UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ERIC KEELS and SANDRA INMAN, individually and on behalf of all others similarly situated, **Plaintiffs,** **v.** **THE GEO GROUP, INC. and ACCURATE BACKGROUND, INC.,** **Defendants.**	**No. 1:15-cv-06261-CBA-SMG**

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS, APPOINTMENT OF PLAINTIFFS' COUNSEL AS CLASS COUNSEL, AND APPROVAL OF PLAINTIFFS' PROPOSED NOTICE OF SETTLEMENT

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INTRODUCTION

Plaintiffs Eric Keels and Sandra Inman (together, "Plaintiffs") submit this memorandum of law in support of their motion for preliminary approval of the class settlement reached by Plaintiffs and Defendant The GEO Group, Inc. ("GEO" or "Defendant") (together with Plaintiffs, the "Parties"). The proposed settlement is fair, reasonable, and adequate, and satisfies all of the criteria for preliminary approval under applicable federal and state law. Accordingly, Plaintiffs respectfully request that the Court: (1) grant preliminary approval of the settlement on the terms set forth in the Settlement Agreement ("Settlement Agreement"), attached as Exhibit A to the Declaration of Ossai Miazad ("Miazad Decl.")[1]; (2) conditionally certify the proposed settlement class, for settlement purposes only, under Federal Rule of Civil Procedure 23(b)(3); (3) appoint Outten & Golden LLP ("O&G") as Class Counsel; (4) approve the proposed Court Authorized Notice ("Notice"), attached as Exhibit B to the Settlement Agreement, and direct its distribution; and (5) schedule a fairness hearing for final approval of the settlement.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Overview of Litigation

On October 30, 2015, Plaintiff Keels filed his Class Action Complaint alleging, *inter alia*, that GEO and Accurate Background, Inc. ("Accurate") violated the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 *et seq*., and the New York State Fair Credit Reporting Act ("NY FCRA"), N.Y. Gen. Bus. Law § 380 *et seq.*, by failing to provide Keels, and other job applicants to GEO, with a copy of their consumer reports, a statement of their rights under the FCRA, and a copy of Article 23-A of the New York Correction Law—*before* denying them employment. *See* ECF No. 1. On December 17, 2015, Plaintiff Keels filed his First Amended

[1] Unless otherwise indicated, all Exhibits are attached to the Miazad Declaration and all capitalized terms have the definitions set forth in the Settlement Agreement.

Class Action Complaint adding Inman as a Plaintiff, and expanding the class definition to include employees in addition to applicants for employment with GEO. ECF No. 16.

On January 15, 2016, GEO and Accurate filed letters with the Court requesting pre-motion conferences regarding anticipated motions to dismiss, and on January 22, 2016, Plaintiffs filed responses to those letters. ECF Nos. 22-25. On February 26, 2016, the Court held a hearing on GEO's and Accurate's requests to move to dismiss, heard argument as to the respective merits of the motions, and set a briefing schedule for both motions to dismiss. Miazad Decl. ¶ 12; *see also* February 26, 2016 Minute Entry.

On February 29, 2016, GEO filed a letter with the Court requesting a pre-motion conference regarding its anticipated motion to stay the case until the resolution of two Supreme Court cases—*Robins v. Spokeo*, 742 F.3d 409 (9th Cir. 2014), *cert. granted*, 135 S. Ct. 1892 (Apr. 27, 2015), and *Bouaphakeo v. Tyson Foods, Inc.*, 765 F.3d 791 (8th Cir. 2014), *cert. granted*, 135 S. Ct. 2806 (June 8, 2015). *See* ECF No. 29. Plaintiffs and GEO subsequently agreed to engage a private mediator to attempt to resolve their dispute before further litigation. Miazad Decl. ¶ 14. In contemplation of mediation, the Court stayed Plaintiffs' time to respond to GEO's pre-motion letter for a litigation stay, *see* March 3, 2016 Order, and GEO's time to file its motion to dismiss, *see* April 11, 2016 Docket Order. Contemporaneously, GEO informed Plaintiffs that their motion to dismiss was drafted and ready to file. Miazad Decl. ¶ 15.

Accurate and Plaintiffs fully briefed Accurate's motion to dismiss, but were able to resolve their dispute amicably after GEO and Plaintiffs settled their claims in principle. *Id.* ¶ 16; *see also* ECF No. 38. On July 19, 2016, the Court endorsed the stipulation between Plaintiffs and Accurate dismissing Plaintiffs' claims against Accurate. ECF No. 41.

B. Discovery and Settlement Negotiations

Before their mediation, the Parties entered into a confidentiality agreement and exchanged information relevant to Plaintiffs' claims—including client files and information relating to the size and ascertainability of the putative Class. Miazad Decl. ¶ 17. All told, Defendant produced over 600 pages of documents, which Plaintiffs reviewed. *Id.* ¶ 18. The Parties held multiple telephone conferences where they discussed this information, and its implication for the merits of the case. *Id.* ¶ 19. Plaintiffs then conducted a preliminary damages analysis for purposes of settlement negotiations. *Id.* ¶ 20. Before mediation, the Parties also exchanged detailed mediation briefs outlining their respective evaluations of the strengths and weaknesses of the claims at issue. *Id.* ¶ 21. Plaintiffs' Counsel also conducted their own independent investigation, interviewing multiple putative Class Members. *Id.* ¶ 22.

On April 22, 2016, the Parties participated in a full day of mediation in New York, New York, with the Honorable Diane M. Welsh, an experienced and well-respected employment, consumer and class action law mediator, and a former United States Magistrate Judge in the Eastern District of Pennsylvania. *Id.* ¶ 23. After concluding a full day of arms-length negotiations, the Parties reached an agreement on the material terms of a settlement. *Id.* ¶ 24. Over the next approximately five months, the Parties extensively negotiated the detailed Settlement Agreement to finalize topics including equitable revisions to GEO's policies and the notice and claims process. *Id.* ¶ 25; Ex. A (Settlement Agreement).

II. SUMMARY OF THE SETTLEMENT TERMS

A. The Settlement Amount

GEO has agreed to pay a maximum Settlement Amount of $900,000.00 to cover payment to Class Members, and Court-approved costs and fees including Plaintiffs' Counsel's attorneys' fees and costs, the Settlement Administrator's fees and costs, and any Court-approved Service

Awards. Ex. A §§ I(Q), (TT).

B. Equitable Revisions to GEO's Policies Relief

GEO also has agreed to significant equitable changes to its policies and business practices above and beyond the Settlement Amount. *See* Ex. A. First, GEO has implemented a formal Background Check Policy to codify the procedures it uses to ensure FCRA compliance across all GEO locations nationwide. GEO's affirmative obligations are to: (1) consolidate background check vendors ("vendors"); (2) contract with those vendors to assume the administration process for sending pre- and post- adverse action notices and engage in periodic compliance audits/reviews; (3) perform FCRA training for existing and new HR employees; (4) transfer responsibility for initiating the adverse action notice process from the facility to regional or corporate level; (5) standardize FCRA-related forms across all facilities; (6) make copies of the periodic background check reports obtained by GEO available to employees upon request and inform employees of this right; and (7) conduct periodic audits of the process. *See id.* § III(A)(1). In addition, GEO has agreed to revise its corporate policies and procedures manuals to include a copy of its Background Check Policy. *See id.* § III(A)(2). GEO also is obligated to ensure that all current and new human resources employees will be trained regarding the Background Check Policy. *See id.* § III(A)(3).

C. Class Members

Class Members are:

> All persons for whom GEO obtained a Consumer Report, from October 30, 2010, through the date of the Preliminary Approval Order, as part of the GEO hiring or employee retention process, and at some point later in time either were not hired or were terminated.

See id. at p.2.

D. Releases

All Class Members who do not exclude themselves from the settlement will release the following claims:

> any and all claims, causes of action, liabilities, demands, and causes of action, fixed or contingent, that were or could have been asserted by the named Plaintiffs, for themselves and as representatives of the Settlement Class, and on behalf of each member of the Settlement Class and/or his or her respective spouse, heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors and assigned and all those acting or purporting to act on their behalf, or any member of the Settlement Class against the Released Parties, or any of them, based upon the FCRA and FCRA State Equivalent that are the subject of this Litigation, including but not limited to the duties to provide applicants and employees notice any kind of notice under the FCRA or the FCRA State Equivalents (including but not limited to disclosure and authorization notice, pre-adverse action notice, adverse action notice, and any documents associated with such notices).

Id. § VII(1).

E. Allocation Formula

Class Members are divided into Class A Members and Class B Members, depending on *when* their claims arose. Class A Members are those who had a Consumer Report that was completed and returned to GEO on or after October 30, 2013, through the date of the Preliminary Approval Order. *See id.* § I(E). Class B Members are those who had a Consumer Report that was completed and returned to GEO on or after October 30, 2010, and on or before October 29, 2013. *See id.* § I(F). Each Eligible Settlement Class Member is entitled to claim a *pro rata* share of the Settlement Amount (after fees and costs are subtracted), not to exceed $200.00 per Class A Member or $100.00 per Class B Member. *Id.* § III(C)(1). Any unclaimed funds will revert to GEO. *Id.*

F. Attorneys' Fees and Costs

Plaintiffs will seek Court approval for up to one-third ($300,000.00) of the Settlement Amount for their attorneys' fees, plus their actual litigation expenses and costs. *Id.* § III(D).

Pursuant to Federal Rules of Civil Procedure 23(h) and 54(d)(2), Plaintiffs will move for Court approval of their Attorneys' Fees and Costs simultaneously with their Motion for Final Approval of the Settlement.

G. Service Awards

In addition to their payment under the allocation formula, Plaintiffs will apply for Service Awards of no more than $5,000.00 each for Named Plaintiffs Keels and Inman. *Id.* § VIII. Plaintiffs will move for Court approval of the Service Awards simultaneously with their Motion for Final Approval of the Settlement.

H. Settlement Administrator

The Parties have selected as Settlement Administrator KCC LLC to provide notice to the Class Members and otherwise administer the settlement. Miazad Decl. ¶ 26. The Settlement Administrator's costs and expenses will be paid from the Settlement Amount. *See* Ex. A § III(B)(2), (5).

III. CLASS ACTION SETTLEMENT PROCEDURE

Rule 23's class action settlement procedure includes three distinct steps:

1. Preliminary approval of the proposed settlement after submission to the Court of a written motion for preliminary approval;

2. Dissemination of mailed and/or published notice of settlement to all affected class members; and

3. A final settlement approval hearing at which class members may be heard regarding the settlement, and at which argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented.

See Fed. R. Civ. P. 23(e); *see also* Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* ("Newberg"), §§ 11.22, *et seq.* (4th ed. 2002); *see also Torres v. Gristede's Operating Corp.*, Nos. 04 Civ. 3316, *et al.*, 2010 WL 2572937, at *3-5 (S.D.N.Y. June 1, 2010). This process

safeguards class members' procedural due process rights and enables the Court to fulfill its role as the guardian of the class's interests.

With this motion, Plaintiffs request that the Court take the first step—granting preliminary approval of the Settlement Agreement, conditionally certifying a settlement class under Rule 23 of the Federal Rules of Civil Procedure for settlement purposes only, approving the Parties' proposed Notice, and authorizing the Settlement Administrator chosen by the Parties to send the proposed Notice to Class Members.

The Parties respectfully submit the following proposed schedule for final resolution of this matter for the Court's consideration and approval:

1. Within 15 days of the Order Preliminarily Approving Settlement, Defendant's Counsel will provide the Settlement Administrator with the list of Settlement Class Members. Ex. A § IV(B)(1).

2. Within 25 days of days of the Order Preliminarily Approving Settlement, the Settlement Administrator shall cause to be disseminated the notices by mail and by email (if available). *Id*. § IV(B)(2)-(3). If any Claim Form is returned as undeliverable, the Settlement Administrator will take reasonable steps to obtain the correct address of such Class Member through the National Change of Address Database and re-mail. *Id*. § IV(B)(3), (5).

3. Within 30 days before the close of the notice period, the Settlement Administrator will send a reminder postcard reminding Settlement Class Members of their opportunity to submit a Claim Form (by mail and by email, where available). *Id*. § IV(B)(6).

4. Class Members will have 60 days from the Notice Date to submit a Claim Form (the "Claims Period"). Class Members may submit a Claim Form by mail, email, fax, or on the Settlement Administrator website. *Id*. § IV(B)(9).

5. Class Members who wish to object or opt out must do so within 45 days from the Notice Date. *Id*. § I(FF)-(GG).

6. A Fairness Hearing will be held as soon as is convenient for the Court, and the Parties request that it not be scheduled for a date less than 90 days following the mailing of CAFA notices. *Id*. § I(X).

7. Within 14 days of the Fairness Hearing, Class Counsel shall file supporting documents and materials for Final Approval of the settlement.

8. The Effective Date of the settlement will be 15 business days after Judgement has become final. *Id*. § I(S). Judgement will become final when either: (i) no appeal has been filed and 30 days have lapsed since entry of the Judgment, or (ii) if a timely appeal has been filed, the appeal is finally resolved, with no possibility of further appellate or other review. *Id*. § I(W).

9. Settlement Funding:

   a. Within 5 days of the entry of the Order Preliminarily Approving Settlement, Defendant will pay into the Settlement Fund an Initial Contribution of $300,000.00, to be used by the Settlement Administrator to cover the costs of Notice and administration of the Settlement, *Id*. § III(B)(2);

   b. Within 5 days of the expiration of the Claims Period, Defendant will pay into the Settlement Fund the Second Contribution of $300,000.00, *Id*. § III(B)(3);

   c. The remaining monetary obligation of $300,000.00, the Third Contribution, will be paid into the Settlement Fund within 5 days of the Effective Date. In the event the amount of claims received: (a) does not exceed the amount of Second Contribution, Defendant does not have to pay the Third Contribution into the Settlement Fund until it receives notice, if any, from the Settlement Administrator that such contribution is needed to satisfy any claims; or (b) exceeds the amount of the Second Contribution but does not rise to the level of the Third Contribution amount, Defendant shall pay into the Settlement Fund an amount of the Third Contribution identified by the Settlement Administrator as necessary to satisfy the claims received, *Id*. § III(B)(4).

10. Settlement checks will be distributed by mail within 15 days of the Effective Date. *Id*. § III(B)(6). Settlement checks will expire 120 days after issuance. *Id*. § III(B)(7).

IV. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE.

The law favors compromise and settlement of class action suits. *See Wal-Mart Stores, Inc. v. Visa U.S.A. Inc*., 396 F.3d 96, 116-17 (2d Cir. 2005) (noting the "strong judicial policy in favor of settlements, particularly in the class action context" (quoting *In re PaineWebber Ltd. P'ships Litig.*, 147 F.3d 132, 138 (2d Cir. 1998))); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) ("[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged."); *see also Johnson v. Brennan*, No. 10 Civ.

4712, 2011 WL 4357376, at *12 (S.D.N.Y. Sept. 16, 2011) ("If the proposed settlement reflects a reasonable compromise over contested issues, the court should approve the settlement.").

"Preliminary approval . . . requires only an initial evaluation of the fairness of the proposed settlement on the basis of written submissions and an informal presentation by the settling parties." *Lizondro-Garcia v. Kefi LLC*, 300 F.R.D. 169, 179 (S.D.N.Y. 2014) (internal citation and quotation marks omitted); *see also Berkson v. Gogo LLC*, 147 F. Supp. 3d 123, 130 (E.D.N.Y. 2015) ("Preliminary approval of a proposed settlement is appropriate where it is the result of serious, informed, non-collusive ('arm's length') negotiations, where there are no grounds to doubt its fairness and no other obvious deficiencies . . . and where the settlement appears to fall within the range of possible approval." (quoting *Cohen v. J.P. Morgan Chase & Co.*, 262 F.R.D. 153, 157 (E.D.N.Y. 2009)). To grant preliminary approval, the Court need only find that there is "probable cause to submit the [settlement] proposal to class members and hold a full-scale hearing as to its fairness." *In re Traffic Exec. Ass'n E. R.R.*, 627 F.2d 631, 634 (2d Cir. 1980) (internal quotation marks omitted); *see* Newberg § 11.25 ("[I]f the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness . . . and appears to fall within the range of possible approval," the court should permit notice of the settlement to be sent to class members (quoting *Manual for Complex Litigation* (3d ed.) § 30.41)).

To determine "whether a class settlement is fair, a district court examines (1) the negotiations that led up to the settlement, and (2) the substantive terms of the settlement." *Berkson*, 147 F. Supp. 3d at 13 (quoting *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06 MDL 1775, 2009 WL 3077396, *6 (E.D.N.Y. Sept. 25, 2009)). "A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery." *Wal-Mart*

Stores, 396 F.3d at 116 (quoting *Manual for Complex Litigation* (3d ed.) § 30.42) (internal quotation marks omitted).

If the settlement was achieved through arm's-length negotiations involving experienced counsel, "[a]bsent fraud or collusion, [courts] should be hesitant to substitute [their] judgment for that of the parties who negotiated the settlement." *In re EVCI Career Colls. Holding Corp. Sec. Litig.*, Nos. 05 Civ. 10240, *et al.*, 2007 WL 2230177, at *4 (S.D.N.Y. July 27, 2007).

Preliminary approval is the first step in the settlement process. It simply allows notice to issue and for Class Members to object to or opt out of the settlement. After notice issues, the Court will be able to evaluate the settlement with the benefit of Class Members' input.

A. The Settlement Is Fair, Reasonable, and Adequate.

In evaluating a class action settlement, courts in the Second Circuit generally consider the nine factors set forth in *City of Detroit v. Grinnell Corporation*, 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000). The *Grinnell* factors are: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *Id*. Here, all of the *Grinnell* factors either weigh in favor of approval of the Settlement Agreement or are neutral.

1. Litigation Through Trial Would Be Complex, Costly, and Long (*Grinnell* Factor 1).

By reaching a settlement prior to dispositive motions or trial, Plaintiffs seek to avoid

significant expense and delay, and instead ensure recovery for the Class Members. The FCRA is a "complex statute[.]" *Galper v. JP Morgan Chase Bank, N.A.*, 802 F.3d 437, 444 (2d Cir. 2015). "[P]articularly in the class action context, [it] is a complex and challenging area of law." *White v. Experian Info. Solutions*, 993 F. Supp. 2d 1154, 1172 (C.D. Cal. 2014); *see also In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000) ("Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them."), *aff'd sub. nom. D'Amato v. Deutsche Bank*, 236 F.3d 78 (2d Cir. 2001). This case is no exception, with an estimated 11,000 individuals and claims under federal and New York law.[2]

Extensive discovery would be required to establish liability and damages and to support Plaintiffs' class certification motion and Defendant's opposition to such motion. This discovery would include further electronic and paper discovery of Defendant's background check and hiring policies; depositions of Class Members and Defendant's employees, such as relevant hiring managers and human resources personal; and depositions of Defendant's corporate representatives. After completing discovery, the Parties would likely move for summary judgment on the merits of the claims. If the Court determined that fact disputes precluded summary judgment, a fact-intensive trial would be necessary. Any judgment would likely be appealed, further extending the Litigation. This settlement, on the other hand, provides significant relief to Class Members in a prompt and efficient manner. Therefore, the first *Grinnell* factor weighs in favor of preliminary approval.

[2] The current class list consists of approbatively 11,000 individuals. GEO is in the process of obtaining the final class list from Accurate, which is expected to be lower than this number.

2. The Court Cannot Assess the Reaction of the Class Until After Notice Issues (*Grinnell* Factor 2).

Because Class Members have not been notified of the settlement at this stage, the Court will be in a better position to more fully analyze this factor after notice issues and Class Members have had an opportunity to opt out or object to the settlement. Thus, this factor is neutral and does not preclude the Court from granting preliminary approval.

3. Discovery Has Advanced Far Enough to Allow the Parties to Resolve the Case Responsibly (*Grinnell* Factor 3).

The Parties have completed enough discovery to recommend settlement. The proper question is "whether counsel had an adequate appreciation of the merits of the case before negotiating." *In re Warfarin*, 391 F.3d at 537 (quoting *In re Cendant Corp. Litig.*, 264 F.3d 201, 235 (3d Cir. 2001)) (internal quotation marks omitted); *see also Karic v. Major Automotive Cos., Inc.*, No. 09 Civ. 5708, 2016 WL 1745037, at *6 (E.D.N.Y. Apr. 27, 2016). "[T]he pretrial negotiations and discovery must be sufficiently adversarial that they are not designed to justify a settlement;" rather, they must be "an aggressive effort to ferret out facts helpful to the prosecution of the suit." *In re Austrian*, 80 F. Supp. 2d at 176 (quoting *Martens v. Smith Barney, Inc.*, 181 F.R.D. 243, 263 (S.D.N.Y. 1998)) (internal quotation marks omitted).

The Parties' discovery here meets this standard. In the months leading up to mediation, the Parties engaged in informal discovery. Defendant provided Plaintiffs information relevant to Plaintiffs' claims including client files and information relating to the size and ascertainability of the putative Class. Miazad Decl. ¶ 17. All told, Defendant produced over 600 pages of documents, which Plaintiffs reviewed. *Id.* ¶ 18. The Parties also had multiple telephone conferences to discuss the information produced by Defendant, and its potential impact on the claims at issue. *Id.* ¶ 19. Plaintiffs' Counsel conducted their own independent investigation, interviewing multiple putative Class Members involved in the hiring process. *Id.* ¶ 20. Before

the mediation, Plaintiffs' Counsel crafted a damages model based on information provided by Defendant and their own evaluation of the merits. *Id.* ¶ 21. Accordingly, the third *Grinnell* factor favors preliminary approval. *See, e.g.*, *Katz v. ABP Corp.*, No. 12 Civ. 4173, 2014 WL 4966052, at *1 (E.D.N.Y. Oct. 3, 2014) (granting preliminary approval of FCRA settlement based on pre-mediation discovery and arms-length negotiations); *see also Ballinger v. Advance Magazine Publishers, Inc.*, No. 13 Civ. 4036, 2014 WL 7495092, at *2 (S.D.N.Y. Dec. 29, 2014); *see also Morris v. Affinity Health Plan, Inc.*, 859 F. Supp. 2d 611, 620 (S.D.N.Y. 2012) (collecting cases) (granting preliminary approval even where no formal discovery had occurred because the parties nonetheless had "ample information from which to weigh the strengths and weaknesses of their claims").

4. Plaintiffs Would Face Risk If the Case Proceeded (*Grinnell* Factors 4 and 5).

Although Plaintiffs believe their case is strong, it is subject to risk. "[R]isks are inherent in litigation." *Sewell v. Bovis Lead Lease, Inc.*, No. 09 Civ. 6548, 2012 WL 1320124, at *8 (S.D.N.Y. Apr. 16, 2012). Indeed, "[i]f settlement has any purpose at all, it is to avoid a trial on the merits because of the uncertainty of the outcome." *In re Ira Haupt & Co.*, 304 F. Supp. 917, 934 (S.D.N.Y. 1969). In weighing the risks of establishing liability and damages, the court "must only weigh the likelihood of success by the plaintiff class against the relief offered by the settlement." *Sykes v. Mel Harris & Assocs.*, No. 09 Civ. 8486, 2016 WL 3030156, at *13 (S.D.N.Y. May 24, 2016) (quoting *In re Austrian*, 80 F. Supp. 2d at 177).

Here, Plaintiffs first would have had to survive a motion to dismiss. In its pre-motion letter to the Court, Defendant stated that it intended to move to dismiss Inman's claims as time-barred (among other arguments). *See* ECF No. 23 at 3. Should Defendant have succeeded, two categories of individuals provided recovery through this settlement would have had their claims

barred—employees who were fired after a background check, and employees and job applicants who only had timely claims if the longer five-year statute of limitation applied (three entire years of claims). *See* 15 U.S.C. § 1681p. The Supreme Court also recently issued a new decision on standing in the FCRA context, *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016), which might have subjected Plaintiffs to further motion to dismiss briefing. Although Plaintiffs are confident that they would have survived both bases for motions to dismiss,[3] the putative Class nonetheless faced risk given that the Second Circuit has not yet expressly ruled on either issue.

If Plaintiffs' claims survived, they would have faced risks as to class certification and summary judgment after a lengthy discovery process. If at summary judgement they lost on the issue of willfulness, recovery of statutory damages would have been barred. Surviving those motions, a trial on the merits would involve significant risk as to both liability and damages. While Plaintiffs believe they could ultimately defeat Defendant's defenses and establish liability, this would require significant factual development and favorable outcomes at trial, and on appeal, all of which is inherently uncertain and lengthy. The proposed settlement alleviates uncertainty. This factor weighs in favor of preliminary approval.

5. Maintaining a Class Through Trial Presents Risk (*Grinnell* Factor 6).

The risk of obtaining class certification and maintaining it through trial also is present. Defendant would likely contest class certification resulting in extensive discovery and

[3] Post-*Spokeo*, multiple Courts have held that Plaintiffs have standing under the FCRA and, specifically, for Section 1681b(b)(3) claims. *See, e.g.*, *Thomas v. FTS USA, LLC*, No. 13 Civ. 825, 2016 WL 3653878, at *12 (E.D. Va. June 30, 2016) ; *see also Meza v. Verizon Communications, Inc.*, No. 16 Civ. 739, 2016 WL 4721475, at *3 (E.D. Cal. Sep.t 9, 2016) (adopting *Thomas*'s reasoning as to 1681b(b)(2) claims); *Chapman v. Dowman, Heintz, Boscia & Vician, P.C.*, No. 15 Civ. 120, 2016 WL 3247872, at *1 & n.1 (N.D. Ind. June 13, 2016) (granting final approval of FDCPA settlement and finding "*Spokeo* largely reiterated long-standing principles"). To date, two Circuits have expressly held that *Spokeo* does not change the existing law of standing. *In re Nickelodeon Consumer Privacy Litig.*, 857 F.3d 262, 273 (3d Cir. 2016); *Church v. Accretive Health, Inc.*, __ F. App'x __, No. 15-15708, 2016 WL 3611543, at *2-3 (11th Cir. July 6, 2016) (per curiam).

briefing. If the Court were to grant class certification, Defendant would likely challenge that determination, requiring additional briefing. Defendant may have argued different defenses for certain Class Members based on their particular factual circumstances. Although FCRA cases are certified, there is nonetheless a legitimate risk that the Court would conclude that individualized factual inquiries would preclude class treatment. *See, e.g.*, *Delmoral v. Credit Prot. Ass'n, LP*, No. 13 Civ. 242, 2015 WL 5793311, at *6 (E.D.N.Y. Sept. 30, 2015) (denying class certification in FDCPA case where "each proposed class member's claim would require an individualized determination of exactly when he or she received the" relevant communications). Moreover, Defendant's position is that GEO's records do not uniformly contain information regarding whether an adverse employment decision was made on the basis of a background check, or on other grounds not implicated by the FCRA and, thus, the class list is necessarily over-inclusive. To address this potential, the parties have employed a claims process requiring individuals to state that they "believe in good faith that GEO's adverse employment decision was related to information in [their] Consumer Report, and [they] did not receive timely notices under the Fair Credit Reporting Act" to address the potential that the class list is over inclusive. Ex. A (Settlement Agreement) at Ex. C (Claim Form). Settlement eliminates risk, expense, and delay. Accordingly, this factor favors preliminary approval.

6. Defendant's Ability to Withstand a Greater Judgment Is Not Determinative (*Grinnell* Factor 7).

A "defendant['s] ability to withstand a greater judgment, standing alone, does not suggest that the settlement is unfair." *In re Austrian*, 80 F. Supp. 2d at 178 n.9. Here, the settlement eliminates the risk of collection by requiring Defendant to pay the full Settlement Amount owed within five days after the Effective Date, and significant amounts before then. *See* Ex. A § III(B). Accordingly, this factor is neutral.

7. The Settlement Fund Is Substantial, Even in Light of the Best Possible Recovery and Attendant Litigation Risks (*Grinnell* Factors 8 and 9).

The $900,000 Settlement Amount represents substantial value given the risks of litigation, even though the recovery could be greater if Plaintiffs survived a motion to dismiss, summary judgment, and prevailed and maintained a class through trial and on appeal. The determination of whether a settlement is reasonable "is not susceptible of a mathematical equation yielding a particularized sum." *In re Austrian*, 80 F. Supp. 2d at 178 (quoting *In re Michael Milken & Assocs. Sec. Litig.*, 150 F.R.D. 57, 66 (S.D.N.Y. 1993)); *see also Ballinger*, 2014 WL 7495092, at *3 ("The inquiry . . . is to see whether the settlement falls below the lowest point in the range of reasonableness.") (internal quotation marks and citation omitted). "Instead, there is a range of reasonableness with respect to a settlement—a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Frank v. Eastman Kodak Co*, 228 F.R.D. 174, 186 (W.D.N.Y. 2005) (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972)) (internal quotation marks omitted). "[T]here is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery." *Grinnell*, 495 F.2d at 455 n.2.

Here, the settlement provides more than "a fraction of the potential recovery." *Id.* at 455. If (and only if) willfulness is proven, Class Members' best outcome under the FCRA would be damages between $100 and $1,000 per claim. 15 U.S.C. § 1681n. Through this settlement, Class Members will receive up to $200 if they fall within the two-year statute of limitations period and $100 if they fall within the five-year statute of limitations (i.e. years 3-5).[4] These

[4] In the unlikely event that the amount to be distributed will be exceeded if claims are paid in full, then the recoveries will be proportionately reduced: two-thirds of that amount will be

potential recoveries are similar to, and in some cases well-exceed, the range of acceptable recoveries approved by Courts in FCRA settlements. *White v. First Am. Registry, Inc.*, No. 04 Civ. 1611, 2007 WL 703926, at *2 (S.D.N.Y. Mar. 7, 2007) (finally approving payments up to $100 for class members who submit claims with *pro rata* reduction if total claims exceeds available balance after settlement expenses including claims administration and attorneys' fees and costs deducted); *Domonoske v. Bank of Am., N.A.*, 790 F. Supp. 2d 466, 470 (W.D. Va. 2011) (finally approving proportional payments up to $100, but no less than $2, for class members who submit claim forms).[5]

When a settlement assures immediate payment of substantial amounts to class members, "even if it means sacrificing 'speculative payment of a hypothetically larger amount years down the road,'" settlement is reasonable under this factor. *Gilliam v. Addicts Rehab. Ctr. Fund*, No. 05 Civ. 3452, 2008 WL 782596, at *5 (S.D.N.Y. Mar. 24, 2008) (citation omitted).

Beyond the cash payment, Plaintiffs have achieved significant equitable revisions aimed at ensuring that job applicants and employees will be provided with notification of their FCRA rights *before* an adverse action is taken—the very issue of this litigation. This includes consolidating background check vendors, having the vendors send required notices, centralizing the process, training employees on the process, and auditing the process. GEO's policies also will be included in its corporate policies and procedures manuals, helping inform employees of

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allocated *pro rata* to Class A Claims and one-third will be allocated *pro rata* to Class B claims. *See* Ex. A § III(C)(2).

[5] *See also Watkins v. Hireright, Inc.*, No. 13 Civ. 1432, 2016 WL 1732652, at *7 (S.D. Cal. May 2, 2016) (preliminarily approving settlement where cap to recovery was $200, but parties estimated each class member would receive approximately $58.00); *Manuel v. Wells Fargo Bank, Nat'l Ass'n*, No. 14 Civ. 238, 2016 WL 1070819, at *2 (E.D. Va. Mar. 15, 2016) (finally approving settlement where class members would receive either $35 or $75 dollars); *Syed v. M-I LLC*, No. 14 Civ. 742, 2016 WL 310135, at *8 (E.D. Cal. Jan. 26, 2016) (finally approving settlement where class members would receive approximately $16).

their FCRA rights (one of the central purposes of Section 1681b(b)(3)). Significantly, the settlement also provides employees with the right to request copies of their background check reports *even* if no adverse action is taken. This provides employees with a free opportunity to review their credit and criminal history and address any issues presented (and is otherwise not a right provided by the FCRA). The equitable revisions are all the more significant given that the FCRA does not provide for injunctive relief and these revisions could not have been achieved absent this settlement. *See White v. First Am. Registry, Inc.*, 378 F. Supp. 2d 419, 424 (S.D.N.Y. 2005) (holding injunctive and declaratory relief unavailable to private parties under FCRA); *cf. Watkins v. Hireright, Inc.*, No. 13 Civ. 1432, 2016 WL 1732652, at *7 (S.D. Cal. May 2, 2016) (including equitable relief as benefit when weighing fairness of FCRA settlement).

Weighing the benefits of the settlement against the available evidence and the risks associated with proceeding in the litigation, the Settlement Amount is reasonable.

V. CONDITIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE.

For settlement purposes, Plaintiffs seek to certify a class under Federal Rule of Civil Procedure 23(e). In the context of settlement and for purposes of settlement, the settlement class meets all of the requirements for class certification, and Defendants do not oppose certification for settlement purposes only. *Cnty. of Suffolk v. Long Island Lighting Co*., 710 F. Supp. 1422, 1424 (E.D.N.Y. 1989) ("It is appropriate for the parties to a class action suit to negotiate a proposed settlement of the action prior to certification of the class."), *aff'd in part, rev'd in part on other grounds*, 907 F.2d 1295 (2d Cir. 1990); Newberg § 11.27 ("When the court has not yet entered a formal order determining that the action may be maintained as a class action, the parties may stipulate that it be maintained as a class action for the purpose of settlement only.").

Settlement class certification and appointment of class counsel have several practical purposes, including avoiding costs of litigating class status while facilitating a global settlement,

ensuring notification of the terms of settlement, and setting the time for the final approval hearing. *See In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 790-92 (3d Cir. 1995) (noting practical purposes of provisionally certifying settlement class).

Under Rule 23, a class action may be maintained if all of the prongs of Rule 23(a), as well as one of the prongs of Rule 23(b), are met. Rule 23(a) requires that:

> (1) the class is so numerous that joinder of all members is impracticable;
> (2) there are questions of law or fact common to the class;
> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
> (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). Rule 23(b)(3) requires the court to find that:

> [Q]uestions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

Id. at (b)(3).

A. Numerosity

"[N]umerosity is presumed at a level of 40 members." *Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995) (citation omitted). Here, the proposed Class is comprised of approximately 11,000 job applicants and employees, making joinder impracticable. *See* Fed. R. Civ. P. 23(a)(1); *Robidoux v. Celani*, 987 F.2d 931, 936 (2d Cir. 1993).

B. Commonality

The proposed class also satisfies the commonality requirement, the purpose of which is to test "whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982).

Here, Plaintiffs and Class Members all share the common contentions that they denied

employment without being provided pre-adverse action notice packets (i.e. consumer reports and statements of FCRA rights). These common factual and legal questions satisfy commonality for settlement purposes. *See Thomas v. FTS USA, LLC*, 312 F.R.D. 407, 417-18 (E.D. Va. 2016) (finding commonality when pre-adverse action notices were never sent); *Manuel v. Wells Fargo Bank, Nat'l Ass'n*, No. 14 Civ. 238, 2015 WL 4994549, at *10-12 (E.D. Va. Aug. 19, 2015) (substantively same). Plaintiffs also allege that Defendant's violations were willful, and courts routinely find that the question of willfulness is a common question that establishes commonality. *Thomas*, 312 F.R.D. at 417; *Manuel*, 2015 WL 4994549, at *10-12; *Katz*, 2014 WL 4966052, at *2 (for FCRA settlement purposes).

C. Typicality

Rule 23 requires that the claims of the representative party be typical of the claims of the class. "Like the commonality requirement, typicality does not require the representative party's claims to be identical to those of all class members." *Frank*, 228 F.R.D. at 182. Typicality is often satisfied "when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." *Marisol A. v. Giuliani*, 126 F.3d 372, 376 (2d Cir. 1997) (citation omitted).

Here, like the putative Class, Keels was a job applicant denied employment because of his background check without having been provided pre-adverse action notice packets. *See* ECF No. 16 (First Amended Complaint) ¶¶ 45-49. Also like the putative Class, Inman was an employee denied employment because of her background check without having been provided pre-adverse action notice packets. *See id.* ¶¶ 64-68. Typicality is met because Plaintiffs were "subjected to the same procedures as all putative class members and it is those procedures that are challenged." *Manuel*, 2015 WL 4994549, at *14; *see also Thomas*, 312 F.R.D. at 419 ("[L]ike every other class member, Thomas did not receive any pre-adverse action materials[.]").

D. Adequacy of the Named Plaintiffs and Their Counsel

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The adequacy requirement exists to ensure that the named representatives will "have an interest in vigorously pursuing the claims of the class, and . . . have no interests antagonistic to the interests of other class members." *Denney v. Deutsche Bank AG*, 443 F.3d 253, 268 (2d Cir. 2006). "[O]nly a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status." *Dziennik v. Sealift, Inc.*, No. 05 Civ. 4659, 2007 WL 1580080, at *6 (E.D.N.Y. May 29, 2007).

Plaintiffs do not have interests that are antagonistic to or at odds with the Class Members' interests. *See Puglisi v. TD Bank, N.A.*, No. 13 Civ. 637, 2015 WL 4608655, at *1 (E.D.N.Y. July 30, 2015) (adequacy satisfied where, *inter alia*, there was no evidence that named plaintiffs' and class members' interests were at odds). Plaintiffs have also selected Counsel capable of adequately representing the class's interests. *See, e.g.*, *Houser v. Pritzker*, 28 F. Supp. 3d 222, 248 (S.D.N.Y. 2014) (finding O&G and non-profit partners "bring to the case a wealth of class action litigation experience" and were adequate to represent approximately half-million person Black and Latino job applicant class in background check litigation); Ex. B (July 30, 2015 Hr'g Tr. for *Puglisi v. TD Bank, N.A.*, No. 13 Civ. 637 (E.D.N.Y.)) at 11-12 (lawyering by plaintiffs' counsel—including O&G—was "excellent" and noting "the high level of service that was provided to the class"); *Beckman v. Keybank, N.A.*, 293 F.R.D. 467, 477 (S.D.N.Y. 2013) (attorneys at O&G "are experienced employment lawyers with good reputations among the employment law bar"); *see also* Miazad Decl. ¶¶ 4-10. Thus, for the purposes of settlement, the adequacy requirement is satisfied.

E. Certification Is Proper Under Rule 23(b)(3).

Rule 23(b)(3) requires that the common questions of law or fact "predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). This inquiry examines "whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Tyson Foods Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997)). For the purposes of settlement, these requirements are met in this case.

1. Common Questions Predominate

The predominance requirement is more demanding than the Rule 23(a) commonality inquiry and "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *In re Am. Intern. Grp., Inc. Sec. Litig.*, 689 F.3d 229, 239 (2d Cir. 2012) (internal quotation marks and citations omitted). To establish predominance, Plaintiffs must demonstrate that "the issues in the class action that are subject to generalized proof, and thus applicable to the class as a whole, . . . predominate over those issues that are subject only to individualized proof." *Cordes & Co. Fin. Servs., Inc. v. A.G. Edwards & Sons, Inc.*, 502 F.3d 91, 107-08 (2d Cir. 2007) (internal quotation omitted). The essential inquiry is whether "liability can be determined on a class-wide basis, even when there are some individualized damage issues." *In re Visa Check/MasterMoney Antitrust Litig.*, 280 F.3d 124, 139 (2d Cir. 2001), *abrogated on other grounds by Miles v. Merrill Lynch & Co., Inc.* (*In re Initial Pub. Offering Sec. Litig.*), 471 F.3d 24 (2d Cir. 2006); *see also Roach v. T.L. Cannon Corp.*, 778 F.3d 401, 405 (2d Cir. 2015) (individualized damages are merely a factor that courts "consider in deciding whether issues susceptible to generalized proof outweigh individual issues[,]" not an absolute bar to class certification (internal quotation marks and citation omitted)). Where plaintiffs are

"unified by a common legal theory . . . and by common facts[,]" the predominance requirement is satisfied. *McBean v. City of N.Y.*, 228 F.R.D. 487, 502 (S.D.N.Y. 2005).

Here, Plaintiffs' common contentions—that Defendants have uniformly failed to provide job applicants and employees with pre-adverse action notice packets—predominate over any issues affecting only individual Class Members. *See, e.g.*, *Thomas*, 312 F.R.D. at 425; *Manuel*, 2015 WL 499549, at *17 (also noting that "[n]o individualized proof would be necessary to determine the issue of willfulness"); *Katz*, 2014 WL 4966052, at *2 (citing *Engel v. Scully & Scully, Inc.,* 279 F.R.D. 117, 130 (S.D.N.Y. 2011) (finding predominance when parties dispute defendant's business practice and complaint sought statutory, not individualized, damages)).

2. A Class Action Is a Superior Mechanism.

The second part of the Rule 23(b)(3) analysis examines whether "the class action device [is] superior to other methods available for a fair and efficient adjudication of the controversy." *Green v. Wolf Corp.*, 406 F.2d 291, 301 (2d Cir. 1968). The superiority analysis considers four factors: (1) individual interest of class members in controlling prosecution of the action; (2) the extent of similar, prior litigation commenced by members of the class; (3) the desirability of concentrating the litigation in a particular forum; and (4) the difficulties of managing the class action. Fed. R. Civ. P. 23(b)(3). Here, potential recovery for Class Members is comparatively modest—even if Class Members were to recover full statutory damages. *See, e.g.*, *Thomas*, 312 F.R.D. at 425 (in FCRA cases, "potential class members' claims for statutory damages are small when considered in comparison to the effort it would take to assert them in court"); *Katz*, 2014 WL 4966052, at *3 (class adjudication superior "due to the low damages incentive for individual litigation"). Employing the class device to concentrate litigation in this Court will achieve economies of scale, conserve the resources of the judicial system, and avoid the waste and delay of repetitive proceedings and inconsistent adjudications of similar issues and claims. *See, e.g.*,

Thomas, 312 F.R.D. at 426; *Manuel*, 2015 WL 499549, at *18. Moreover, "many plaintiffs will not be aware that their rights were violated because of the technical nature of the FCRA and thus would not be able to bring a suit at all" without this settlement. *Thomas*, 312 F.R.D. at 425 -26.[6]

VI. PLAINTIFFS' COUNSEL SHOULD BE APPOINTED AS CLASS COUNSEL.

Rule 23(g), which governs the standards and framework for appointing class counsel for a certified class, sets forth four criteria the district court must consider in evaluating the adequacy of proposed counsel: (1) "the work counsel has done in identifying or investigating potential claims in the action;" (2) "counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;" (3) "counsel's knowledge of the applicable law;" and (4) "the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A). The Court may also "consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class[.]" Fed. R. Civ. P. 23(g)(1)(B). The Advisory Committee has noted that "[n]o single factor should necessarily be determinative in a given case." Fed. R. Civ. P. 23(g) advisory committee's note.

Plaintiffs' Counsel satisfy these criteria. They have done substantial work identifying, investigating, negotiating, and settling Plaintiffs' and Class Members' claims. Miazad Decl. ¶¶ 11-25. Plaintiffs' Counsel has substantial experience prosecuting and settling employment class actions, including background check cases. Miazad Decl. ¶¶ 6-7, 10. Further, courts have repeatedly found Plaintiffs' Counsel to be adequate class counsel. *See supra* Argument, § V(D); Miazad Decl. ¶¶ 6-7, 10.

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[6] "Manageability" need not be considered in deciding whether to certify a class for settlement purposes only, as the litigation would not proceed on the basis of the certified settlement class if settlement is unsuccessful. *Amchem*, 521 U.S. at 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems.").

VII. THE NOTICE AND AWARD DISTRIBUTION PROCESS ARE APPROPRIATE.

The Notice fully complies with due process and Rule 23(c)(2)(B), which requires:

> the best notice that is practicable under the circumstances....The notice must clearly and concisely state in plain, easily understood language:
>
> (i) the nature of the action;
> (ii) the definition of the class certified;
> (iii) the class claims, issues, or defenses;
> (iv) that a class member may enter an appearance through an attorney if the member so desires;
> (v) that the court will exclude from the class any member who requests exclusion;
> (vi) the time and manner for requesting exclusion; and
> (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

The Notice satisfies these requirements. It is written in plain English and is organized and formatted to be as clear as possible. It is based on the model notice forms provided by the Federal Judicial Center ("FJC") on its website (www.fjc.gov). *See Reyes v. Altamarea Grp., LLC*, No. 10 Civ. 6451, 2010 WL 5508296, at *2 (S.D.N.Y. Dec. 22, 2010) (approving notice based on FJC model). The Notice describes the settlement's terms, informs Class Members about the allocation of fees and costs, and provides the date, time, and place of the final approval hearing and Class Members' ability to exclude themselves. *See* Ex. A (Settlement Agreement) at Ex. B (Class Notice). The Settlement Agreement provides that the Settlement Administrator will mail and email (where available) Court-approved Notices and Claim Forms to all Class Members within 20 days of the entry of the Preliminary Approval Order. *Id*. § IV(B)(2)-(3). The Settlement Administrator will take reasonable steps to obtain correct addresses of any Class Member whose Claim Form is returned as undeliverable and will attempt a re-mailing.

CONCLUSION

For these reasons, Plaintiffs respectfully request that the Court grant the Motion.

Dated: October 5, 2016
New York, New York

Respectfully submitted,

/s/ Ossai Miazad

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