

A

true and correct. The statements herein are based upon my personal knowledge and expertise, and any opinions stated in this affidavit are made with a reasonable degree of professional certainty.

2. I am familiar with the subject of this class action. Pursuant to a request by the "Coordinated Objectors," I previously prepared an affidavit in which I identified why I believe that the Second Modified Stipulation of Settlement is fair, reasonable and adequate. I attended the Fairness Hearing on January 12, 2004, at which no party voiced an objection to my affidavit.
3. In regard to an award of attorneys' fees to counsel for the Coordinated Objectors, it is my opinion that the value of the Second Modified Stipulation of Settlement and the contributions made by counsel for the Coordinated Objectors warrant substantial compensation. In contrast to the questionable value of the original Stipulation of Settlement, the Second Modified Stipulation of Settlement has conferred a considerable benefit to the Class and to the general public. But for the actions of counsel for Coordinated Objectors, no such benefits would have been realized. In fact, the original Stipulation was, as others have noted, a "giant step backward" and a continuation of "business as usual." (See Attachment "A.")
4. The original Stipulation of Settlement would have had potentially disastrous consequences to the Class. Had it not been for the Coordinated Objectors, this disaster would have befallen the Class. Instead, the Second Modified Stipulation of Settlement now remedies the credit reporting agencies' (CRAs) most problematic practices. Thus, focusing on the substance of the solution produced by the Coordinated Objectors, as opposed to the exacerbation of problems that would have occurred under the Plaintiffs' original Stipulation of Settlement, the Coordinated Objectors have brought considerably greater value to the Class.
5. The main benefit of the Second Modified Stipulation of Settlement approved by the Court is that it uniformly removes all references to "bankruptcy" from the credit reports of Class Members who never filed for bankruptcy. Such references are highly damaging to credit standing because important creditors like Freddie Mac, Fannie Mae, insurance companies and others electronically scan credit reports for references to highly derogatory information, including bankruptcy. Moreover, in my opinion, many creditors that manually review a credit report would look negatively upon a consumer whose report contained either "included in bankruptcy" or "included in the bankruptcy of another."
6. During the Court's September hearing, Equifax indicated that had the original Stipulation been approved, it would have continued to report "included in the bankruptcy of another." Trans Union indicated it was likely to follow suit. In fact, Trans Union's counsel said that creditors considered it "predictive" that a

consumer had an account that was included in bankruptcy.

7. An important way in which CRAs compete is over which of them can supply subscribers with the most complete history on a consumer, particularly negative history. This is because the subscribers look to the CRAs to warn them about credit-risky consumers. In my opinion, Equifax was looking to exploit the "Equifax fix" loophole in the original Stipulation to its competitive advantage. Trans Union explicitly told the Court that it was reserving its right to follow Equifax's lead and to report "included in the bankruptcy of another" if the original Stipulation was approved.
8. By allowing Equifax and Trans Union to continue placing "bankruptcy" notations on the credit reports of non-bankrupt consumers, the original Stipulation would have failed to halt the main damage: the unfair guilt by association of the non-bankrupt consumer and the triumph of *technical accuracy over maximum possible accuracy*, which is the legal standard.
9. It is my opinion that the CRAs' refusal to handle the "bankruptcy" notations in a uniform way would have created serious confusion in the marketplace. If a consumer were diligent enough to obtain her consumer report from Experian, she would see no reference to bankruptcy and (presumably for purposes of argument) an accurate portrayal of the payment history of the joint account. However, unbeknownst to that consumer, her Equifax and Trans Union credit report would continue to reference a bankruptcy for which she was not legally responsible, but which nonetheless could negatively impact her future efforts to obtain credit, insurance or employment. It also would be probable that the credit score derived from her Equifax or Trans Union credit report would be adversely impacted.
10. Conversely, if a consumer obtained his Equifax or Trans Union report and saw the reference to a bankruptcy, the consumer likely would assume there was a bankruptcy notation on his Experian report, prompting him to unnecessarily expend time and energy, and assume out-of-pocket expense.
11. Through correspondence and e-mails that the Court ordered produced to Coordinated Objectors, it is apparent that Class Counsel knew of problems with their proposed solution a year ago. I have attached several of the emails and letters to this affidavit. Despite such notice, Class Counsel pushed forward with a settlement that conferred no real benefit to the Class.
12. Ironically, Equifax's counsel, Mara McRae, was one of the first to address the shortcomings of the potential settlement. By letter dated January 14, 2003, Ms. McRae stressed the likelihood of confusion for the class and inefficiency for the CRAs and its customers if the terms imposed by the settlement on the CRAs were not uniform:

There is a substantial overlap in those who are members of the other defendants' classes and members of the Equifax class. Therefore, different settlement terms, especially terms of a remedial nature such as you suggest in you [sic] letter could be confusing, inefficient, or potentially even conflicting. . . ."

In particular, because the situation of which plaintiffs complain is uniform and industry-wide under the Metro format, any change to the way in which these matters are reported, if possible at all, should be uniform. Such uniformity would make a change both easier to implement with our customers and less confusing to consumers."

(Attachment "B" at page 2.)

13. Despite Ms. McRae's rather candid assessment, Class Counsel agreed to a "special fix" that not only would have been highly damaging to the Class, but also contradicted Ms. McRae's professed desire for uniformity.
14. Two months later, on March 14, 2003, Class Counsel again was warned explicitly that it was headed in the wrong direction by agreeing to the special Equifax "fix." In their consultation with Joanne Faulkner, who Class Counsel refers to as "an influential NACA lawyer,"¹ Class Counsel learned that the Equifax fix "is a giant step backwards and must be deleted. This allows business as usual as far as I can see." (Attachment "A" (emphasis added).)
15. In an e-mail dated March 17, 2003, Mr. Limbaugh indicated he understood the nature of Ms. Faulkner's objection, stating "The apparent position of these people is that the only appropriate remedy is to stop reporting the bankruptcy info in any form." (Attachment "C.") Mr. Limbaugh recognized and noted, "So, the argument goes, there will not be any real benefit." (Attachment "D.") In a follow-up note, Mr. Limbaugh asked Ms. McRae: "Do you have any concerns about this? After all, 'the fix' is the central component of the relief to the class." (Attachment "E.")
16. But rather than challenging Ms. McRae to get appropriate relief for the Class, Mr. Limbaugh and Class Counsel did not challenge the CRAs. At one point, Mr. Limbaugh said he did not disagree in principle with Ms. McRae's

¹ Ms. Faulkner is one of the nation's leading consumer attorneys and an expert on the FCRA. She is contributing co-author of the leading text on the FCRA, the National Consumer Law Center's Fair Credit Reporting Act (in its fifth edition). She has won a series of precedent-setting court cases, including two by the U.S. Supreme Court. Heintz v. Jenkins, 514 U.S. 291 (1995); Connecticut v. Doehr, 501 U.S. 1 (1991); also see Nelson v. Chase Manhattan Mortgage Corp., 282 F.3d 1057 (9th Cir. 2002); She is the recipient of NCLC's 2002 Vern Countryman Award, given to public interest attorneys whose special contributions to the practice of consumer law have strengthened and affirmed the rights of low-income Americans. For more testimonials about Ms. Faulkner, go to <http://www.consumerlaw.org/award/faulkner.shtml>.

questionable assertion that "Joanne just doesn't like the fact that co-signing with a bankrupt may be of interest to creditors."² (Attachment "D.")

17. There is no indication that Mr. Limbaugh independently evaluated Ms. Faulkner's warning or even discussed it with Ms. Faulkner in greater detail. Instead, he informed Ms. McRae, "Plaintiff's counsel are committed to go forward with our agreement as written and to do our best to defend it from objectors." (Attachment "C.")
18. I have reviewed the hearing transcript from the Court's initial fairness hearing on September 23-24, 2003, including the testimony of George Finder and Richard Le Febvre. Neither of these consultants for Class Counsel squarely addressed the harm to the class flowing from the Equifax "fix" and the initial Stipulation of Settlement. In my opinion, neither of these men defended the Equifax fix as a proper remedy for the Class.
19. Mr. Finder's testimony indicated that he did not understand the importance of creditors' scanning of credit reports for terms such as "bankruptcy." When asked by Leonard Bennett if he understood that Fannie Mae and Freddie Mac did automated scans of credit reports, Mr. Finder's first response was, "I don't understand the relevancy of your question." Mr. Finder's testimony demonstrated that he was unaware of the adverse impact that scanning would have:

Mr. Bennett: It's fair to say that without getting more detail that you have no idea how Fannie Mae and Freddie Mac will read 'in bankruptcy of another' with determining whether . . . a loan with that can be underwritten?

Mr. Finder: Correct.

Mr. Bennett: And because you don't do any credit scoring or you have no idea what the Equifax pound sign is going to mean in a credit score?

Mr. Finder: Only what I've read in the documentation.

Mr. Bennett: And none of the documentation deals with what's going to happen with the automated credit reports, the credit scores or the scans, correct?

Mr. Finder: Yes (Transcript at 340.)

² In another e-mail to Mr. Limbaugh, Ms. McRae continued to defend against Ms. Faulkner's criticism by diverting the discussion to credit scoring, stating, ". . . we cannot possibly represent anything with respect to the effect of this change on the consumers' scores." (Attachment "C.")

20. In his declaration, Mr. Le Febvre stated that the main contention of the class was that the "issuance of a credit report with any reference to a bankruptcy on a joint account tradeline, where the subject of the credit report did not file that bankruptcy, is inaccurate and a violation of the FCRA." As the Court pointed out in the fairness hearing, only the Court, and not Mr. Le Febvre, is qualified to determine what is a violation of the FCRA. But in terms of the scanning practice, Mr. Le Febvre is correct in the sense that the presence of the term "bankruptcy" inaccurately portrays class members, much to their disadvantage. The inclusion of bankruptcy is also inaccurate under the Fair Information Practices analysis I provided in my first affidavit because it gives a distorted picture, instead of a full and complete picture.

21. With the Court's help, Mr. Le Febvre finally admitted as much in the fairness hearing. Referring to Ms. Byerson's credit report, which contained an "included in bankruptcy" reference, the co-counsel for the Coordinated Objectors asked:

Mr. Caddell: You would agree for Ms. Byerson, the Equifax fix does not meet the standard that you have set forward. . .

Mr. Le Febvre: This is not part of this litigation based on what I understand. . . . (Transcript at 366.)

Mr. Caddell: . . . Isn't it obvious that this information does not present a full and complete picture of Ms. Byerson's account at First Community Fi because it doesn't tell you the payment history? Isn't that true?

Mr. Le Febvre: Again, I would state that I haven't been asked to give that opinion, and I've been asked –

THE COURT: Answer the question – Is it a full and complete picture? Yes or no.

Mr. Le Febvre: No. (Transcript at 368-69.)


22. Mr. Le Febvre's lack of enthusiasm for the Equifax fix was evident when in response to Mr. Caddell, Mr. Le Febvre responded, "I was just asked to give an opinion on if this settlement was in the consumer's best interests given the two options that were on the table, and I said yes." (Transcript at 365 (emphasis added).)

23. Despite such obvious hesitations from the experts, Class Counsel did not, in my opinion, appear to have made an earnest attempt to convince Defendant Equifax to go along with a uniform fix that would remove all references to bankruptcy and finally secure a "true and complete picture" for all class members. The Coordinated Objectors, on the other hand, achieved this

important result because they forcefully demanded it, letting all involved know that it was "non-negotiable."

24. In my affidavit submitted to the Court without objection on January 12, 2004, I addressed the many benefits and improvements of the Second Modified Stipulation. In addition to my previous analysis of these benefits, I have attached a chart outlining the benefits conferred to the Class by the Coordinated Objectors. (Attachment "F.") Overall, the Coordinated Objectors conferred additional, substantial benefits to the Class. These include (a) the elimination of mandatory arbitration; (b) the selection of the arbitrator by AAA, instead of by defendants; (c) the requirement that defendant's bear the cost of arbitration; (d) the right of the Class in any future actions to seek emotional distress damages for future remedies; (e) the right of class members to pertinent documents maintained by defendants; and (f) a streamlined, more consumer-friendly claims process.
25. For these reasons, the original Stipulation of Settlement would have been more harmful than helpful to the Class, while the Second Modified Stipulation of Settlement provides an important remedy to the Class. Accordingly, the Coordinated Objectors and their counsel deserve the credit for preventing a bad outcome, and for helping ensure that the appropriate remedy was achieved.

Further affiant sayeth not.



Evan Hendricks

Subscribed and Sworn to before me
this 29th day of January, 2004.



Notary Public, in and for said
County and State

MARDOQUEO M. SANCHEZ
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires July 14, 2006