SMITH: Your Honor, correction to that. We  
16 are not filing the 51 names. THE 51 names -- we will be  
17 happy to do that.

18 THE COURT: I think it would probably be a good  
19 idea to have garden city do an amended declaration in which  
20 they say, we also received these 51 opt-out notices on the  
21 following dates so that there is a record of when they were  
22 received in the record of the Court. Because, if those  
23 individuals later file suit and claim to be opt-outs, the  
24 record of that is going to be needed.

25 MR. SMITH: Yes, ma'am.

1           THE COURT: All right. Am I correct, Mr. Smith,  
2 then, that the names that are in what you are about to file  
3 are just those that garden city considered to be timely  
4 opt-outs?

5           MR. SMITH: Yes, ma'am.

6           THE COURT: Then we will ask you to supplement that  
7 with the names of the 51.

8           MR. SMITH: Your Honor, I will go ahead and hand  
9 up. Obviously, we filed it in two different ways. We  
10 filed one in a list with just names; one we asked for a  
11 protected order.

12           THE COURT: I will be discussing that issue later.  
13 All right. What has been handed to me is an envelope  
14 marked "confidential information to be submitted to the Court  
15 in connection with plaintiffs' motion to seal supplemental  
16 opt-out list" that, at this point, I will not file because I  
17 will take that up later. But he has an unredacted list --  
18 a redacted list, I assume there, that does not contain  
19 social security numbers and addresses and phone numbers; is  
20 that correct?

21           MR. SMITH: Just the names, yes, ma'am.

22           The court: The document to be filed is entitled:  
23 "Declaration of the garden city group, incorporated." It  
24 contains a short declaration of a project manager at garden

25 city group. And this person indicates they were hired as the  
20

1 opt-out administrator and has prepared a redacted  
2 supplemental opt-out list which contains 306 names. So,  
3 this is not comprehensive. This is those that were added  
4 after the last list. So, there is an earlier document like  
5 this that contains a large number of names.

6 MR. SMITH: Your Honor, just for edification. We  
7 filed a consolidated list that indicates the last list was  
8 filed, as well as the supplement that you just mentioned.

9 THE COURT: Is that what is in here?

10 MR. SMITH: Yes, ma'am, in that it is.

11 THE COURT: In the sealed document?

12 MR. SMITH: And the smaller one that you were just  
13 looking at. If you will notice, that is the supplemental  
14 list with just names.

15 THE COURT: But at this point, on file with the  
16 Court are two redacted lists which contain together the total  
17 number of timely opt-outs as per garden city group.

18 MR. HARNEY: And when they file this supplemental  
19 declaration regarding the 51 people, could they also affirm  
20 that these lists contain all the opt-outs that we are finally  
21 receiving? In other words, it is not enough for us to really  
22 have them say, here are some opt-outs. We need them to say,  
23 these now what we have filed are all the opt-outs that we  
24 have received, because that is what we need to be able to  
25 show in a Court in arkansas, Mississippi, wherever we are a

1 defendant. Because we are proving a negative, in effect.

2 THE COURT: Well, let me ask you this. The last  
3 paragraph in this affidavit is:

4 "Therefore, a comprehensive review of all  
5 opt-out requests shows a total of 3,718 timely  
6 opt-out requests, and 51 untimely opt-out  
7 requests."

8 Do you think that is sufficient?

9 MR. HARNEY: Yes, if it says, "and they are the  
10 ones shown on those two lists." I haven't seen that  
11 declaration.

12 THE COURT: He just says "attached is the redacted  
13 supplemental opt-out list." I think probably, because they  
14 will be filing a supplemental redaction list anyway, they can  
15 do that and take care of that issue.

16 Now, it is my understanding that there were originally  
17 249 objectors of whom 18 were represented by counsel, plus  
18 Ms. Wheelahan, who is also an attorney.

19 At this point, there are three objectors who remain  
20 active. That is Zupan, Murphy and Wheelahan. And we have  
21 16 former objectors who are now -- who are represented by  
22 the coordinated objectors who now support the settlement.  
23 So, those are the numbers as far as status of objectors.  
24 Does anyone disagree with that?

25 MR. MCCUTCHEN: Your Honor, may it please the

1 Court. English McCutchen. Two things. I would like to  
2 introduce to the Court Ms. Cynthia Chapman of CADDELL and  
3 Chapman of Houston who is with us today. And the other  
4 thing is we would like the record to show that, since the  
5 coordinated objectors group did, in fact, approve the  
6 settlement as modified, we suggested that not all of the  
7 attorneys who were in our group actually appear here today  
8 from around the country and incur those additional expenses.  
9 So, while we have given the clerk AND THE Court reporter the  
10 names of the people who are here, I did want the Court to  
11 know why some of them are not here.

12 THE COURT: All right. Thank you.

13 Since the last hearing, there has been new legislation  
14 which does deal, to some extent, with the issue of the credit  
15 report, the FREE consumer disclosure. I have also reviewed  
16 that legislation and have compared what it provides to what  
17 this stipulations of settlement provide. So, I just wanted  
18 to put that in the record.

19 In revising paragraph 20a, as I noted, there has been  
20 -- this provision of the stipulation has been modified to  
21 simplify the submission of a claim by deleting, it appears to  
22 me, the notarization requirement. I want to confirm that  
23 with counsel. That the oath and notary requirements were  
24 eliminated, and the words "penalty of perjury" were added in  
25 lieu of that, and that was intentional.

1 MR. Limbaugh: Yes, ma'am.

2 THE COURT: Now, when you changed paragraph 20C,  
3 it raised some questions in my mind that I need to clarify  
4 with you. Even before the change concerning the  
5 jurisdictional amount under the old stipulation, some cases  
6 would not have satisfied diversity jurisdiction requirements  
7 OF THE federal courts. As I understand it, the parties  
8 are, therefore, relying on federal question jurisdiction by  
9 requiring that the claim be pled as an FCRA claim, but  
10 stipulating that the only proof required is that an event for  
11 a remedy. In other words, a violation of the settlement  
12 occurred.

13 In essence, it seems to me that the defendant is  
14 conceding, for purposes of any case filed under this, that  
15 the violation is a violation of the FCRA. And, therefore,  
16 federal jurisdiction would be present. But how do you  
17 contemplate that these cases will -- where and how do you  
18 contemplate that these cases will be filed? If they are to be  
19 filed in the venue or the jurisdiction where the plaintiff  
20 lives, then another judge would be assigned to them. And  
21 there is some risk, I suppose, that a judge would decide  
22 that this was an improper attempt to consent to Federal Court  
23 jurisdiction.

24 On the other hand, if you require them to file here and  
25 they are, which might make some sense to avoid differing

1 interpretations of the stipulations by different judges  
2 around the country, then that means that any plaintiff who  
3 files would have to file in South Carolina, even though they  
4 lived in Missouri.

5 I don't know whether you have discussed this or not. And  
6 I don't know whether there was any agreement as to where  
7 these cases would be filed. Overall, it would seem to me  
8 that the plaintiffs would probably want to file in their home  
9 forum, and you just run some risk of a judge somewhere else  
10 who didn't approve this settlement saying, I don't agree  
11 there is federal jurisdiction here, and remanding the case or  
12 dismissing the case, in which event I guess there would have  
13 to be a state court action brought.

14 Mr. Caddell, would you like to address that?

15 MR. CADDELL: Your Honor, on behalf of the  
16 coordinated objectors, we do appreciate that it is some risk.  
17 BUT it is a risk we prefer to take because of the size of  
18 these cases. We think it is appropriate to bring these cases  
19 in the jurisdiction where the plaintiff resides or subject to  
20 the appropriate venue provisions of the federal courts.

21 THE COURT: All right. So, there is no one here  
22 that is concerned with the risk of a federal jurisdictional  
23 issue being raised in one of these cases down the road?

24 MS. WHEELAHAN: Your honor, I don't think there is  
25 federal jurisdiction where there is merely a violation of a

1 state law contract. I don't think -- if you want to  
2 characterize these defenses to remedy, as they call them, as  
3 violations of a settlement and nothing more, then they are  
4 violations of a state law contract.

5 THE COURT: All right.

6 MR. BENNETT: Leonard Bennett. As someone who  
7 litigated these, it was our understanding, when Mr. Caddell  
8 was negotiating settlement, that we would be litigating in  
9 the plaintiffs' venue. To be candid, that was not  
10 something, as I understand it, to be discussed by Mr.  
11 Caddell's negotiations. I don't believe we would have any  
12 difficulty. And this may be anecdotal, if anything else,  
13 but i don't believe we would have any difficulty alleging  
14 this is a violation of the FCRA. I think Ms. Wheelahan's  
15 concern is, i don't believe, is truly founded. Your Honor's  
16 concern possibly. There is a possibility that this judge in  
17 arkansas who may not agree if Ms. Mcrae, on behalf of  
18 Equifax, argues that they don't stipulate as to liability,  
19 that judge might have a differing interpretation. That is  
20 something that the coordinator objectors, when they  
21 negotiated the settlement, I think was prepared -- a risk  
22 they were prepared to take.

23 I don't believe anybody contemplated Your Honor would be  
24 hearing an infinite number of FCRA cases.

25 MS. WHEELAHAN: Your Honor, I want to point out the

1 Supreme Court syngenta decision is, I think, important to  
2 that.

3 THE COURT: Speak up.

4 MS. WHEELAHAN: The supreme Court syngenta decision  
5 addresses that jurisdictional issue.

6 THE COURT: All right. Thank you.

7 Let me go for a moment to the issue of the adequacy of  
8 the fix proposed by equifax.

9 MR. MCCUTCHEN: Before you leave paragraph 20,  
10 English McCutchen. Go to subparagraph B. in the second  
11 line, you will notice that part of what the coordinated  
12 objectors had requested changed "financial damages" were  
13 changed to "economic damages." And if you go to the bottom  
14 of the page up 13 lines from the bottom, I see that the word  
15 "financial damages" was not picked up. We didn't catch it  
16 either, and we would ask that counsel change the word

17 "financial" there to "economic," as well, so it would be  
18 consistent, if Your Honor follows what I am saying.

19 In other words, they agreed "economic damages" was a  
20 better word than "financial." And just down in the body of  
21 it, it was not caught.

22 MR. HARNEY: Your Honor, we agreed that financial  
23 and economic meant exactly the same thing, and that we  
24 couldn't figure out a difference. And so we changed it so we

25 wouldn't have to argue about it. And I think all of the

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1 parties are willing to state here in court that we consider  
2 it to mean the same thing. I would hate to have to do  
3 another draft of this stipulation. Isn't that right,  
4 plaintiffs?

5 MR. SMITH: Your Honor, we agree that it is, we  
6 thought it was the same. We don't think one is better than  
7 the other one.

8 THE COURT: Mr. McCutchen, do you think that having  
9 the Court's order simply reflect that agreement would be  
10 sufficient?

11 MR. MCCUTCHEN: Yes, ma'am, that is fine.

12 The court: I was talking about the Equifax fix  
13 here. It is my understanding that under the revision now,  
14 because of the changes that Equifax needs to implement, the  
15 new date for the final implementation by Equifax of the  
16 revised fix is May 31 of 2004. And that, in the meantime,  
17 Equifax will be following its original fix. Therefore, the  
18 stipulation, at least as to Equifax, effectively envisions a  
19 July 31st of 2003 to May 31, 2004 fix, followed by a -- that  
20 is the original fix -- followed by a May 31, 2004 forward  
21 fix, which would be the same as the other two defendants'  
22 original fix. IS that correct?

23 MR. HARNEY: Yes, Your Honor.

24 THE COURT: All right. There has been an

25 amendment to the remedial provisions to facilitate

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1 notification of the defendants of any alleged events for  
2 remedy. As I understand this, the class members cannot seek  
3 penalties for multiple violations until they give 48 hours  
4 notice. And there is related language at the end of  
5 paragraph 20 that effectively limits damages claims as well,  
6 that as the class members are required to wait 48 hours after  
7 giving notice of the problem before seeking credit. Are  
8 there any issues concerning that that need to be addressed?

9 Now, as to the changes of law. That is, what will  
10 happen if the law changes? As I understand it, the  
11 modified stipulation allows a defendant to change its  
12 behavior automatically if the statute -- if a statute  
13 changes the law. That is without coming back to Court.

14 Now, the way it is worded in paragraph 23 right now, it  
15 says that:

16 "If a federal statute either permits the  
17 reporting of information, which would  
18 otherwise be barred under the stipulation, or  
19 prohibits anything required by the  
20 stipulation, then they can simply proceed."

21 Is it the intention of the parties that, if a federal  
22 statute is amended or passed which permits a credit reporting  
23 agency to report this type of information, that that would

24 immediately allow any of these defendants to immediately  
25 begin reporting such information?

29

1 MR. HARNEY: That is our understanding.

2 THE COURT: That is your understanding. I wanted  
3 to make sure everyone was clear on that. And then in  
4 subparagraph B under paragraph 23 where it says, this is  
5 also dealing with a statute change which would prohibit  
6 anything required. Is it the defendant's interpretation of  
7 that, that in order for the statute to allow you to be  
8 released from the obligations of this settlement, it would  
9 have to require something material to this settlement? In  
10 other words, if there were a minor change to a federal  
11 statute that prohibited one part of this stipulation, but it  
12 didn't affect anything else in this stipulation, what I want  
13 to be sure of is that the defendants won't declare the entire  
14 stipulation null and void because a statute changed one part.

15 MR. HARNEY: I don't think we can. It says we are  
16 entitled to report such information and protect itself in  
17 accordance with such statute. It doesn't say we are  
18 entitled to get out of the agreement.

19 MR. KOGAN: Mark Kogan. The concern that we had  
20 was that we not, in complying with this, run afoul of a  
21 subsequently enacted statute. And it is our view, at least  
22 trans union view, that if we are wrong about that, then the  
23 class member would have a remedy to the extent that we were  
24 not required by the statute to do what we were doing.

25 THE COURT: All right. So then there is no

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1 objection to my order stating that this would only release  
2 you from obligations under the settlement agreement that were  
3 directly proscribed by statute?

4 MR. KOGAN: Mark Kogan. Directly -- it would only  
5 entitle us to report the information in the future that we  
6 have agreed not to report. If failing to do so would pose  
7 either a reasonable, substantial, knock-down, drag-out  
8 certainty risk of violating that statute. I mean, I think  
9 the standard ought to be a risk-based standard rather than a  
10 direct causation. Because I think what we are contemplating  
11 is having the right to resolve the doubt in favor, since we  
12 deal in such large numbers, of complying with what we think  
13 the statute requires knowing that we may be called upon to  
14 come to Court and defend that interpretation rather than  
15 putting us in the reverse situation of wondering is this  
16 really a direct requirement? Because the FTC is unlikely to  
17 be concerned about that question in deciding whether or not  
18 we were in compliance.

19 So, we feel that, in order for this matter to be  
20 addressed, it ought to be addressed in terms of our  
21 accepting the risk of being wrong, but on the other hand,  
22 extending to us the right we contemplated and negotiated for  
23 in the agreement, which is the right to report the

24 information.

25 MR. HARNEY: I would put a slightly different spin

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1 on that in that I think saying "direct," I think that would  
2 be trying to look ahead too much. I think the Court is  
3 looking to see if what we have done is right needs to have  
4 the leeway to decide. I mean, if it wasn't direct, but it  
5 was also clear and certain that we were prohibited, then we  
6 should be allowed to in both of those. But I think the key  
7 language is that we have to conduct ourselves in accordance  
8 with the statute. It doesn't say we can forget that  
9 provision. It just says we have to do the statute. And I  
10 think what Mr. Kogan says is exactly right, that if we try  
11 this automatic part and we are wrong, then we are liable.

12 The court: How about if the language read under b:  
13 "Nothing in this second modified stipulation should require  
14 the defendant to conduct itself in violation of any statute."

15 MR. HIRSHMAN: Harold Hirshman. I'm not sure if we  
16 are really driving toward greater clarity. We are  
17 introducing -- I think if we understood more what your  
18 concern was.

19 THE COURT: My concern is that the language in B in  
20 the first clause prior to the semicolon is somewhat broad;  
21 Whereas the language after the semicolon is less broad. And  
22 so what I am concerned is that I want to limit that language  
23 so that, if something that is covered in this stipulation is

24 later proscribed by statute, that does not release you from  
25 all of your obligations under this stipulation of settlement.

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1 I want to limit it to what is changed in the law.

2 It is sort of like, when part of a statute is found  
3 unconstitutional, often the remaining portion of the statute  
4 survives. I want that clarity here.

5 MR. KOGAN: Mark Kogan, may it please the Court.  
6 Would it address the Court's concern if, I hate doing this  
7 on the fly, but the reference which is a compound reference  
8 after the semicolon, the compound reference being both to A  
9 and to B, if what follows the semicolon -- which I have now  
10 found a way to lose my place. If the language shall be  
11 entitled to report such information were moved back to A, and  
12 that the balance of what follows the semicolon would apply  
13 only to B? so that what we would be saying there that we  
14 would be entitled to comply with, behave in accordance with  
15 the statute, but that would not conflate the idea of  
16 reporting the information which is really the business of  
17 subparagraph -- subpart A of that. Would that address the  
18 Court's concern at all?

19 THE COURT: It might. I would have to see it  
20 written.

21 MR. KOGAN: I'm sorry to fumble with this.

22 THE COURT: We have two extra copies of that page  
23 if you want to try to take them and write it, and I will come

24 back to this, give you some time to work on it.

25 There is a related issue in this same paragraph that I

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1 wanted to ask you about. And that is in this paragraph you  
2 -- when you get to the case law changes you say: "If a  
3 change by the United States Supreme Court, the Fourth  
4 Circuit, or federal regulation is otherwise," et cetera. I  
5 am curious as to why it was limited to the Fourth Circuit.  
6 The reason I am curious is that, what happens if the sixth  
7 circuit says you can't do this or you can do this? Then you  
8 have got one circuit has directed you to do or not to do  
9 something, but you are only agreeing that you will follow  
10 the Fourth Circuit's law. And this is a national class  
11 action. So, it seems to me that it would have to be ---

12 MR. HARNEY: Can I tell the Court?

13 THE COURT: --- either Supreme Court or all  
14 circuits.

15 MR. HARNEY: Can I tell the Court how that was  
16 negotiated? It was, of course, something we would have  
17 preferred to say all of the circuits. As I understand it,  
18 the plaintiffs said that now you are just talking permission,  
19 you are not talking prohibition. So, Equifax, you are not  
20 going to be in violation of the Sixth Circuit, you are just  
21 not going to be according yourself the benefit of the Sixth  
22 Circuit. Since we sued here in the Fourth Circuit, we  
23 think that you should only have permission if it is the  
24 Fourth Circuit. And we fought that a little bit and then

25 gave into it. I think, Hunter, it was you.

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1 MR. LIMBAUGH: I agree with what Mr. HARNEY said.  
2 The impact is completely different when you are talking about  
3 prohibition versus permission as it relates to the  
4 defendants. And so this was negotiated, and they were  
5 willing to accept that they could only seek permission based  
6 on U.S. Supreme Court or Fourth Circuit decision, which is a  
7 position that inures to the benefit of the class as opposed  
8 to having any circuit in the country be able to trigger this.

9 THE COURT: All right. I can understand that.  
10 That answers that concern. I will come back to that other  
11 issue about the language in the first part of paragraph 23  
12 after we have had a little more time.

13 One of my concerns is the web site. And that is this web  
14 site needs to be continued, and someone needs to be  
15 responsible for maintaining it. And this could potentially  
16 be a very long-running duty, but runs longer than your  
17 respective law practices might. I have thought about  
18 dealing with this by placing class counsel under both an  
19 individual and collective obligation and, I guess -- I mean  
20 plaintiffs' counsel under an obligation to maintain the web  
21 site as necessary to effectuate the settlement until further  
22 order of the Court so that they could not dismantle the web  
23 site without coming back to the Court saying, it has been

24 fifteen years. We now think that we don't need this web site  
25 any longer. And that is one thing that I wondered if anyone

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1 had thought about as to what your plans were for the web  
2 site.

3 MR. LIMBAUGH: Hunter Limbaugh. Your Honor, our  
4 plans and there are actually provisions in the stipulation in  
5 which we have agreed to do things on the web site. So,  
6 somebody feel free to jump up and hit me if I say something  
7 totally off the wall. The life of the agreement is 20  
8 years. And we would certainly be willing to maintain the web  
9 site for the life of the agreement. It would be nice to  
10 have the ability to come to Court on that specific issue and  
11 say that, for whatever reason, it isn't -- it is clearly not  
12 necessary any longer if that became the case. But otherwise,  
13 I would have assumed that we would have the obligation to  
14 keep it going for the life of the agreement.

15 THE COURT: So we can just state that it will be  
16 until further order of the Court?

17 MR. LIMBAUGH: Yes, ma'am, that will be fine.

18 THE COURT: All right. During the time period  
19 that all of this has been going on, a number of class members  
20 have written to the wrong place seeking their free consumer  
21 disclosure reports. Some of them came here to the Court,  
22 and some of them, I guess, went to plaintiffs' counsel.  
23 These have all ultimately ended up with plaintiffs' counsel  
24 who want to deliver them to the defendants. As I understand

25 it, the defendants don't want to accept them. And my

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1 suggestion would be to allow plaintiffs' counsel to act as  
2 agent for the class member and forward them on to the  
3 defendants. It seems to me it is somewhat hypertechnical  
4 not to accept these. And is there any objection by any  
5 defendant to doing that?

6 MR. HARNEY: If they can, in that capacity, forward  
7 something to Equifax that is directed to Equifax, and it is  
8 supposed to be directed to Equifax, they can figure that  
9 out, then we will have to take it. But we don't -- we  
10 think that it was real clear as to what the person had to do.  
11 No objector from either the objectors or anybody said that it  
12 wasn't spelled out real clear. And it just seems to us that  
13 we shouldn't incur extra expense in any special processing on  
14 this. So, I have already told them that they can send it  
15 to us and state, we are directing this to you because it is  
16 supposed to go to you. We will have to take it. But as  
17 far as this idea of just taking a big sheaf of them and  
18 guessing maybe they were meant for Equifax, we do object.

19 MR. KOGAN: Mark Kogan. I would like to clarify one  
20 thing Mr. Harney said. I think what we mean by it is clear  
21 that it is intended for Tu or Equifax, is that it is clear  
22 from the document, as opposed to some endogenous inquiries  
23 that were made. Because then I think that would exceed the  
24 agency that the Court contemplates. So, subject to that, I  
25 concur with Mr. Harney.

1 THE COURT: How many are there? Do you know?

2 MR. SMITH: Doug Smith, Your Honor. The range is  
3 somewhere between seven and 9,000. Yes, ma'am. And, of  
4 course, we have had ongoing discussions with the defendants  
5 on this. And, quite frankly, there were a number of  
6 discussions as to how it should be resolved. Of course, my  
7 letter of a couple of weeks ago basically boiled it down to  
8 at least two of us couldn't -- two of us -- two of the  
9 defendants and us could not agree on how to resolve it.

10 Your Honor, obviously the copying of each one of those  
11 is one way in which we felt like would comply with Judge  
12 Seymour's order. Their position is that these requests  
13 don't specifically identify them. Some don't. And I ---

14 THE COURT: Is that true for just a minority of  
15 them, or do you know?

16 MR. SMITH: I would say most of the ones that we  
17 received, a large, large majority of them are ones that  
18 specifically say -- well, don't specifically say, just have  
19 the three identities at the top, and that is why they were  
20 just whatever reason either mailed to Court, class counsel,  
21 or as a group mailed to the administrator. And so, I think  
22 that is where the confusion lies.

23 Obviously, our position is that these people want their  
24 free credit report, would like to look at it. And the

25 defendants' position is that it doesn't directly identify

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1 which one of them this is directed to. We have our  
2 opinions on that. The Court very well knows from our letter  
3 that the defendants do not wish for us to express our opinion  
4 on that.

5 THE COURT: On the form that you just showed me  
6 there at the top, are all three names already on that form,  
7 I assume?

8 MR. SMITH: Yes, ma'am. I will hand one up just  
9 for the Court's review.

10 MR. CADDELL: Your Honor, if I might, Mike  
11 Caddell.

12 THE COURT: Yes, sir.

13 MR. CADDELL: A couple of points, Your Honor.  
14 First, I suppose the obvious one, a number of class members  
15 would, in fact, be entitled to a free disclosure statement  
16 from each of the credit reporting agencies. So that, unless  
17 we know more, it may be, in fact, that these individuals are  
18 seeking a consumer disclosure statement from each of the  
19 CRA's. And that they are, in fact, entitled to it because  
20 they would have had, in fact, the notation of bankruptcy on a  
21 credit disclosure statement from each of these agencies.

22 Second, Your Honor, given the relatively, I understand  
23 that it seems like a large number, but given a class size of  
24 2 million, it is a relatively small number, if there are

25 those where there is no indication at all of any of those.

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1 So we would propose -- coordinator objector would propose two  
2 things. As to those that list all three, I would suggest,  
3 Your Honor, that unless there is another reason not to do so,  
4 that they, in fact, be provided a consumer disclosure  
5 statement from each of the CRA's.

6 Second, if there are those who have not indicated any  
7 credit reporting agency in their request, I would suggest an  
8 easy way to handle that would be class counsel could very  
9 inexpensively send a postcard back to these individuals  
10 notifying them that their request had been sent to the wrong  
11 one. A form postcard could be done very cheaply. And  
12 notify these people that their request, for one reason or  
13 another, was defective, and they need to redirect it to  
14 either the appropriate company or let class counsel know  
15 which credit reporting agency they desire a consumer  
16 disclosure statement on.

17 I think we agree with the Court that it would be  
18 hypertechnical in the context of this settlement not to make  
19 any response and to just drop, you know, 9,000 people and  
20 not make any effort to respond to their request. I am not  
21 suggesting -- I know class counsel is not suggesting that.  
22 I don't mean to suggest that in any way.

23 MR. SMITH: Your Honor, just for clarification. I  
24 am advised there are less -- far fewer than less than one

25 percent don't have any identification as to who they wish,

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1 which of the three CRA's they would send. Most of them have  
2 followed the form, at least have used the form. I think the  
3 better way of doing it, and they don't -- they don't  
4 identify by crossing out at the top or anything like that.  
5 They just send it back to the administrator, and that is  
6 where they did not follow the precise instructions of the  
7 notice.

8 So, the issue then, there are two issues. One, I think  
9 the class counsel can safely say that we believe that these  
10 people expect to receive a credit report. It would be  
11 difficult for us to say that they expect to receive one from  
12 all three, but they are certain that they believe that they  
13 are to get credit reports.

14 MR. HARNEY: I have to take issue with saying that  
15 these people are entitled to it. The notice says that you  
16 are to mail the form on the next page or a copy of it  
17 separately, in italics, to each defendant from whom you want  
18 a report at the address shown on the form. That is how  
19 somebody got to be entitled to a free credit report was to  
20 follow those instructions.

21 MR. HIRSHMAN: Harold Hirshman on behalf of  
22 Experian. I had offered a compromise to settle this.  
23 Failed to get consensus on my side of the table. Divide

24 this group up in three since it is essentially an  
25 acknowledged duplication of these people and send each of

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1 them, you know, 3,000, 3,000, 3,000, and be done with it.  
2 That was not something that was acceptable because of the  
3 position that there was no entitlement. I still offer it to  
4 the Court as a quicker solution than sending postcards back  
5 or having each of us send a report to 8,000 people, which I  
6 don't think is contemplated.

7 THE COURT: Well, my concern is that, to some  
8 extent, the delay occasioned between September and now has  
9 complicated this issue. They didn't know -- well, the  
10 settlement was not approved or disapproved in September, but  
11 the time was running on the opportunity to do this. And now  
12 we find ourselves on January 12th with a problem that needs  
13 to be resolved in time for them to take action by January  
14 31st. And that is the problem. If we had, you know, if  
15 the timing of our hearing and Court schedule had happened  
16 earlier, we would be in a better position to assist these  
17 people in doing the right thing in making these requests.

18 So, I agree, Mr. Hirshman, that is probably the best  
19 solution. Absent agreement to do that by the defendants,  
20 then I believe there needs to be some sort of notice to these  
21 individuals that they have mailed it to the wrong place, and  
22 they need to just follow the instructions. Send them a  
23 notice telling them that they must submit the form directly

24 to the company that they wish to receive the information  
25 from.

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1 And, because of the time to do that, I would probably  
2 need to extend the deadline. I don't think extending the  
3 deadline is anything that any of you want to do. Mr.  
4 Harney.

5 MR. HARNEY: I'm sorry. I heard what you said. I  
6 didn't hear a question in it.

7 THE COURT: The question is, do you want to extend  
8 the deadline to require the notice, or do you want to agree  
9 to do one-third of these?

10 MR. HARNEY: What I would want to do is, extend the  
11 deadline and make them do it right. But I think in terms of  
12 justice and efficiency and all of those kinds of things, the  
13 one-third, one-third, one-third, while I'm principled and  
14 I don't like it, I think makes more sense.

15 THE COURT: All right. Good.

16 MR. SMITH: Thank you, Your Honor.

17 THE COURT: We will do that.

18 MR. LIMBAUGH: Did we get an amen out of lawyer  
19 Kogan?

20 THE COURT: I assumed he was already in agreement.  
21 Maybe I am wrong.

22 MR. KOGAN: Well, I wasn't, but I am now.

23 THE COURT: All right. Now, there was a problem  
24 with the E-mail caused by the changeover in the web site.

25 And I can't really explain it to you, but there was a letter

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1 about it and then there was a response from Mr. Smith  
2 explaining what happened. And it appears to me that there  
3 was a gap period in December when people who were sending  
4 e-mails, the e-mails were not getting to the class counsel  
5 -- to the plaintiffs' counsels' web site. That has been, as  
6 soon as it was discovered and the Court was made aware of it,  
7 I had them post a notice explaining this on the web site and  
8 telling people that, if they had tried to communicate with  
9 the class counsel during that time period, there was a  
10 failure of the web site and that they needed to re-send any  
11 communications. And we don't have any indication other than  
12 the one person who had written that there was a problem.

13 I just want you to realize there was a problem, and we  
14 have done what we can do to fix it. And does not appear to  
15 have been a very big problem at this point.

16 There is a late opt-out request from two individuals,  
17 Lillie and Jose Saldana. Is anybody here today on behalf of  
18 the Saldanas?

19 MR. ALFORD: I am, Your Honor. David Alford. I  
20 filed a motion to opt out on behalf of Mr. Baxter.

21 THE COURT: I heard the first part.

22 MR. ALFORD: I am here representing the Saldanas.  
23 Mr. Baxter first filed the motion. He was not admitted into  
24 our District Court; so, I am entering it on his behalf.

25 THE COURT: All right. And as I understand it,

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1 the defendants are opposing this late opt-out. And the facts  
2 are the couple moved, the parents took over their post office  
3 box, much of the mail that came to the post office box was  
4 forwarded to them by the parents, but for some reason, this  
5 was not. The notice here was not forwarded. So, they  
6 received their notice in September after the opt-out date,  
7 but in the interim some time in May, he had filed suit  
8 already?

9 MR. ALFORD: That is correct, Your Honor. Your  
10 office called me requesting that I bring a copy to verify the  
11 date of the filing. So, I have IT with me. We got it in  
12 late Thursday. I did not mail it down. But I have got a  
13 copy of the complaint and answer filed in the underlying case  
14 in Oregon. And part of that, in the answers that were filed  
15 on behalf of the three credit reporting bureaus, there was,  
16 in the answer, affirmative offenses. There was no issue  
17 raised with respect to an objection that there was this class  
18 pending. It was dated May 19th. It appears to be clocked  
19 in on the Court on May 21st. I have copies to hand up if  
20 the court desires.

21 But that confirms the fact that apparently it was filed  
22 after the March or the date of the March order. But at the  
23 time also, it shows that none of the defendants' CRB's files  
24 affirmed their offense in this pending class action. So,

25 nobody knew about it up in Oregon until the Saldanas did, in

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1 fact, receive their letter and acted timely. And the  
2 affidavit goes to support that.

3 Mr. Bennett: Your Honor, Leonard Bennett. I had  
4 spoken with the Oregon counsel. And I represent to the Court  
5 that they were completely unaware of this action at the point  
6 where they first received this. They called me after the  
7 initial fairness hearing to ask what the status of this was  
8 and if I knew anything about this Clark matter. And these  
9 two attorneys, Mr. Baxter and Mr. Solay (phonetic), judge,  
10 I wouldn't expect to play any games with Your Honor or the  
11 Court about this. They are questioning me. Seemed very  
12 genuine they had just learned about this after the 23rd  
13 hearing.

14 THE COURT: Do you know how they learned about it  
15 eventually?

16 MR. ALFORD: Your Honor, the affidavit states, and  
17 as I have been apprised, they returned home to visit their  
18 parents I think September 19th or 20 in the affidavit, at  
19 which time the affidavit states the parents gave them that  
20 envelope, and it was immediately turned over to Mr. Baxter  
21 who was their counsel.

22 THE COURT: That is what I was asking, how the  
23 lawyers found out. But their clients immediately told them.

24 MR. ALFORD: Correct, Your Honor. Turned it over

25 to Mr. Baxter.

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1 THE COURT: Does any defendant want to be heard on  
2 this issue?

3 MS. MCRAE: MARA MCRAE for Equifax. Mr. Ellis is  
4 going to address this issue.

5 MR. ELLIS: BERNIE Ellis. We simply believe that  
6 there is an overriding -- a strong interest in the finality  
7 of the Court's order. We believe notice was sent to the  
8 proper address. It was obviously sent to what had been  
9 their address. They had made arrangements for forwarding.  
10 I think this is a mistake on SALDANAS' end. While I can  
11 understand what happened, we simply believe that they have  
12 to meet the standard of rule 6(B) of excusable neglect, which  
13 is sufficient to override the interest in this Court's order.  
14 And I don't believe that, based upon the facts here since  
15 notice was sent in a proper way to a proper address in which  
16 they would be expected to receive proper notice, that they  
17 can meet that standard. Thank you.

18 MS. MCRAE: Your Honor, if I may. If I may add my  
19 recollection of the review of the Saldana complaint. It was  
20 not identified as a case in which the plaintiffs were  
21 complaining of this included in bankruptcy reference;  
22 Therefore, we would have had no reason to assert the  
23 pendency of this action or the preliminary injunction as an

24 affirmative defense or otherwise.

25 THE COURT: Mr. Alford, have you had a chance to

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1 examine the complaint to see if it directly raises this  
2 issue?

3 MR. ALFORD: I don't believe. I have copies of it,  
4 Your Honor. I don't believe it makes any reference in the  
5 language as to a bankruptcy comment.

6 THE COURT: What was the gist of their case then?

7 MR. ALFORD: I'm sorry, Your Honor?

8 THE COURT: Could you hand up a copy of the  
9 complaint for us?

10 MR. ALFORD: Yes.

11 THE COURT: We will look at it when we don't have  
12 everyone here and have more time, and we will determine the  
13 relationship between what is pled in the complaint and this  
14 action. I am just wondering, what prompted the lawyers to  
15 be concerned that this class action would somehow detract  
16 from their ability to bring their client's claims in a case  
17 that was already then pending?

18 MR. ALFORD: Your Honor, there is obviously no  
19 affidavit submitted. And not being directly privy to the  
20 facts, it is my understanding, talking with Mr. Baxter, that  
21 one of the allegations on behalf of the Saldanas as against  
22 the CRB's involves not just a listing of the bankruptcy on  
23 their credit, but there are some other issues. I do not

24 know the other issues other than there are, it is my  
25 understanding, sort of multiple two, three or four issues

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1 with the findings.

2 THE COURT: Is it your understanding it would bar  
3 all of their claims? But if they were barred by their  
4 failure to opt out here, it would bar part of their case?

5 MR. ALFORD: That is what my understanding is. IN  
6 talking to counsel, that was one of the questions we had.  
7 They have had -- apparently they were snowed in up there over  
8 the past week. I left the message when your office first  
9 contacted me as far as getting this complaint in. Mr.  
10 Baxter got into the office I think late Thursday, his time.  
11 He faxed it down to us. I got it really about midday Friday  
12 I was back in the office. So, I don't have all of the  
13 facts.

14 One of the concerns he has with his underlying suit is,  
15 there are other issues. I read the complaint, and I do not  
16 see in there where they are enumerated as to the specific  
17 allegations. So, I did not see the bankruptcy, But I  
18 understand that there are. Plus, there are other non or  
19 there are other defendants in his suit that are not in this  
20 class action. So, I guess, some local.

21 THE COURT: Other credit reporting agencies?

22 MR. ALFORD: Actually credit users, Your Honor, who  
23 apparently have filed or placed entries into the CRB. So,

24 it is a multiple-defendant suit. And if it would help, I  
25 could have Mr. Baxter send ---

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1 THE COURT: I think it would help if you would have  
2 him send a letter with a copy to opposing counsel stating in  
3 what way this issue is part of his case. What other issues  
4 are in his case so that we could make a determination.

5 MR. ALFORD: Yes, ma'am.

6 THE COURT: It is not an issue that is something I  
7 have to decide today. It doesn't bear on the overall  
8 fairness and adequacy of the settlement.

9 MR. ALFORD: I will have him do that. Is there any  
10 reason for me to remain today?

11 THE COURT: No. No, I don't think so.

12 MR. ALFORD: Thank you, Your Honor.

13 THE COURT: I want to go back now to the class  
14 definition for a moment. In my letter to you in which I  
15 questioned why you included the language "or during the class  
16 period," And then there was also some language that  
17 referred to a person who declared bankruptcy at any time  
18 during the class period. First of all, was that intended?  
19 And second of all, well, first of all, was that intended?

20 MR. HIRSHMAN: Yes, Your Honor. It was intended  
21 to exclude people who were in bankruptcy on the theory that,  
22 if they had had a trustee in bankruptcy, the trustee in  
23 bankruptcy would be the one who had the claim. And so, we

24 wouldn't properly seek a release from the individual.

25 And, secondly, it would probably have been, even if there

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1 was no trustee, an asset that should have been notified to  
2 the creditors. And the claim would probably then belong to  
3 the creditors. We felt that was too complex.

4 Finally, we felt that that party would have almost no  
5 chance of proving injury because they were themselves  
6 bankrupt some time during the period. So that, whatever  
7 stigma they might have been complaining about, probably  
8 objective credit record would have been sufficient to support  
9 the denial of credit in the particular situation.

10 THE COURT: So, if, for example, there had been  
11 a report of included in bankruptcy of another, which caused  
12 them some damage, and they then later did file bankruptcy  
13 themselves, you would say that that claim -- that the damage  
14 that resulted from having that first report would have been  
15 either a claim made during bankruptcy or a claim listed as an  
16 asset of the bankrupt estate.

17 MR. HIRSHMAN: It should have.

18 THE COURT: And handled as part of the bankruptcy.

19 MR. HIRSHMAN: It should have. It should have been  
20 an asset. An asset of theirs which was either given over to  
21 the trustee or listed so that it could be collected or dealt  
22 with in a plan or reorganization. We doubt, as a matter of  
23 reality, that anyone did such a thing. But in terms of the

24 legalities, we felt that it would be inappropriate, knowing  
25 that the legal title probably didn't vest in the person who

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1 was originally injured, to seek a release from that person.

2 THE COURT: Does anyone wish to comment on that  
3 issue or have anything else further to say on that issue?

4 At this point, I think I would like to hear from Mr.  
5 Cochran and then Ms. Wheelahan. Then I would come back to a  
6 few more issues I have. Mr. Cochran, you may go first.

7 MR. COCHRAN: Thank you, Your Honor. For the  
8 record, I am Henry W. Cochran from Cleveland, Ohio,  
9 representing objectors Zupan and Murphy.

10 Your Honor, I initially want to make sure the record is  
11 clear that there are objections that are being settled by the  
12 coordinated objectors or call them the settling objectors.  
13 You may refer to us as the continuing objectors. I want the  
14 Court to understand we share in most, if not all, of the  
15 objections that were made. We are continuing on issues that  
16 are different and apart from that.

17 Your Honor, as to future claims. I think it is clear  
18 that people with claims based on future conduct that has not  
19 yet occurred and cases that are not, therefore, yet really  
20 justiciable are, at the time that any such claims do occur,  
21 bound by this settlement to give up at least the following  
22 items:

23 One, they are giving up all of their state law claims,  
24 whatever they may be. I don't think there is anyone in this

25 room that could even give a complete recitation to the Court

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1 on what those are, among the 50 different states, including  
2 myself.

3 Two, they are giving up as a concomitant of number one,  
4 their possibly more extensive statutes of limitation that  
5 might occur under state law primarily due to the application  
6 of discovery rules. A rule that -- statute doesn't begin  
7 to run until you discover the injury.

8 Three, they are giving up the claims for emotional  
9 distress related thereto.

10 Four, they are giving up their claims to punitive  
11 damages.

12 Admittedly related to number four is number five, they  
13 are giving up claims for willful violations.

14 And, six, they are giving up claims for multiple  
15 violations that have already occurred.

16 Now, what is the problem with this? I think it is an  
17 issue, Your Honor, that raises two problems. One is to  
18 the fairness and adequacy of the settlement. And, two, as  
19 to the conflicts of interests, this creates among class  
20 members that is not being addressed in the class and in their  
21 representation. I can think of at least four specific  
22 conflicts that arise from this problem or are related to this  
23 problem.

24 Number one. I believe there are people in the class,

25 as the class is presently defined, who do not, as we sit

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1 here today, know they are in the class. They have not  
2 necessarily ever seen a credit report that contains the  
3 bankruptcy reference. And aren't necessarily aware of their  
4 injury. And, of course, we know there are some hundreds,  
5 I think 7 or 800,000 notices that were returned. But even  
6 some people who received notices, the mail may have been  
7 received, that person didn't get it. We have already seen  
8 that happen. We know that happens frequently with this many  
9 mailings. Or people who might receive it, quite frankly,  
10 and read the notice, and not really know that they have ever  
11 had a credit report issued on them that has resulted in a  
12 denial of credit due to the reference of bankruptcy.

13 The reason this first conflict is important is that, if  
14 you flip forward to the future claim issue, I think the  
15 primary response is that they are receiving something in  
16 exchange. They are making a knowing decision. They are  
17 receiving the concession of liability, if you will, in  
18 exchange for giving up all of these rights I have enumerated.

19 And for someone who doesn't even know he is in the class,  
20 he is obviously not making that knowing decision. In fact,  
21 such a person may be the victim of future conduct, not yet  
22 occurred, file a lawsuit regarding that conduct, and only  
23 then find out in the answer to the complaint, or however it

24 might arise, that they have given up their rights to file  
25 that lawsuit.

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1       Second conflict, I think is, interestingly enough,  
2 pointed out by the coordinating objectors in their response  
3 to our last objection. That is, there are people in some  
4 states who have very little, if any, claim according to law  
5 that has already been established for this bankruptcy  
6 reference issue. And the coordinating objectors point out  
7 Ohio and Alabama as examples. There are other members of the  
8 class whose state law has not so precluded them from having a  
9 cause of action. This is not addressed at all in the  
10 settlement.

11       And the reason it is a conflict, I think, is obvious.  
12 That the people who, for example, in Alabama, who under  
13 Alabama state law would have a very difficult time  
14 prevailing for this reference to bankruptcy, are receiving a  
15 benefit of the bargain that is more extensive, just  
16 different in nature totally, referring to the concession of  
17 liability, Your Honor, than people in other states where  
18 that is not the state law. The settlement does not address  
19 this conflict.

20       Third conflict that is not addressed is, there are some  
21 members of the class clearly who will never be a victim of  
22 future conduct. Other members who will. They are in

23 tremendously different positions. A person who was never a  
24 victim of the future conduct is in a much different position  
25 than someone who is regarding the issue we are discussing.

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1 There is no addressing of that in the definition of the class  
2 or the class representation, et cetera.

3 Fourth, are, of course, there are people with multiple  
4 claims. And there are people with only single claims. This  
5 does not relate to the future issue, Your Honor. I only  
6 point it out as a fourth conflict of interest.

7 Now, the problem with these kind of conflicts of  
8 interest is not just that they relate to the adequacy and  
9 fairness of the settlement and how people are being treated,  
10 but I think it goes to the heart of the certifiability, Your  
11 Honor. Whether the Fourth Circuit, or any of the other  
12 circuits, would approve a certification of a class with these  
13 kind of conflicts never having been addressed, either in  
14 terms of the settlement itself, or perhaps, more importantly,  
15 in terms of the representation, separate representation of  
16 these interests.

17 Certification. Now, Your Honor, I am not here just to  
18 cry about what I think is wrong with the settlement as I have  
19 just set out. I am also here to say that this can be  
20 addressed in one of several ways that would certainly meet  
21 the concerns of myself and the objectors I represent. I am  
22 going to name three that come to mind.

23 First of all, you could limit the class definition to

24 people who have knowledge that they are in the class, i. e.,  
25 people who have knowledge that they are the subject of such a

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1 credit report and have suffered that injury. And limit the  
2 class in that way. This way, you can avoid peoples' future  
3 rights from being foreclosed when they don't even know about  
4 it.

5 Two, and separate from that, Your Honor, you can give  
6 the class members, even if you keep the same definition, the  
7 choice, when they become the victim of future conduct, they  
8 can choose either to buy into the benefit of the bargain,  
9 which I think has been adequately described by all the  
10 parties in the papers, or they can decide to proceed with an  
11 original case in Federal Court without all of the six, any  
12 of the six restrictions that I gave reference to.

13 Thirdly, Your Honor, you can, and less harmful, I  
14 suppose, simply give the persons who can show at the time of  
15 future conduct that they did not have knowledge of this  
16 settlement. At least give those persons the right to make a  
17 choice. I will either go to the Federal Court as I could  
18 have, or take the benefit of this bargain.

19 The third choice I suppose is the least harmful in the  
20 eyes of the defendants. I would prefer one of the first two.  
21 But I suggest, in the interest of compromise and cutting to  
22 the quick, if you will, that at least that should be done.

23 If someone can actually show that they did not ever see a  
24 credit report with such a bankruptcy reference, and had no  
25 knowledge that they had been injured in that way, that they

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1 would at least have the opportunity to try to prove that and  
2 seek a choice by which they would get out of these  
3 restrictions.

4 I would certainly like the Court to consider those three  
5 alternatives as the Court makes its final, final, final  
6 determination whether this settlement is going to be  
7 approved.

8 Thank you, Your Honor.

9 THE COURT: Thank you, Mr. Cochran.

10 MR. COCHRAN: If Your Honor has any questions.

11 THE COURT: I don't.

12 Ms. Wheelahan. After we hear from Ms. Wheelahan, we  
13 will take a morning break.

14 MS. WHEELAHAN: Good morning, Your Honor. For the  
15 record, Dawn Wheelahan, pro se.

16 Mr. Cochran addressed a great many of the objections that  
17 I had and that were also in my briefs, so I will not repeat  
18 what he said.

19 I think the Court pointed out a tremendous jurisdictional  
20 problem with this settlement that, frankly, I don't know why  
21 anyone, especially these defendants, wants to undertake.  
22 When you characterize multiple FCRA violations, that it is

23 established in the law as separate transactions that are not  
24 before this Court at this time, you characterize them as a  
25 single event for remedy and a violation of this settlement.

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1 What you then have, when you recharacterize those things,  
2 and I am not sure it is permissible to take something and  
3 simply recharacterize it, but when you do it, what you have  
4 is a violation of a state law contract. We can presume that  
5 it is South Carolina law that governs the contract, but we  
6 don't even know that because, unlike many settlements, the  
7 contract does not say what law governs it. So that each  
8 state will be free to apply its own state laws and its own  
9 state choice of law rules to determine what state's law  
10 applies to this contract. And you are still left with a  
11 state law contract.

12 Now, when the contract specifies, as it does in paragraph  
13 20C, that violations will be brought only in Federal Court,  
14 how does the Federal Court obtain jurisdiction over those  
15 violations? I think that you pointed out a significant  
16 problem. There is no federal jurisdiction. Unless they  
17 want to allege a violation that is more than \$75,000, which  
18 is not always easy to do if they can't bring a claim for  
19 punitives, and if they can't bring a claim for emotional  
20 distress.

21 Now, Mr. Hendricks points out -- I am referring to the

22 affidavit of evan hendricks that was submitted by the  
23 coordinated objectors. He attaches to that affidavit some  
24 testimony before Congress. And at page 3 of that testimony,  
25 starting at line 13, Mr. Hendricks talks about some of the

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1 damages that borrowers can sustain. He says:

2 "A borrower classified as a marginal risk pays  
3 almost \$90,000 more in interest than someone  
4 with an excellent credit rating. Someone  
5 with -- someone classified as a poor credit  
6 risk," which one would presume a bankrupt  
7 person would be, "pays \$124,000."

8 These are significant claims. These are not small  
9 claims. And then there is the consequential and emotional  
10 distress and whatever that goes along with trying to correct  
11 an inaccurate credit report which, if you look at the case  
12 law, is usually substantial.

13 Mr. Hendricks goes on to say that:

14 "Credit matters -- credit ratings matter for  
15 other transactions as well."

16 He talks about new cars. Someone financing a \$24,000  
17 car with a marginal rating pays 127 percent more in interest.  
18 Someone with poor credit pays 255 percent more. These  
19 claims that may arise in the future are entirely separate  
20 violations, under today's existing case law, are entirely  
21 separate violations of the fair credit reporting act and of

22 the state law, as they may be, in which these consumers  
23 reside.

24 It is a normal thing for a Court to release all claims,  
25 including claims that may arise in the future, that arise

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1 from the transactions that are before the Court. The  
2 transactions that arise in the future are not before this  
3 Court today. And if they are characterized as violations of  
4 the settlement, well then those are state law claims. That  
5 is a serious jurisdictional problem. I think that the  
6 Supreme Court addresses it to some extent in the syngenta  
7 decision that I mentioned.

8 But, again, if this settlement were addressing the  
9 claims that were before the Court today, I wouldn't be here.  
10 And if it included a stipulation that a violation of the  
11 settlement would provide for such and such remedy, whatever  
12 it might be without any other restrictions on future claims,  
13 I wouldn't be here because those happen every day. What is  
14 novel about this settlement is that you attempt to release  
15 future torts that have not yet occurred. That are not nearly  
16 violations of this settlement, they are whole other  
17 transactions. It has never been attempted or done before  
18 that I can see.

19 The supreme Court recently in the Stevenson decision that  
20 had to do with the agent orange case, it refused -- it  
21 affirmed the Second Circuit's decision saying that a class  
22 member, whose injuries had not yet arisen at the time a

23 settlement occurred, could not be bound by the due process  
24 rules by the agent orange settlement. Again, that class  
25 member had already sustained his injury. Just as the

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1 asbestos class members in amchem and ortiz had already  
2 sustained the injury, which was the exposure to the toxic  
3 substance. And still the Court said, I mean, arguably in  
4 those cases the Transaction from which the claims arose had  
5 occurred, and still the Court said due process does not allow  
6 you to release their claims.

7 In this settlement, these transactions have not yet even  
8 arisen, future transactions I am talking about. And yet,  
9 they are attempting to release them in this settlement. It  
10 is simply not necessary. I think you recognize that. And  
11 the Court recognized that in talking about the jurisdictional  
12 problems.

13 You asked me about problems that I mentioned, that there  
14 was no presettlement discovery. Those comments in my brief  
15 related to provisions of attorneys' fees, and we are not  
16 taking that up today; so, I don't have anything more to say  
17 about that.

18 I have a problem with the arbitration provisions that  
19 limit attorneys' fees in an arbitration to \$12,000 where a  
20 claim is up to 74,900. A normal, customary contingency fee  
21 for a lawyer is 33 percent. Forty percent is more common.  
22 That \$12,000 is a 15 percent fee. Who could get a lawyer

23 for that? And why should a lawyer be limited to a 15 percent  
24 fee when a customary fee is 33 and a third percent, and a  
25 more unusual fee is 40?

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1           The court: There is nothing that prohibits him from  
2 getting his contingent fee in addition to the \$12,000. That  
3 is just how much the defendants will pay.

4           MS. WHEELAHAN: Right. I understand. I understand.  
5 Why shouldn't a person be entitled to have the full measure  
6 of the fees that they have to pay?

7           THE COURT: Well, this is a settlement. The  
8 statute hasn't provided for full attorneys' fees.

9           MS. WHEELAHAN: I understand. But these are future  
10 claims. These are future claims. And they may be  
11 substantial future claims.

12          Your Honor, I would move for leave to intervene. I  
13 think post scardelletti, after the scardelletti decision, it  
14 is not necessary for a class member to intervene in order to  
15 have standing with respect to any appeal that may follow.  
16 But just to avoid any sort of time wasting procedural  
17 squabbles that have to do with standing, I would move for  
18 leave to intervene.

19          THE COURT: It is my understanding that that issue  
20 has already been decided by the Court and that you do not  
21 need to intervene to have standing to appeal. Does anyone  
22 disagree with that?

23           That was a Fourth Circuit Case.    You are right in the  
24 right place for that.

25           MS. WHEELAHAN:   I know.

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1           The court:   The Supreme Court reversed the fourth  
2 circuit, but it came out of the Fourth Circuit.

3           MS. WHEELAHAN:   I think you are correct about that,  
4 Your Honor.

5           The discovery provisions in connection with the  
6 arbitrations.    The settlement provides that the plaintiffs  
7 will be subjected -- they shall subject themselves to  
8 depositions and so forth, and yet there is no corresponding  
9 obligation on the part of the defendants.    The arbitrator  
10 decides whether the defendant should have to submit to  
11 discovery or not.    It seems to me that it would be more  
12 evenhanded if the arbitrator would decide with respect to  
13 both parties to an arbitration, rather than have the  
14 settlement say the plaintiff shall subject the subject to  
15 deposition and the defendants may.

16          I mean,   these depositions can be very, for an  
17 unsophisticated consumer, opposed by a very sophisticated  
18 consumer reporting agency lawyer,   they can be difficult and  
19 traumatic experiences for plaintiffs.    It seems to me that  
20 should be a little more evenhanded.

21          I don't think that it is clear what effect the settlement  
22 has on the plaintiffs in the future, if the defendants are

23 permitted to change their behavior due to a change in the  
24 statute. Is the settlement still then binding on the  
25 plaintiffs? Under the wording here, as I read it, all

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1 aspects of the settlement -- and this is in my brief. All  
2 aspects of the settlement continue to be binding upon the  
3 plaintiffs, even with respect to future claims, whereas  
4 nothing then binds the defendants. That seems to me to be a  
5 problem.

6 With respect to Mr. Cochran's comments about state laws,  
7 I would point out that Louisiana law, for instance,  
8 provides that any violation of the FCRA, whether it is  
9 willful or negligent, creates the presumption that the  
10 Louisiana consumer credit law has been violated and,  
11 therefore, entitles people to substantial actual damages.  
12 This can -- this is part of the problem that I talked about  
13 earlier having to do with the jurisdictional issue. That is  
14 just Louisiana law. Other states provide for other things.

15 The defendants talk about how liability may be difficult  
16 to prove here with respect to a willful violation. Any  
17 violation of the FCRA in Louisiana creates the presumption  
18 that the Louisiana consumer credit law has been violated.  
19 And I think each state is going to have its own laws.  
20 Again, if we were talking about the claims that are before  
21 this Court right now, those settlements happen all the time.

22 I think the problem comes when people who are not before  
23 this Court -- who are before the Court with respect to the  
24 claims that are before the Court, the transactions that are  
25 before the Court, but with respect to future transactions,

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1 over which the court doesn't now have any jurisdiction  
2 because there is no case or controversy before the Court with  
3 respect to transactions that have not occurred. Those state  
4 law claims are a problem because each -- we have nationwide  
5 class members, and each of the states will provide them  
6 different remedies.

7 And unless there are any questions, I think that the rest  
8 of it is in my brief, so I won't take up any more time.

9 THE COURT: All right. Thank you, ma'am.  
10 Counsel, we will take a ten-minute break now. When we come  
11 back, I want to address the issue of the motion for  
12 protective order and to seal that has been filed concerning  
13 what happens to the unredacted list of plaintiffs who have  
14 opted out. And then we will -- so we will do that after  
15 the ten minute break.

16 MR. COCHRAN: Your Honor, may I ask, should the  
17 continuing objectors remain?

18 THE COURT: It is up to you. I am going to take  
19 that up. And the only other thing I am going to take up is a  
20 proposal for a procedure to deal with attorneys' fees if I do  
21 approve the settlement.

22 MR. COCHRAN: Thank you.

23 THE COURT: All right. Ten minute break.

24 (Whereupon, a short recess was held.)

25 THE COURT: Going back to paragraph 23. In light

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1 of your comments, I think it is all right. Okay. So, i am  
2 not going to require a change to that.

3 All right. Now, the next issue is that -- well, first  
4 of all, on this issue concerning the motion for protective  
5 order and to seal that was filed by class counsel, there is a  
6 related motion to intervene by Ayers and byerson just to  
7 oppose. And that is granted, you know, to allow that  
8 opposition, the motion to intervene by Ayers and byerson.

9 As to the motion to seal, this deals with just what is  
10 filed in the Court. I think that right now all that is  
11 filed is the redacted list showing just names, and that that  
12 is not sealed. Is that correct?

13 MR. SMITH: That's correct.

14 THE COURT: I think everyone agrees that the date  
15 of birth and the social security number need to be protected.  
16 Does anyone disagree with that? So, at this point, the  
17 question is, what happens to the full list, that is, the  
18 complete, unredacted list? Now, Mr. Smith has handed me up  
19 this sealed envelope which contains the -- and I am not  
20 really sure whether it just contains the supplemental  
21 opt-outs or all the opt-outs, but it says "supplemental

22 opt-out list."

23 MR. SMITH: Your Honor, it is consolidated.

24 THE COURT: It is consolidated. Okay. And my  
25 concern about that is that it does contain social security

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1 numbers and dates of birth, which need to be protected.  
2 And that filing documents under seal creates problems for us  
3 apart from the issue of whether or not you can originally  
4 seal documents anyway. Even if you meet all of the  
5 requirements to file something under seal, it creates  
6 problems because, at some point, we either have to unseal  
7 documents or return documents, we have to send documents to  
8 the records center, and when we get ready to send documents  
9 to the records center, we either unseal them or -- and send  
10 them, or we send a notice to the parties saying, if you don't  
11 want your documents unsealed, come get them. So, they end  
12 up back with the parties anyway eventually. And so there  
13 are some complications of the Court keeping the total  
14 information here under seal even if it -- even if it is  
15 sealed.

16 Now, there is also, even if they are not filed and  
17 sealed, a way to protect them. And that is to enter a motion  
18 for protective order. And in March, Judge Seymour's order  
19 at page 5 required the folks who received the lists to keep  
20 them confidential. I understand that some of the objectors'  
21 counsel want access to the list. And that they claim that  
22 they want access for them to seek witnesses in other cases.

23 I am not inclined to allow access to them. And I am not  
24 inclined to have the document filed under seal with the Court  
25 but rather maintained by someone under protective order.

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1 And it seems to me that, allowing these folks' names to  
2 be obtained by other attorneys for whatever reason, forces  
3 people who have chosen not to be part of this action to share  
4 their identities, and that they could then be burdened with  
5 subpoenas and calls seeking personal information. If we  
6 filed it with the Court not under seal, even if we redacted  
7 the social security number, date of birth information, it  
8 would still give -- it would publish the confidential fact  
9 that bankruptcy appears somewhere in their credit record and  
10 causes them problems for that reason.

11 So, I don't see a good reason why these need to be made  
12 available to the public or to counsel. I am inclined to  
13 leave them under a protective order where either garden city  
14 group, or class counsel, or even defendants' counsel  
15 maintain them under protection. Seems to me defendants'  
16 counsel may have more need for them actually than class  
17 counsel at some point. So, I will be glad to hear anybody  
18 who has an opposition or an objection or comment on what I  
19 have said.

20 Mr. Bennett.

21 MR. BENNETT: Leonard Bennett, may I be heard?

22 THE COURT: Sure.

23 MR. BENNETT: Judge, first, while certainly given  
24 my area of practice, I appreciate the Court's concern for the  
25 privacy of these individuals. That privacy was violated

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1 when Mr. Smith filed the original opt-out list, which is  
2 already part of the public record. In fact, before we had  
3 even received an objection related to or Mr. Smith's attempt  
4 to redact that list, that list had already left the control  
5 of this Court. That list has already been sent by me to the  
6 national consumer law center.

7 THE COURT: Wait just a minute, back up. Which  
8 list?

9 MR. BENNETT: The original list with the names of  
10 these individuals.

11 THE COURT: Names only?

12 MR. BENNETT: The names only. And not including  
13 the supplemental 300 or so additional names that Mr. Smith  
14 now has offered was already publicly filed, Was already  
15 opened to the Court, and is already, in fact, innocently,  
16 and before any of these issues were raised, was sent by me.  
17 A copy, in fact, was sent to Mr. Baxter and Mr. Solay  
18 relating to their case; as well as to the national consumer  
19 law center; and to Ira reingold, the director of the national  
20 association of consumer advocates as a way to list or to  
21 identify who is free of the settlement that is before the  
22 Court right now.

23           So, the issue for Your Honor, and As the only entity  
24 that has or party that has any right or standing on behalf of  
25 Ms. Ayers and Ms. Byerson, we would oppose the protective

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1 order with respect to the names. Logistically, Your Honor,  
2 what you do, if you permit only the defendants to have access  
3 or only some other entity ---

4           THE COURT:    WAIT JUST A MINUTE.  As to the names.

5           MR. BENNETT:  As to the addresses.

6           THE COURT:  As to the other information other than  
7 the names.

8           MR. BENNETT:  Say that you have -- say that you have  
9 -- I actually represent a Mary Jones, i represent Mary E.,  
10 and Mary W., Jones in two cases.  Mary Jones is a  
11 hypothetical name that is on that opt out list.  May live in  
12 Pittsburgh, Pennsylvania.  There may be another Mary Jones  
13 that received a notice but didn't opt-out that lives in  
14 Gainesville, Florida.  In order for the sequence of events,  
15 Ms. Jones in Florida did not opt out.  Ms. Jones in  
16 Pittsburgh did.  Ms. Jones in Pittsburgh files a fair credit  
17 reporting act claim, and Ms. Mcrae or one of her associates  
18 that litigate on behalf of Equifax files a plea -- a special  
19 plea or a motion to dismiss for res judicata.  IN that  
20 circumstance, what the Court does, is put the defendant who  
21 has sole control, sole access amongst those two parties to

22 the list, the names, and the like, in a much better  
23 position, in a position that nobody can justifiably argue.  
24 They have already ---

25 THE COURT: You mean, if the Court allows the

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1 defendants to maintain the list.

2 MR. BENNETT: Or if the Court provides the  
3 defendants access to that list, because you don't provide it  
4 to the opt-outs. You are not providing that same advantage  
5 to the opt-outs. The ability to examine the documents to  
6 litigate whether or not somebody did properly opt out and  
7 determine whether or not they are subject to the settlement.  
8 If the Court were to provide such a protective order, the  
9 only way that I believe that it would be fair is, if the  
10 defendants were prohibited from accessing that list, just  
11 the same as the 3,700-odd opt-outs, because otherwise, you  
12 do provide that disadvantage.

13 Now, I would also suggest, judge, that while I agree  
14 with your Court's overall view regarding the privacy of these  
15 names, that you will open up -- I mean this is properly  
16 discoverable in some other matter. And, in fact, the reason  
17 it came before Your Honor is that we filed a Rule 45 subpoena  
18 in New York. And the rule is, you file where the documents  
19 are to subpoena these documents in my Nancy Ayers case, a  
20 case that has settled with respect to this two-thirds of the  
21 table and not with respect to the very end of the table. And

22 in that particular case, we will allege that this was a  
23 systematic and common problem. In the bureau's defense,  
24 their defense to that is that the industry doesn't interpret  
25 it this way. It was odd impact on our client. Not

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1 something that would customarily occur or ordinarily occur.  
2 This was just a fluke. To the extent that we can establish  
3 pattern and practice evidence, it is uncontrovertible that  
4 in fair credit reporting act litigation, pattern and  
5 practice evidence is admissible to prove wilfulness, which is  
6 a very hard objective already. And a pattern and practice  
7 that affected a number of other people in the same fashion is  
8 evidence which would be very helpful, not just incidentally  
9 useful, but very important in a willfulness claim.

10       Secondarily, the bureaus have already taken the position  
11 in my Ayers case that the industry does not interpret  
12 "included in bankruptcy," to mean that this individual has  
13 filed bankruptcy. To the extent that we have access to this  
14 wide range of discovery of other individuals who have had  
15 creditors interpret it in that fashion, then we are in a  
16 better position.

17       There is even, if it is not under seal, there are much  
18 higher burdens for a protective order than I believe --  
19 well, nobody, nobody with standing has made this issue.  
20 Mr. Smith has, but he doesn't represent the opt-outs. He  
21 represents individuals, the class members. But nobody has

22 justified or proven to Your Honor, we believe, what would  
23 be necessary.

24 Now, you have done a remarkable job without the help of  
25 many of us at different times, but in this particular

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1 instance, judge, this is a sincere request. When I go to  
2 New York and subpoena this document or in a future case  
3 where I am attempting to discover this, I guess we would  
4 have to bring it back before Your Honor and relitigate it.  
5 But at this stage, they have not established a right to the  
6 protective order with respect to the names. We do move, as  
7 the only party with standing.

8 THE COURT: Are you limiting your comment to the  
9 names?

10 MR. BENNETT: And addresses.

11 THE COURT: I was asking him, was he limiting his  
12 comment to the names. It is confusing. As I understand it,  
13 the names are already out there. The names have been filed.  
14 And the second filing today, the supplemental file, was filed  
15 in the public records. So, the names of all the opt-outs are  
16 already in the public record. The only question is, other  
17 identifying information which is not in the public record but  
18 is in the master list.

19 MR. BENNETT: Yes, judge.

20 THE COURT: And that is what you want access to by  
21 being able to subpoena it?

22 MR. BENNETT: That's right, judge.

23 THE COURT: You don't want it filed anywhere?

24 MR. BENNETT: I don't want a protective order or a  
25 seal. I don't care if it is filed anywhere. If they wish

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1 to oppose the subpoena, the federal rules provide a certain  
2 number of protections or ways that they can quash a subpoena.  
3 But they have attempted an end run around. In fact, the  
4 only -- I am baffled by the sequence of events that occurred  
5 in my case because there were three things filed. There was  
6 this filed ---

7 THE COURT: This being?

8 MR. BENNETT: This being the motion to seal or  
9 protective order by the plaintiffs in the class.

10 THE COURT: Here?

11 MR. BENNETT: Here. There was an objection filed,  
12 which we believe was the proper procedure, procedurally  
13 proper in New York in response to our New York subpoena. And  
14 we had already retained New York counsel and had to go  
15 litigate that. And in the Ayers case, Equifax and trans  
16 union filed a consolidated motion in Virginia in Richmond,  
17 which is where the Ayers V Equifax and trans union case was  
18 then pending. So, you had these three different  
19 proceedings. And this is one of them. This isn't the  
20 proper way for this to occur. We certainly, as to the  
21 opt-outs, object to the publishing of our social security

22 number and date of birth. But we don't want a protective  
23 order.

24 If the Court permits the redacted list, I don't think  
25 anybody has moved to compel them to file the full list. And

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1 then the only issue is, how do the parties in future cases  
2 litigate the question of whether someone is bound by the  
3 settlement because they were opted out or not opted out?  
4 And that is a more complicated issue that I think the  
5 defendant -- the bureaus and folks like myself that litigate  
6 these things actively will have to flesh out when we get to  
7 that. But if you just have ---

8 THE COURT: Even just hypothetically, even if you  
9 were able to get access to the list pursuant to a subpoena,  
10 don't you agree that it would have to be pursuant to some  
11 sort of protective order?

12 MR. BENNETT: I think it would. Let me put it this  
13 way, judge. I guess what I really have a concern with is I  
14 have two views from which I advocate. The first is my own,  
15 and the interest of those individuals who will come to me and  
16 who I will represent. On behalf of those individuals, if I  
17 have access to the protective order, if it is a customary  
18 order that prohibits me from disseminating information to  
19 third parties, I don't think I have violated that by sending  
20 a subpoena to Mary Jones in Gainesville or Mary Jones in

21 Pittsburgh to ask for her experiences with bank of America or  
22 what other creditors she dealt with. I don't think that  
23 violated the protective order, the issuing of that subpoena.  
24 However, if I were to speak with Mr. Schwab in a case in  
25 which we might be involved in and I were to say, David, why

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1 don't you call Mary Jones in Pittsburgh? She is on the  
2 opt-out list. That would be violating the protective order.  
3 It would be disseminating information to a third party.  
4 That is the first view. I would be satisfied as long as I  
5 have access to it, but that is the selfish view.

6 The other logistical view and the bigger picture  
7 principled view is that the other opt-outs, who will be  
8 forced to litigate this issue against the bureaus, would be  
9 put at a substantially unfair advantage because the  
10 defendants would be either privy to the opt-out list in full,  
11 or documents, or, alternatively, would be administering them  
12 under one scenario. And that would be an unfair advantage  
13 over another individual like Mr. Baxter and his client who  
14 just simply have the redacted list that just has the names.

15 THE COURT: So, there needs to be some person or  
16 entity that has the list from which each side in a potential  
17 future litigation could obtain their client's portion of that  
18 list?

19 MR. BENNETT: Yes, judge. That would solve that  
20 problem. I agree with you. It wouldn't solve the ability

21 to obtain evidence. But again, I really -- my objection  
22 isn't to providing redacted lists to the Court, it is to  
23 having the all future discovery matters now determined in  
24 Your Honor's protective order when the issues are not  
25 properly before the Court. But with respect to a redacted

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1 list, I don't think that is a problem except logistically.  
2 And Your Honor certainly could accommodate that by providing  
3 a neutral who could administer the list. I don't know that  
4 there is a neutral behind me or myself.

5 THE COURT: Well, if the defendants have it and the  
6 plaintiffs' counsel have it, then any opt-out counsel would  
7 have a way, through plaintiffs' counsel, to determine whether  
8 or not their person was or was not on the list. Whether or  
9 not it is the same person, for example.

10 MR. BENNETT: Judge, on behalf of consumers that I  
11 represent, this is a perfect example in this case, because  
12 there is no interest that Mr. Smith is advocating for that he  
13 represents. But I consider the plaintiffs, from my selfish  
14 Richmond, Virginia plaintiffs' perspective, I consider them  
15 opponents. And to -- it would be simply as, and given the  
16 cooperation that has occurred between these two tables,  
17 Judge, it would be, I believe, still unfair to force us to  
18 work with the plaintiffs. In my Ayers case, mara mcrae  
19 knew before we ever did, before they ever did, before  
20 English ever received anything new, that this was coming.

21 That this motion was going to be filed. It is our  
22 perspective, unsubstantiated, but it is my perspective that  
23 there was a coordination between these two sides in order to  
24 assist Equifax and trans union in my Richmond Ayers case,  
25 giving the sequencing of events and the letters that were

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1 sent out.

2 I think the more neutral, if you keep it with the garden  
3 city group with certain respects, certain requirements  
4 spelled out in Your Honor's order, or some other neutral, I  
5 think that that would better satisfy the people I represent.  
6 Thank you, judge.

7 THE COURT: Mr. Smith.

8 MR. SMITH: Your Honor, very briefly. First of  
9 all, I am glad for the concession from Mr. Bennett that we do  
10 not represent the opt-outs. And that, of course,  
11 represents the problem. We are the ones, however, that  
12 elicited the response by virtue of the notice. In my  
13 opinion, if we don't have a duty to try to protect at least  
14 their interest from the standpoint of asking the Court for  
15 what it wishes to do, if we don't do that, then we subject  
16 ourselves, individually, to massive exposure from individuals  
17 who have been very clear in their opt-outs that they do not  
18 want this information shared with anyone. I don't live in a  
19 conspiratorial world. I generally try to take things as  
20 they are. I can't even respond to his suggestion that we  
21 shared this information with the defendants. And I don't

22 know, we had all prepared were prepared, whether the  
23 defendants liked it or not, to try to protect the interest of  
24 these opt-outs, even though we don't represent them.

25 If the Court says that Mr. Bennett can have the list

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1 right down to the color of their shoes, that is more than --  
2 that is fine with us. But we would love for the Court to at  
3 least understand that we need to protect our own interests  
4 from the standpoint of getting sued, because I think these  
5 people really do feel as though they don't want this  
6 information shared. In fact, I would suggest to you, when  
7 they filed it, there was no expectation on their part that  
8 this information was going to be shared. IN fact, some  
9 specifically said it shouldn't.

10 We did not file, quite contrary to what Mr. Bennett  
11 suggested to the Court, we did not file an objection in New  
12 York. We filed one in Virginia, his home circuit, I  
13 assume is his home. We did file an objection. We had to  
14 hire an attorney in New York to represent the garden city  
15 group, which was our agent, because our agent basically  
16 said, what do you want us to do? Mr. Bennett said, that is  
17 not their plaintiffs' counsel issue, you are in New York.  
18 So, we had to hire an attorney to protect these people's  
19 interests; otherwise, he would have gotten the list.

20 I only say this. It is our greatest fear, obviously,  
21 that there might be some sort of resulting lawsuit from

22 clearly these people who do not want this information  
23 released in to the public. The names, we think, are  
24 sufficient. Again, I am not going to get into the ulterior  
25 motives, but I think that certainly the issue as to us being

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1 a repositor of information and, if that information is  
2 subpoenaed from us or, if they request that information or  
3 confirmation that an individual is or is not in, or is or is  
4 not an opt out we will confirm in writing or however Mr.  
5 Bennett wants. For that matter, any naca lawyer throughout  
6 the country, we will certainly do that. We don't like being  
7 repositories of information because of the exposure of it,  
8 but we are in the position to be able to do that and probably  
9 in the best position to do that. Of course, the defendants  
10 already have that information, so they too can confirm.

11 THE COURT: They don't have it in the same format  
12 that you have it, do they?

13 MR. SMITH: I think what the defendants have, I  
14 think they have it in full. They have the information with  
15 -- it would include all of the information.

16 The court: But not -- in other words, do they have  
17 a list of opt-outs that includes names, address, and other  
18 identifying information?

19 Mr. Smith: Yes, ma'am. Yes, ma'am.

20 THE COURT: They do.

21 Mr. Smith: Yes, ma'am.

22           MR. BENNETT: Judge, then it has been released  
23 outside of the domain of the protective order already, and  
24 the Court could not then put it back in the basket. It  
25 also, I think, does highlight, and I am a conspiratorial

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1 person, judge, it does highlight this conspiracy to which I  
2 have -- certainly I understand why they might would have  
3 wanted to pay for a lawyer in New York to fight our subpoena  
4 out of their genuine principled interest in protecting these  
5 opt-outs, but the conduct that the coordination that has  
6 occurred in the subpoena and this particular fact, the fact  
7 they have already shared this information with the defendants  
8 and now come before Your Honor to seek Your Honor's help in  
9 excluding not just my request, but the request of all of the  
10 other vernacular attorneys who filed these cases around the  
11 country, I think is disingenuous, and I think, judge, it  
12 would certainly be unfair.

13           In addition, we don't have to establish or meet a burden.  
14 Their advocacy -- well, nobody is advocating a protective  
15 order with any standing to do so. Mr. Smith says he doesn't  
16 care as long as he is not the individual who is culpable.  
17 Your Honor, with your judicial immunity, should not be  
18 concerned about that. And Your Honor orders its release,  
19 there is no longer any party that has filed any objection in  
20 this Court to that information. We are the only ones that  
21 have moved with standing to protect part of that list. You

22 should protect social security numbers and dates of birth.

23 MR. SMITH: Just as a follow-up, I just missed it.  
24 This was an effort, Your Honor, in fact, by giving to the  
25 defendants who were simply complying with Judge Seymour's

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1 order, and that is all.

2 THE COURT: Mr. Hirshman, did you have something to  
3 say?

4 MR. HIRSHMAN: Yes, Your Honor. Harold Hirshman  
5 for Experian. I think we are dealing with, as we know, is  
6 information that came to the credit bureau in the first  
7 instance with the full expectation of protections of the FCRA  
8 with respect to this data. Because we had to notify people  
9 in order to make them aware of their claim and give them  
10 their rights to opt out, it doesn't seem to me that any of  
11 the arguments we have heard means that those people had, from  
12 a notice or expectation, that they could then be called  
13 forth, that their personal information or credit history  
14 could be called forth to be used in some place in some other  
15 lawsuit which is all this is about.

16 There is a second aspect, which is, that can counsel know  
17 whether his client really opted out? And the proposition  
18 that eight lawyers, who are officers of this Court and other  
19 courts, would lie about that and say that somebody didn't opt  
20 out or did opt out when they didn't, is remarkable. And  
21 that is the two issues that seem to be here. One is that

22 they have a right to invade the privacy of these people.  
23 These lawyers whose sole goal in life is to protect people's  
24 credit privacy. They now have a fishing pond to go in to to  
25 see whether or not they can obtain some information which

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1 they believe is helpful for them in some lawsuit. That  
2 strikes me as a remarkable derogation of the principles that  
3 they say that they are standing for.

4 I believe we do have an obligation to come forward with  
5 Your Honor. We thought that the matter was being argued and  
6 if -- if there is some question of standing, although I don't  
7 believe there is, we are here, and we do not believe that  
8 this information should be published willy-nilly. We think  
9 that, given what Your Honor has said, it probably does not  
10 make sense to file it under seal. And to leave it wherever  
11 it is with the obligation of most lawyers to treat it in a  
12 fair and sensible manner consistent with the law.

13 THE COURT: Mr. Caddell.

14 MR. CADDELL: Yes, Your Honor. Very briefly. I  
15 am agnostic on the issue of whether or not this information  
16 should be provided to someone outside of this immediate  
17 proceeding. But I am concerned, from a process standpoint,  
18 that the information be maintained by neutral, preferably the  
19 Court. I understand and appreciate the Court's difficulties  
20 in maintaining information under seal, but the truth is,  
21 that an opt-out and an opt-out's counsel would expect that

22 this information be maintained at the Court. And if there is  
23 an issue over whether someone is or is not an opt-out, it  
24 frequently or typically is referred back to the Court that  
25 oversaw the settlement. I think that may be a

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1 responsibility of the supervising court.

2 I would point out to the Court, also, from a process  
3 standpoint, Your Honor, that plaintiffs' counsel, I am not  
4 accusing anyone of anything untoward, I think this is more a  
5 matter of appearance perhaps than it is of substance, but I  
6 think appearances matter. I would point out that  
7 plaintiffs' counsel have agreed, in the stipulations of  
8 settlement, that they will not, under any circumstances,  
9 undertake representation of any opt-out.

10 Now, that may not be inconsistent with maintaining a  
11 list and providing that to counsel for a future opt-out who  
12 chooses to pursue litigation. Nonetheless, I think from  
13 appearance standpoint, it would be better if the Court  
14 maintain the list or if that list were placed in the hands of  
15 them, Your Honor.

16 The court: All right. Mr. Harney.

17 MR. HARNEY: A couple of things. First, it  
18 certainly should be that the protective order would provide  
19 for anyone who wanted to sue one of these CRAs's to be able  
20 to find out if they were on the list and, if so, what -- to  
21 see that their name was on the list, and if it wasn't on the

22 list, there should be a way for them to prove the negative,  
23 which I suppose would be to have the custodian of the list  
24 come into Court or give an affidavit and say, you aren't on  
25 the list. So, but that can fully be taken care of by each

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1 individual plaintiff finding out whether or not they are on  
2 the list. So, that the concept that plaintiffs' lawyers  
3 need to know whether somebody is on the list so they can need  
4 to see the whole list to know if an individual is on the list  
5 is a red Herring.

6 The second red Herring is this fact -- this idea that  
7 they need to prove common practices. We have basically  
8 acknowledged that this is such a common practice that there  
9 are 2 million people in the class that we sent notices to.  
10 And to suggest that they need to go and pick out the few  
11 people who decided to opt out to develop that information is  
12 a red Herring.

13 The witness -- that they need these particular people as  
14 witnesses is also a red Herring. There is no rational reason  
15 why these 3,000 people would make any better witnesses than  
16 any of the other 2 million people. The reason that none of  
17 those reasons make sense is that none of those are the reason  
18 that they want this information.

19 The reason they actually want this information is so that  
20 they can solicit these people and get them to file a lawsuit.  
21 These people don't need volunteer lawyers telling them that

22 they could file a lawsuit. These are the 3,000 people who  
23 were so informed and understood that they actually filed an  
24 opt-out. So, they know where they stand, and they can go  
25 get a lawyer if they need one.

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1 Now, the final point is, who should keep this. I  
2 happen to think that it should be the plaintiffs' lawyers.  
3 It is not because I am in collusion with them. In fact, we  
4 are, on this point, it is one of the things that made us the  
5 maddest in this case, is that Mr. Smith filed that list of  
6 names. We do not think that even the list of names should  
7 have been filed because it does disclose those people, makes  
8 them harder to identify, but still discloses it. We would,  
9 in fact, like protection even against the use of what is in  
10 the public domain. And we think this Court can enter an  
11 order telling that anybody who has gotten these names should  
12 not use them for improper purposes.

13 But the reason I think the plaintiffs should hold this  
14 list is because they are here. Then this Court would then be  
15 the Court that would have jurisdiction over the plaintiffs'  
16 conduct. And I think there is a great value to that rather  
17 than having, if there is some dispute about what they are  
18 doing, I think there needs to be somebody who can make the  
19 type of certification that I am talking about, yes, you are  
20 on list, no, you are not on the list. I do think that the  
21 plaintiffs are actually the most neutral for this purpose.

22 I think that the defendants could do the job, but I think  
23 Mr. Caddell's comment about appearance might come into play  
24 there. I know of no reason other than rank speculation that  
25 anybody would think that the plaintiffs' counsel, who have

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1 done this whole lawsuit and brought this settlement and are  
2 maintaining a web site, would not be the appropriate people  
3 to maintain this list.

4           The court: When you contracted with garden city  
5 group to do what they did in the case, what discussions, if  
6 any, were held with them concerning what would happen to the  
7 documents that they received in the course of doing their  
8 job?

9           MR. SMITH: Your Honor, specifically, they were to  
10 deliver to us the request, which they did. The request for  
11 exclusion, which we have kept boxed up in my office. Then  
12 we were to deliver those to Equifax, I believe, in at least  
13 one version. And then there was a computer readable form  
14 reflecting all of the requests for exclusions. That is in  
15 Judge Seymour's order, paragraph 14A.

16           THE COURT: When you are talking about the  
17 documents that they would deliver to you, these would just  
18 be the actual forms themselves.

19           MR. SMITH: Yes, ma'am.

20           THE COURT: And then the compilation of the list  
21 that has name and other identifying information on it was to

22 be done by the defendant?

23 MR. SMITH: That was done on our end. The  
24 plaintiffs -- actually, we did that. The plaintiffs'

25 counsel paid someone to go through those lists and come up

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1 with.

2 THE COURT: Come up with the final list?

3 MR. SMITH: Yes, ma'am.

4 THE COURT: Garden city, after this is all over,  
5 is garden city still holding any documents?

6 MR. SMITH: Not to my knowledge. I can't imagine  
7 why they would want to. We can get confirmation if they are  
8 or not. But my suggestion to the Court is they are not.  
9 They wanted to get rid of them.

10 THE COURT: There are two kinds of documents at  
11 issue. There are the actual forms themselves filled out by  
12 the opt-outs, which you have, and then there is the list  
13 compiled from those forms.

14 MR. SMITH: We have the original forms.

15 The court: Right.

16 MR. SMITH: And we prepared the list. We have not  
17 given garden city group a list. We did not share that back  
18 with them. We have no reason. I have no reason to believe  
19 that they produced a list. I don't know that I am aware of  
20 that.

21 THE COURT: So, if they were subpoenaed as they  
22 were in New York for a list, they have no such list?

23 MR. SMITH: No list to my knowledge, Your Honor.  
24 And they may have made copies. We can get ---

25 THE COURT: Made copies of what?

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1 MR. LIMBAUGH: If you don't mind, Your Honor,  
2 Hunter Limbaugh. I had some conversations with garden city  
3 on this. I think I can clear this part up. At the time  
4 the request for exclusion logistics were being dealt with by  
5 garden city group, that is to say putting them altogether,  
6 sending them to us for the purpose of putting them in a  
7 computer readable form on a disk, they were instructed -- I  
8 instructed them to copy all of those requests for exclusion  
9 simply as a matter of protection in the event that the  
10 originals got lost or something in transit. So, it is my  
11 understanding that garden city group did make photocopies of  
12 the request for exclusion.

13 Now, we haven't had a subsequent conversation with them  
14 to authorize them to destroy those, but that would be my  
15 expectation. They are certainly not expecting to have to  
16 keep those indefinitely. And that my feeling was there would  
17 come a time shortly when there would be no need for them to  
18 retain them at all, and we would authorize them to destroy  
19 them.

20 THE COURT: So, you think garden city has

21 photocopies of the forms?

22 MR. LIMBAUGH: Of the forms.

23 THE COURT: And your class counsel have the  
24 originals of the forms.

25 MR. LIMBAUGH: Yes.

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1 THE COURT: Class counsel has the computerized list  
2 made from the original, both in redacted and unredacted form.

3 MR. LIMBAUGH: Yes, ma'am.

4 THE COURT: You have provided to the defendants the  
5 list in unredacted and redacted form?

6 MR. LIMBAUGH: Pursuant to Judge Seymour's order  
7 that that be done, yes, ma'am.

8 Mr. Harney: That was the one point I wanted to  
9 clarify. Maybe everybody is on top of this. The March  
10 order was modified by paragraph 7 of the July 3 order. And  
11 paragraph 7 of the July 7 order says, that class counsel or  
12 its designee will compare the list. And the lists -- then  
13 request for exclusion will be retained by class counsel. It  
14 is a change from the March order. The March order put more  
15 of it on us, and we changed it.

16 MR. LIMBAUGH: The only difference, Your Honor, is  
17 that, originally, the defendants were going to be responsible  
18 for converting the paper to computer readable form. That was  
19 changed in the subsequent order to put the burden on the  
20 plaintiffs' counsel to perform that function. That is the

21 only change as I recall. It just took it off them and put  
22 it on us. That is why we did it.

23 THE COURT: And the forms themselves, then, if  
24 class counsel is not going to maintain them, how much space  
25 are we talking about? What are we talking about in terms of

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1 boxes?

2 MR. SMITH: Your Honor, I am advised that close to  
3 seven or eight banker boxes.

4 THE COURT: In whose office are they located?

5 MR. SMITH: Presently they are in my office.

6 THE COURT: Anyone else to be heard on this?

7 MR. BENNETT: Judge, in response to Mr. Harney's --  
8 well Experian's position is, this was subject to the Judge  
9 Seymour protective order, and it wasn't. That pertained to  
10 the construction of the class list, which was information --  
11 based on information furnished from the bureaus. This, there  
12 was no such expectation of privacy because the opt-out list  
13 was generated by these opt-outs affirmatively publicizing  
14 their information to the garden city group. So, that to  
15 the extent there is no current protective order, Your Honor  
16 can certainly please to do as Your Honor sees fit. The  
17 second issue, with respect to Mr. Harney ---

18 THE COURT: Are you saying that Judge Seymour's  
19 prior orders never limited access to this information at all?

20 MR. BENNETT: It absolutely did not. Judge  
21 Seymour's order pertained only to the information provided by  
22 the defendants. It didn't pertain to information provided  
23 by the opt-outs. That is the -- this is information we are  
24 seeking and talking about today is information that the  
25 opt-outs created by filling out a form and mailing it in.

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1 That is information that was never even in the control of any  
2 of the parties at the point it was generated by these 3,600  
3 or so odd opt-outs. And, judge, I know this, I am -- I  
4 might be wrong, I won't say I know, I strongly believe this  
5 because this was an issue, the issue that was raised in the  
6 New York response to our subpoena and in trans union and  
7 Equifax's motion to quash our subpoena in Richmond. The  
8 Judge Seymour order deals with different information related  
9 to all class members, and it pertained to -- it enforced or  
10 imposed restrictions on how the information provided by the  
11 bureaus in determining who is in the class was to be  
12 maintained. It didn't pertain to information from third  
13 parties.

14 Now, of course, the opt-out names will look like names  
15 -- a subset of names within the class list, but that is not  
16 how it came in control of the Court or of garden city.

17 The second, if Your Honor please, we might be able to  
18 wrap this up. I offered in my motion on behalf of Ms. Ayers  
19 and Ms. Byerson this would become completely moot if the

20 defendants agree to take two issues off the table or to so  
21 stipulate.

22 Mr. Harney said, for example, with respect to we don't  
23 need to prove pattern and practice because, of course, they  
24 admit that. So, I offered the statement that we would have  
25 to prove in my motion where I said that, if they were to

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1 stipulate that the reporting of a bankrupt was consistent  
2 with the deliberate and established policies and procedures  
3 of the bureaus. If they would stipulate that this was  
4 consistent with their established or the deliberate and  
5 established policies and procedures, this method of reporting  
6 was a deliberate decision that they made.

7 And then the second, Judge, that they would stipulate  
8 that creditors interpret the "included in bankruptcy  
9 reporting" to mean that this consumer in issue filed  
10 bankruptcy. Those are the two issues that we need discovery  
11 on in all of these cases. And they fight tooth and nail on  
12 both of those matters. And Mr. Harney, to argue otherwise,  
13 I don't think he could. He obviously is an honest man.

14 THE COURT: Number one, how can they stipulate as  
15 to how somebody else interpreted the report?

16 MR. BENNETT: They can't possibly, but that is why  
17 we need discovery to discover how the world of creditors out  
18 there interprets this information.

19 THE COURT: It would be from some other people.

20 MR. BENNETT: That is why we need the opt-out list  
21 in order to determine how these various other creditors have  
22 done this. This is the most, beyond any other issue  
23 included in bankruptcy cases, Your Honor, the most  
24 contested issue is, what does the credit industry -- how does  
25 the credit industry interpret, quote, included in bankruptcy,

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1 close quote, when there is not a public record? They argue  
2 -- they all know there is no public record. All creditors  
3 know that this individual didn't file bankruptcy. My side  
4 argues to the contrary. That is the single biggest issue in  
5 all of these cases.

6 THE COURT: All right. Let me say this. I am not  
7 going to resolve that issue because that is in another Court.  
8 I am going to resolve what happens to these documents because  
9 they were generated as part of this class action.

10 Mr. Hirshman, you were standing longer.

11 MR. HIRSHMAN: Yes, Your Honor. If Your Honor  
12 goes to the march 19th order of Judge Seymour to paragraph  
13 14A. Counsel just said what we were talking about was not  
14 people who had asked to be excluded from the class. And I  
15 will give Your Honor a minute.

16 THE COURT: I have got it.

17 MR. HIRSHMAN: I believe you will see as you read it  
18 that 14A deals explicitly and directly with people who asked  
19 to be excluded from the class. And the creation of such a

20 list, if we should create the list, and ultimately we get to  
21 a lacuna, a hole in the order, which says, thereafter, that  
22 is after it is created, it shall be filed with the Court by  
23 Experian at or before the final settlement hearing. So,  
24 there was a contemplation that it be filed with the Court.  
25 What the order doesn't say is whether that filing would be

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1 under seal or under what circumstances. So, I think it is  
2 incorrect to say that there was an intention and an  
3 intentionality to just make this publicly available.

4 The court: All right.

5 Mr. Kogan: Your honor.

6 The court: Mr. Kogan, yes, sir.

7 MR. KOGAN: I am advised, in South Carolina, it is  
8 risky to become associated with any form of agnosticism, but  
9 I will associate myself with part of what Mr. Caddell said.  
10 But before I do, I would like to refer the Court to paragraph  
11 5 of that order that Mr. Hirshman just read from. And that  
12 refers to a confidentiality of all of the information  
13 required to effectuate the matters described in the order,  
14 which includes the matters described later in 14A, the way I  
15 read it.

16 The second point I would like to make is that, as a  
17 practical matter, I could envision many district judges,  
18 when confronted with confidential information in an opt-out

19 circumstance, treating this matter in part in camera, similar  
20 to a trade secret, where there is an inherent privacy issue.  
21 Namely that, if this is the information pertaining to someone  
22 else, it would only be revealed in very controlled  
23 circumstances. So that in the Mary Jones, I believe  
24 circumstance, I could envision a district judge identifying  
25 the problem, well, if this is not the Mary Jones on this

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1 list, I will be telling you something about the Mary Jones  
2 who is not your client that you have no right to know. And  
3 I could envision individual district judges formulating  
4 process and procedure about that.

5       What I cannot envision is this notion that we could  
6 engage this massive conspiracy to doctor the list so as to be  
7 able to assure ourselves that the particular Mary Jones that  
8 Mr. Bennett has in tow, at that moment in time in that Court,  
9 is actually the one on the list. That we would have forged  
10 the submission. That the document contained in Mr. Smith's  
11 office has been not just has been actually a forgery, which  
12 contains all of this person's information, which it would  
13 have to do. And that in order to create that forgery, all  
14 of the defendants would have to get together and share the  
15 information so that the forged form would meet the  
16 identifying criteria for Mr. Bennett's client at that time.

17       This reminds me of the original conspiracy theory that we  
18 started to hear about in September. I think the Court  
19 wisely looked the other way and rejected that idea, and I

20 think we should do today.

21 THE COURT: All right. The bottom line is that  
22 the documents in the envelope will not be filed in the public  
23 record of the Court. I am going to think about the best way  
24 to handle it. Obviously, the preference would be for us to  
25 keep this, you know, for the Court to be the neutral party.

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1 But I don't think that that is going to work with the number  
2 of boxes and all of that. So, I will probably set up some  
3 sort of situation under which class counsel maintains these  
4 documents under a protective order and can release them only  
5 under very limited circumstances and with a prior order of  
6 the Court. So, if someone needs access to a document to  
7 verify whether or not someone is or is not an opt-out, they  
8 come back and file a motion, and at that time, I would  
9 generally allow access for a certain limited purpose and a  
10 certain limited way. If someone leaves the private practice  
11 of law or does something else that they can no longer do  
12 that, then they would have to come back to the Court for  
13 further order making other arrangements at that time for what  
14 would happen.

15 If there are any limitations on the use of the opt-out  
16 list that need to be imposed upon the defendants, and I  
17 cannot think of any at this point, I would like for you to  
18 let me know. I don't think that it is fair to limit the use

19 of the list. In other words, to preclude a plaintiffs'  
20 lawyer from getting access to the list for purposes of  
21 proving pattern and practice, for example, but to allow the  
22 defendants to have access to that list for purposes of  
23 defending pattern and practice. In other words, I think  
24 the use of the list needs to be limited to the extent that it  
25 is only used to verify who is or is not an opt-out. And so,

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1 defendants' use of the list probably, correspondingly, needs  
2 to be limited in that way. But beyond that, I can't think  
3 of any other limitations.

4 MR. BENNETT: Your Honor, may we reply by letter to  
5 the Court?

6 THE COURT: Sure.

7 MR. BENNETT: To inform you of our views?

8 THE COURT: I will address this towards the end of  
9 this order, and it will be a few days, so send me a letter.

10 MR. SMITH: Just for personal reasons and only,  
11 instead of -- if the Court does choose to identify one member  
12 of class counsel to maintain the possession of those  
13 documents, I have discussed it with Mr. Mullen, and Mr.  
14 Mullen is prepared to undertake that responsibility, if that  
15 is the Court's wishes.

16 THE COURT: Mr. Mullen will also be the person in  
17 charge of the web site, right?

18 MR. SMITH: Your Honor, we can certainly ---

19 THE COURT: When we set up this requirement to

20 continue to maintain the web site, it would be, would he be  
21 doing it? I understand you are using another firm to  
22 actually use it. The Johnson firm was actually maintaining  
23 it?

24 MR. SMITH: No, that is actually my firm.  
25 Actually, we hired a company out of Atlanta, F2 technologies,

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1 which basically handles it. But there is absolutely no  
2 problem with either Mr. Mullen or I or members taking on that  
3 responsibility.

4 The court: Well, just for consistency, would it be  
5 better for it to be Mr. Mullen since he will be the keeper of  
6 the documents?

7 MR. SMITH: Yes, ma'am.

8 THE COURT: Mr. Mullen, do you agree with that?

9 MR. MULLEN: I don't have much choice now, judge,  
10 but I agree with you.

11 THE COURT: All right.

12 MR. HARNEY: Your Honor, one other point. Will  
13 the Court at least PLEASE be considering whether to order  
14 that the list that is in the public domain not be used for  
15 solicitation of clients and witnesses?

16 THE COURT: Not unless someone files a motion and I  
17 have it addressed with proper briefing. We don't generally  
18 limit access to documents that have already been filed with

19 the Court absent very unusual circumstances. Once the cat  
20 is out of the bag, the cat is out of the bag. And if it  
21 has already been forwarded to that national center that Mr.  
22 Bennett is talking about, it is probably already on a web  
23 site somewhere.

24 Mr. Caddell.

25 MR. CADDELL: Your Honor, just briefly. There would

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1 be a difference. I'm not sure the Court has addressed this.  
2 But I do think that, from an appearance standpoint, my  
3 concern would be satisfied if the Court maintained a copy  
4 merely of the list. I really don't think it is necessary  
5 that the Court maintain seven banker's boxes of the  
6 underlying documents, the hard copies of the request forms.  
7 I simply would propose that the Court maintain a copy of the  
8 list, should there ever be any need to consult that.

9 THE COURT: I will consider that. I am definitely  
10 holding onto it until I decide what to do with it.

11 MR. BENNETT: Judge, on behalf of my two clients,  
12 to the extent that this is -- we preserve our objections to  
13 the overall protective order, would not have an objection to  
14 filing that information under seal. And we, to the extent  
15 we had so objected, we withdraw that objection. Then,  
16 subject to the other issues, our ability to litigate, whether  
17 we need the information from Mr. Mullen in some future  
18 instance.

19 THE COURT: Okay.

20 As to the matter of dealing with attorneys' fees. If the  
21 Court approves the settlement, this is the procedure that I  
22 am considering. It is a two-stage procedure. And the first  
23 stage is the stage in which the Court approves the total fee  
24 award. And what I have in mind is setting up a time frame  
25 that, no later than a certain date, any person who claims an

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1 entitlement to fees, costs, or expenses would have to submit  
2 time costs, and expense record summaries, along with any  
3 affidavits and memoranda in support of the amount of the  
4 fees, costs, and expense award which they believe to be  
5 either an appropriate total award to all counsel or the  
6 amount that they believe should be awarded to them.

7 And I am encouraging class counsel and objectors to make  
8 a joint submission as to a total fee cost, and expense award.  
9 But I do need these time, costs, and expense records  
10 summaries in which each timekeeper sets forth the total hours  
11 spent by that timekeeper along with an identification of  
12 their role, such as attorney or paralegal.

13 And I am going to break it down into three time periods:  
14 Before class cert; then from class cert through the  
15 September hearing; and then the third time period would be  
16 after the September hearing up to today or up until the time  
17 the submission occurs. Probably do a fourth one with time  
18 spent thereafter after today. So, it will be four time

19 periods. And I am going to require that they can either  
20 just file the time records and break them down into those  
21 time segments by marking them, or, if they believe that the  
22 time records contain privileged material, then they can  
23 petition the Court for permission to file a redacted version  
24 of the documents. But consult with other lawyers first to  
25 see if anyone has any objection and let me know. Call me if

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1 there is a problem about filing those. Don't just submit  
2 those under seal. We won't accept them under seal.

3 Then, I am going to have a time period for an opposition  
4 to the total amount sought. A time period for anyone who  
5 wishes to file an opposition to the total amount sought. And  
6 no reply would be required, but a reply could be filed in a  
7 short period thereafter. Then once that is done, the  
8 second stage would be an allocation stage in which class  
9 counsel and objectors' counsel would be given 30 days after I  
10 enter an order setting the total fee award to try to resolve  
11 the allocation. In other words, the breakdown of the total  
12 fee award. And at the end of that time, if there has been  
13 an agreement, they should file the agreement. Or, if not,  
14 tell me there has been no agreement. Then, if no agreement  
15 has been reached, then I will give a briefing schedule for  
16 filing briefs setting forth the respected positions on the  
17 allocation issue with the time period for filing opposing

18 briefs.

19       So, what I am basically trying to do is come up with the  
20 total fee award per defendant. Then try to give you 30 days  
21 to try to agree on an allocation. And then, if you can't  
22 agree on an allocation, I will set the allocation. I know  
23 there had been some concerns about filing time records, time  
24 sheets. I am not saying by requiring these that I am going  
25 to limit people to an hourly rate based on their time sheets,

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1 but in order for me to evaluate the reasonableness of the  
2 overall fee, I must have some idea how much time people spent  
3 in the case. And you can argue in your other papers why a  
4 multiplier should be in effect, or other reasons why a fee  
5 award should exceed the normal hourly rate fee award.

6       Now, many papers were already filed on that. They were  
7 filed before the September hearing. And you don't need to  
8 refile the same thing. So, if you have already got an  
9 affidavit or an argument filed in a petition for attorney  
10 fees, you can simply reference that. It would help us if  
11 you would copy it and attach it so we would have it all in  
12 one place. We have so many papers in this case that digging  
13 them out sometimes is cumbersome. So, if you would just  
14 attach your prior filings and refer to them then, that would  
15 be very helpful to us. But that is the plan that we would  
16 use.

17       Does anyone have any objection or comment to that type of  
18 procedure being used?

19 Now, Mr. Limbaugh.

20 MR. LIMBAUGH: Yes. Understanding that the Court  
21 may very well have its own reasons for the time periods that  
22 you referenced, we would suggest that it may not be  
23 necessarily necessary to have that much -- those durations of  
24 time intervening between the various activities. So, to the  
25 extent ---

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1 THE COURT: I am anticipating arguments, if I get  
2 there, about allocation. That may make it necessary for me  
3 to separate out different periods of time periods before the  
4 objectors came involved. After they came involved.

5 MR. LIMBAUGH: I think you misunderstood, and I  
6 apologize. What I was talking about was the periods of time  
7 in between the acts that are required of counsel with regard  
8 to the steps.

9 THE COURT: The filing of the brief? You think I  
10 can shorten those?

11 MR. LIMBAUGH: It is our suggestion that less time  
12 would be necessary. But, again, I didn't know what the  
13 Court's reasons were for that. And other counsel may  
14 disagree.

15 THE COURT: Well, I didn't actually set any times  
16 other than that 30-day period. IS that the one you are  
17 talking about?

18 MR. LIMBAUGH: That is the only one I heard.

19 THE COURT: You think in less than 30 days the  
20 objectors' counsel and class counsel can confer and just see  
21 whether they have an agreement?

22 MR. LIMBAUGH: I think, yes, 30 days.

23 THE COURT: Then you don't have to wait 30 days.  
24 As soon as you have an agreement or not an agreement, tell  
25 me. That will set the next stage. I will set a number of

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1 days that follows if there is a disagreement. One thing I  
2 am not exactly sure on is whether the defendants wish to be  
3 involved at all in this attorneys' fee part of the case if  
4 the settlements were approved. It is my understanding that  
5 you have agreed to not oppose a request for attorneys' fees  
6 that does not exceed 5 million dollars per defendant. You  
7 only wish to get involved if it exceeds 5 million dollars.  
8 If it is within the 5 million dollar limit, I am not  
9 anticipating that you wish to be heard on that, but I don't  
10 know that. That is just an assumption.

11 MR. HIRSHMAN: That is correct as to Experian.

12 MR. HARNEY: With respect to Equifax, we would  
13 like to be served with every submission to the Court. And  
14 then we will, if we think there is something inappropriate,  
15 we will do it or let you know we are going to do it. I  
16 think that will be enough for us for now.

17 THE COURT: Mr. Kogan.

18 MR. KOGAN: Your Honor, you said, "attorneys'  
19 fees." I believe it is attorneys' fees and costs and  
20 expenses was the 5 million dollars.

21 THE COURT: That's true.

22 MR. KOGAN: With that understanding, thank you,  
23 ma'am.

24 THE COURT: That is my understanding based on the  
25 documents.

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1 All right. One other issue. The question about how one  
2 goes about applying for their free consumer disclosure. If  
3 you are a very smart person and you read the whole settlement  
4 stipulation of settlement agreement, you know, you can  
5 certainly figure this out. But it seemed to me that the --  
6 it might be helpful to folks, both to the defendants and to  
7 class counsel, to put some sort of instructions on the web  
8 site so that it saves you having calls, saves you having  
9 people writing. It just says: IF the judge -- once the  
10 order approving settlement has been issued, put on the web  
11 site: "The settlement has been approved. Click here to  
12 see the order. If you wish to now seek your free consumer  
13 disclosure, do the following: One, two, three." And just  
14 have it right there so that they can see it.

15 Does anybody have any problem with that?

16 MR. HARNEY; I have no problem with it. But please  
17 put, "if you haven't already done it." And put, "if you have

18 already done it, you don't need to do it again." Because we  
19 got 90,000 of these, and we certainly don't need to get  
20 duplicates. We got no economical way to sort duplicates.

21 THE COURT: I understand.

22 MR. SMITH: Your Honor, given the deadline January  
23 31st, maybe I am misunderstanding. Forgive me if I am.  
24 In other words, we will have a written order for them to  
25 link to. I am assuming we are going to get a written order

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1 relatively quickly. So, whatever time is left is left.

2 THE COURT: We could go ahead. I do plan to do a  
3 written order quickly. But you could go ahead and say that,  
4 "the deadline to request consumer disclosure for any  
5 potential class member under this pending settlement is  
6 January 31st. To do this, do the following."

7 MR. SMITH: That is fine.

8 THE COURT: "If you have not already done so, do  
9 the following." And that takes care of it. And then you  
10 don't have to wait for the order to do it.

11 MR. HARNEY: It would probably save some of the  
12 conflict that we often have with plaintiffs' attorneys. I  
13 don't think it would be conspiratorial if they were to run  
14 that language by us before they put it on the web site.

15 THE COURT: That's fine. Run it by the defendants  
16 and by the representatives for the consolidated objectors.

17 All right. Is there anyone else who has an issue they  
18 need to bring up before we adjourn today? All right. Thank  
19 you very much. And we will get an order out very shortly.

20 \*\*\* END OF REQUESTED TRANSCRIPT \*\*\*  
\* \* \* \* \*

21 CERTIFICATE OF REPORTER  
22 I certify that the foregoing is a correct transcript from  
my stenographic notes in the above-entitled matter.

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25 Debra R. Jernigan, RPR, CRR Date