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26 **UNITED STATES DISTRICT COURT**
27 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

28
29 JOHN SMITH, individually and as
30 a representative of the Class,
31
32 Plaintiff,
33
34 v.
35 A-CHECK AMERICA INC. d/b/a
36 A-CHECK GLOBAL,
37
38 Defendant.

Case No.: 5:16-cv-00174-VAP-KK

**PLAINTIFF’S NOTICE OF
MOTION AND MOTION FOR
PRELIMINARY APPROVAL
OF THE PROPOSED
SETTLEMENT [UNOPPOSED]**

Date: February 27, 2017
Time: 2:00 p.m.
Judge: Hon. Virginia Phillips
Crtm: 8A

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Attorneys for Defendant A-Check America Inc. d/b/a A-Check Global

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on February 27, 2017, at 2:00 p.m., or as
3 soon thereafter as may be heard before the Honorable Virginia A. Phillips in
4 Courtroom 8A of the above-entitled court, located at 350 West 1st Street, 8th
5 Floor, Los Angeles, California, 90012, Plaintiff John Smith (“Plaintiff,”
6 “Named Plaintiff,” or “Class Representative”) will move, and hereby does
7 move, for an entry of Order, pursuant to Federal Rule of Civil Procedure 23(e),
8 for approval of the concurrently filed Settlement Agreement and Release,
9 whereby this Court would:

- 10 a. Find that the requirements for certification of a settlement
11 class have been satisfied, and certify the Settlement Class;
12 b. Preliminarily approve the Settlement Agreement as fair,
13 reasonable, and adequate;
14 c. Find that the class notice procedure set forth below satisfies
15 the requirements of due process and applicable law;
16 d. Set a date for the hearing at which the Court will finally
17 determine the fairness, reasonableness, and adequacy of
18 the proposed Settlement (the “Final Fairness Hearing”),
19 such date to be no sooner than forty-five (45) days after the
20 Opt-Out Deadline;
21 e. Appoint John Smith as Class Representative for the
22 Settlement Class; and
23 f. Appoint Berger & Montague, P.C., as class counsel to the
24 Settlement Class.

25 Defendant does not oppose this motion. Therefore, Plaintiff requests
26 that this motion be determined without oral argument pursuant to Local Rule
27 7-15 or, in the alternative, Plaintiff requests that the parties be allowed to
28 appear telephonically should the Court require oral argument.

1 This motion is made on the grounds that the Settlement is fair,
2 reasonable, and adequate, as well as being the product of adverse parties
3 involved in arm's-length, good-faith negotiations after a year of litigation and
4 discovery involving experienced class counsel.

5 This motion will be and is based on this Notice of Motion and Motion;
6 the concurrently filed Memorandum of Points and Authorities; the
7 concurrently filed Settlement Agreement and Release, fully executed as of
8 January 27, 2017 (including the five exhibits attached thereto); the
9 accompanying Declaration of Joseph C. Hashmall; the accompanying
10 Proposed Order; and all other papers and records on file in this matter.

11
12 BERGER & MONTAGUE, P.C.

13
14 Dated: January 30, 2017

15 By: /s/ Joseph C. Hashmall

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COUNSEL FOR PLAINTIFF

MEMORANDUM OF POINTS & AUTHORITIES

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1 **I. INTRODUCTION**

2 Named Plaintiff John Smith (“Plaintiff”), individually and on behalf of
3 the Settlement Class¹, seeks preliminary approval of the proposed Settlement
4 Agreement with Defendant A-Check America Inc. d/b/a A-Check Global
5 (“Defendant” or “A-Check”). The Settlement Agreement between Plaintiff
6 and Defendant (collectively, the “parties”), if approved, will resolve all claims
7 of the Plaintiff and all members of the Class in exchange for Defendant’s
8 agreement to undertake various changes in its practices, and to pay four
9 hundred thousand dollars (\$400,000) into a common settlement fund.

10 The proposed Settlement of this action is the product of hard-fought and
11 lengthy arm’s-length negotiations by experienced and informed counsel and
12 warrants preliminary approval, as the terms are “fair, reasonable, and
13 adequate.” Fed. R. Civ. P. 23(e)(2).

14 **II. RELEVANT FACTS**

15 **A. THE PARTIES ENGAGED IN LITIGATION, FORMAL AND**
16 **INFORMAL DISCOVERY, AND MEDIATION BEFORE REACHING**
17 **THIS SETTLEMENT**

18 **1. Procedural History**

19 Prior to reaching the Settlement Agreement in this matter, this case was
20 actively litigated. On December 3, 2015, Plaintiff Smith filed his proposed
21 class action against A-Check in the Superior Court of the State of California.
22 On January 29, 2016, A-Check removed the lawsuit to this Court. On
23 February 17, 2016, Plaintiff filed his First Amended Complaint (“FAC”).
24 (ECF No. 15.) On behalf of himself and the proposed class, Plaintiff Smith

25 _____
26 ¹ Unless otherwise explicitly defined herein, all terms have the same meanings
27 as those set forth in the Class Action Settlement Agreement (“Settlement
28 Agreement” or “Settlement”), attached to the Declaration of Joseph C.
Hashmall (“Hashmall Dec.”) as Exhibit 1.

1 sought statutory damages of between \$100 and \$1000 per violation, plus
2 attorneys' fees, costs, and all other available relief. *Id.* Defendant moved to
3 dismiss the FAC, a motion the Court denied. (ECF Nos. 28, 35.) Defendant
4 filed its Answer on May 6, 2016. (ECF. No. 36.)

5 During the litigation, the parties exchanged numerous pieces of
6 information through both formal and informal discovery. In formal discovery,
7 both parties produced hundreds of pages of documents, and Plaintiff also
8 received significant discovery from a third party subpoena directed at an
9 industry organization. Hashmall Dec. ¶ 3. Additionally, Plaintiff deposed
10 Defendant's Rule 30(b)(6) designee. *Id.* In advance of mediation, the parties
11 also worked cooperatively to exchange information regarding how
12 Defendant's electronic systems could be queried to identify members of the
13 classes. *Id.* ¶ 4. In service of this effort, the parties engaged in numerous
14 conference calls, some of which included technical consultants advising the
15 parties on how best to extract information from Defendant's databases. *Id.* ¶
16 5.

17 On December 1, 2016, the parties attended a full-day mediation. Prior
18 to this successful mediation, both parties prepared mediation briefs indicating
19 their positions on the merits of Plaintiff's claims and on an appropriate
20 settlement value and structure. *Id.* ¶ 6. The mediation, conducted by Joan
21 Kessler, an experienced third-party mediator, culminated in both parties
22 signing a binding Terms Sheet, which served as the basis for the instant
23 Settlement Agreement. *Id.* ¶ 7.

24 **2. Summary of Plaintiff's Settled Claims Against** 25 **Defendant**

26 All the settled claims relate to background checks that Defendant
27 produced on job applicants. As expressed in the First Amended Complaint
28

1 (ECF No. 15.), the FCRA prohibits a consumer reporting agency (“CRA” or
2 “agency”) from including non-conviction adverse information older than
3 seven years.

4 Plaintiff Smith alleged that Defendant violated the FCRA by producing
5 a background report that included information relating to non-convictions that
6 predated the report by more than seven years.

7 Defendant denies any liability for these claims.

8 To avoid the further costs and burdens of litigation, the parties have
9 agreed to settle the claims. The proposed Settlement Class consists of the
10 approximately 2,717 persons who Defendant has identified as (1) having been
11 the subject of a background report prepared by A-Check, (2) whose
12 background report contained one or more items of criminal information which
13 were non-convictions predating the report by more than seven years, and (3)
14 whose report was issued at any time dating from February 17, 2014 to the date
15 of the Settlement Agreement, January 27, 2017. Ex. A., Settlement
16 Agreement, ¶ 27.

17 The Settlement Class Members will release all claims arising under 15
18 U.S.C. § 1681c of the FCRA and any analogous state law claims.

19 **3. Settlement Negotiations**

20 On December 1, 2016, the parties engaged in a full day of vigorous,
21 arm’s-length negotiations in a mediation with Joan Kessler. At the conclusion
22 of this mediation, the parties reached an agreement as to the material terms of
23 a settlement. While the parties negotiated the case, the parties did not negotiate
24 any terms relating to attorneys’ fees for Plaintiff’s counsel or incentive awards
25 for the Named Plaintiff until after all other material terms were agreed upon.
26 Settlement, ¶ 36-37. The material terms of the Settlement were reduced to a
27 terms sheet signed at the conclusion of mediation. In negotiations over
28

1 subsequent weeks, a full Settlement Agreement was reached and executed.

2 **B. THE PARTIES' SETTLEMENT AGREEMENT**

3 **1. Overview of Terms and Settlement Administration**

4 In consideration for the release of the Settlement Class Members'
5 claims, A-Check has, first, implemented an automated process to screen out
6 information that should not be reported under 15 U.S.C. § 1681c. Ex. A,
7 Settlement Agreement ¶ 30. Defendant agrees to keep this process in place for
8 at least two years after the Settlement's Effective Date unless the Defendant
9 believes in good faith that a change in existing law warrants a departure from
10 this practice.

11 Second, Defendant has implemented procedures to ensure that criminal
12 charges which are dismissed due to amendment prior to conviction are no
13 longer reported after seven years. Ex. A, Settlement Agreement ¶ 31.
14 Defendant agrees to keep this process in place for at least two years after the
15 Settlement's Effective Date unless the Defendant believes in good faith that a
16 change in existing law warrants a departure from this practice.

17 Third, Defendant agrees to provide Class Members who request a copy
18 of their background report with a copy, free of charge. Ex. A., Settlement
19 Agreement ¶ 32. The benefit of these three non-monetary provisions is
20 substantial both for Settlement Class Members and future applicants for
21 employment who have their background reports prepared by A-Check.

22 Finally, A-Check will deposit the Gross Settlement Amount ("GSA") of
23 \$400,000 with the Settlement Administrator for the benefit of the Class.
24 Settlement Agreement ¶ 33.

25 After the deductions for any Court-awarded attorneys' fees, litigation
26 expenses, settlement administration costs, and Named Plaintiff service award,
27 this fund will be distributed to all Settlement Class Members who do not opt
28

1 out. *Id.*, ¶ 20. Defendant, in assembling the class list, shall note which
2 Settlement Class Members had outdated information related to criminal
3 charges on their reports, and which Settlement Class Members had only
4 outdated information related to traffic offenses on their reports. The net
5 settlement fund shall be distributed to Settlement Class Members such that
6 individuals with any outdated criminal charges on their reports shall receive a
7 payment four times greater than those with only outdated traffic violations on
8 their reports. *Id.*, ¶ 35.

9 If settlement checks are not cashed, those funds will be donated to the
10 *cy pres* recipient, the Southern Center for Human Rights in Atlanta, subject to
11 Court approval. *Id.*, ¶¶ 15, 39. No portion of the settlement fund will revert
12 to the Defendant in any circumstance. *Id.* ¶ 34.

13 After a competitive bidding process, class counsel has selected
14 Kurzman, Carson Consultants, an independent third party, to serve as the
15 Settlement Administrator in this case. Settlement Agreement, ¶ 26. The
16 Settlement Administrator will undertake mailing notice, mailing of settlement
17 payments, and other administrative tasks. *Id.*, ¶¶ 41-44. All fees and expenses
18 charged by the administrator will be deducted from the settlement fund, up to
19 a total of \$23,000, subject to Court approval. *Id.*, ¶ 38.

20 **2. Form of Notice to Settlement Class Members**

21 The parties have agreed to a notice procedure which will ensure that
22 Class Members receive notice of the Settlement by making settlement
23 information available via two means: direct mail and a settlement website.
24 First, the parties have agreed to the Postcard Notice attached as Exhibit B to
25 the Settlement Agreement, subject to the Court's approval.

26 The Postcard Notice, a double-sided postcard, will inform Class
27 Members of the basic information about the Settlement, and will be mailed via
28

1 first-class U.S. mail to each Settlement Class Member. *See* Settlement
2 Agreement, Ex. B. The Postcard Notice will also inform Class Members of a
3 variety of means to receive additional information about the Settlement,
4 including the URL of the settlement website – which will include the long-
5 form notice described below – and the toll-free telephone number which can
6 be used to provide Class Members with information about the Settlement and
7 will allow Class Members to provide their updated contact information. *Id.*
8 The Postcard Notice will be mailed, by first-class mail, to each known
9 Settlement Class Member at the last known available address in A-Check’s
10 database, as updated by the National Change of Address Database. Settlement
11 Agreement ¶ 42.

12 On the settlement website, the Long Form Class Notice will be made
13 available, as will a number of other important documents regarding the
14 Settlement. Among other things, the Long Form Class Notice, attached as
15 Exhibit E to the Settlement Agreement, informs Class Members of:

- 16 a. The subject matter of this lawsuit;
- 17 b. The material terms of the Settlement Agreement, including
18 the amount of recovery and the manner in which the
19 settlement fund will be divided;
- 20 c. The scope of the release;
- 21 d. The right to object to the proposed Settlement, and the
22 deadlines and procedures for doing so;
- 23 e. The right to opt-out of the proposed Settlement, and the
24 deadlines and procedures for doing so;
- 25 f. The fact that if Class Members do not opt out of the
26 Settlement Class, they will be bound by the Settlement;
- 27 g. The proposed deductions from the settlement fund,

1 including both the percentage and amount to be requested
2 by class counsel, and the amount to be requested for the
3 Named Plaintiff's service award; and

4 h. The date, time and location of the Final Fairness Hearing.

5 When, as here, Class Members and their addresses can be ascertained,
6 notification by mail is the best notice practicable and meets the due process
7 requirements of Fed. R. Civ. P. 23(c). *See Phillips Petroleum Co. v. Shutts*,
8 472 U.S. 797, 812 (1985). In an effort to ensure the efficacy of the notice
9 program, however, the parties have also agreed to undertake two additional
10 efforts to provide notice to the Class. First, the parties have agreed to
11 implement a settlement website established and maintained by the Settlement
12 Administrator which will contain additional information about the Settlement
13 and allow Class Members to update their addresses. Settlement Agreement
14 ¶ 43. Second, the Settlement Administrator will establish a toll-free telephone
15 number with an Interactive Voice Response system to provide Class Members
16 with information about the Settlement and allow Class Members to provide
17 their updated contact information. *Id.*, ¶ 44.

18 These extensive efforts to provide notice to the Class are "the best notice
19 that is practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B). A-
20 Check will also comply with the notice requirements of the Class Action
21 Fairness Act of 2005, 28 U.S.C. § 1715(b), by providing notice of this
22 proposed Settlement to appropriate state officials for each state in which a
23 Named Plaintiff or Settlement Class Member resides and upon the U.S.
24 Attorney General. Settlement Agreement, ¶ 15.

25 **3. Opt-Out Right**

26 The parties propose that the Settlement Class be certified pursuant to
27 Fed. R. Civ. P. 23(b)(3). Settlement Class Members may send opt-out requests
28

1 to the address contained in the Notice, and the Settlement Administrator will
2 maintain that address. Settlement Agreement, ¶ 22, 45. The deadline for Class
3 Members to opt out of the Settlement will be forty-five days after the date
4 notices are mailed. *Id.*

5 **4. Right to Object**

6 Class Members who wish to object to the Settlement Agreement must
7 file a written statement of objection with the Clerk of Court, and mail the same
8 to the Settlement Administrator no later than the Objections Deadline, which
9 will be forty-five days after the date notices are mailed. *Id.*, ¶¶ 22, 46.
10 Settlement Class Members who fail to make objections in the manner specified
11 above shall be deemed to have waived their objections. *Id.*, ¶ 46.

12 **5. Attorneys' Fees, Expenses, and Service Award**

13 The Settlement Agreement states that class counsel's fees and service
14 awards for the Named Plaintiff are to be deducted from the fund, subject to
15 Court approval. Settlement Agreement ¶ 20. Counsel is authorized to petition
16 for up to one-third percent of the fund as attorneys' fees, as well as
17 documented, customary expenses, and \$3,500 for the Class Representative as
18 a service award. *Id.* ¶¶ 36-37. Class counsel will formally make this request
19 no later than fourteen (14) days before the Opt-Out and Objection Deadline,
20 and will post the motion papers on the settlement website, so that Class
21 Members will have a chance to review them before deciding whether to object
22 or opt out. *Id.* ¶ 52. Neither settlement approval nor the size of the settlement
23 fund are contingent upon approval of any requested fees or class representative
24 service awards.

25 **III. ARGUMENT**

26 Federal courts favor the voluntary resolution of litigation through
27 settlement, particularly in the class action context. *San Francisco NAACP v.*
28

1 *San Francisco Unified Sch. Dist.*, 59 F. Supp. 2d 1021, 1029 (N.D. Cal. 1999)
2 (“There is a strong judicial policy in favor of settlements in complex class
3 actions”); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir.
4 1992) (noting “strong judicial policy that favors settlements, particularly
5 where complex class action litigation is concerned”); *Armstrong v. Board of*
6 *Sch. Directors*, 616 F.2d 305, 312-13 (7th Cir. 1980); *Franks v. Kroger Co.*,
7 649 F.2d 1216, 1224 (6th Cir. 1981) on reh’g, 670 F.2d 71 (6th Cir. 1982);
8 *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1148 (8th Cir. 1999).

9 These considerations apply here. For the reasons set forth below, the
10 Court should grant preliminary approval of the Settlement, and authorize the
11 issuance of notice to the Class.

12 **A. CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE**

13 The parties request that the Court certify the Settlement Class under
14 Federal Rule of Civil Procedure 23 for settlement purposes only. Even a class
15 certified for settlement purposes must satisfy the requirements for class
16 certification pursuant to Rule 23, though the Court “need not inquire whether
17 the case, if tried, would present intractable management problems, *see* Fed. R.
18 Civ. P. 23(b)(3)(D), for the proposal is that there be no trial.” *Amchem*
19 *Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997). The proposed Settlement
20 Class here meets the prerequisites for certification under Rule 23(a) and
21 23(b)(3).

22 **1. The Prerequisites of Rule 23(a) Are Met**

23 Under Rule 23(a), a class may be certified only when (1) the class is so
24 numerous that joinder of all members is impracticable; (2) there are questions
25 of law or fact common to the class; (3) the claims or defenses of the
26 representative parties are typical of the claims or defenses of the class; and (4)
27 the representative parties will fairly and adequately protect the interests of the
28

1 class. The proposed Settlement Class meets these requirements.

2 a. The Proposed Settlement Class Meets the
3 Numerosity Requirement

4 Fed. R. Civ. P. 23(a)(1) requires a proposed class be “so numerous that
5 joinder of all members is impracticable.” In this case, where the Class consists
6 of approximately 2,717 people, there is no question that the numerosity
7 requirement is met.

8 b. The Class Shares Common Questions of Law and
9 Fact

10 A proposed class satisfies the “commonality” requirement “if there are
11 questions of fact and law which are common to the class.” Fed. R. Civ. P.
12 23(a)(2). This requirement, however, has been

13 construed permissively. All questions of fact and law need not be
14 common to satisfy the rule. The existence of shared legal issues
15 with divergent factual predicates is sufficient, as is a common
16 core of salient facts coupled with disparate legal remedies within
the class.

17 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998).

18 Commonality has been found in similar cases in which it was alleged a
19 consumer reporting agency reported outdated adverse information in violation
20 of 15 U.S.C. § 1681c. *Hawkins v. S2Verify*, No. C 15-03502 WHA, 2016 WL
21 3999458, at *3 (N.D. Cal. July 26, 2016) (finding commonality, certifying
22 class based on claim of reporting of outdated criminal information); *Massey v.*
23 *On-Site Manager, Inc.*, 285 F.R.D. 239, 244 (E.D.N.Y. 2012) (finding
24 commonality, certifying class, in case where consumer reporting agency
25 reported outdated information on class members’ reports)

26 FCRA classes are frequently certified in cases in which a defendant’s
27 uniform policies and procedures impacted class members in the same way.

1 *See, e.g.; Serrano v. Sterling Testing Sys., Inc.*, 711 F. Supp. 2d 402 (E.D. Pa.
2 2010) (finding commonality and certifying FCRA class when defendant
3 consumer reporting agency's consumer reports all contained the same illegal
4 statement regarding outdated information); *Campos v. ChoicePoint, Inc.*, 237
5 F.R.D. 478, 485 (N.D. Ga. 2006) (finding commonality and certifying FCRA
6 class when defendant consumer reporting agency consistently and as a matter
7 of policy failed to provide full file disclosures to consumers who requested
8 them); *Summerfield v. Equifax Info. Servs. LLC*, 264 F.R.D. 133, 139 (D.N.J.
9 2009) (finding commonality and certifying FCRA class when consumer
10 reporting agency sent allegedly misleading form letter to consumers who
11 disputed information on their reports); *Chakejian v. Equifax Info. Servs. LLC*,
12 256 F.R.D. 492 (E.D. Pa. 2009) (same); *Gillespie v. Equifax Info. Servs., LLC*,
13 05 C 138, 2008 WL 4614327, *4 (N.D. Ill. Oct. 15, 2008) (finding
14 commonality and certifying FCRA class when consumer reporting agency's
15 standard procedure allegedly caused inaccurate reporting); *Williams v.*
16 *LexisNexis Risk Mgmt. Inc.*, CIV A 306CV241, 2007 WL 2439463 (E.D. Va.
17 Aug. 23, 2007) (finding commonality and certifying FCRA class when claim
18 revolved around consumer reporting agency's procedures for notifying class
19 members that adverse public record information about them was being
20 reported).

21 Because the core question in this case is whether Defendant's reporting
22 of outdated information violated the FCRA, commonality has been
23 established.

24 c. The Named Plaintiff's Claims Are Typical

25 A named plaintiff's claims are typical if "they are reasonably co-
26 extensive with those of absent class members; they need not be substantially
27 identical." *Hanlon*, 150 F.3d at 1020.

1 In this case, Named Plaintiff’s claims are identical to the claim of every
 2 other Class Member, and are based upon the same legal theory. When every
 3 member of the Class, including Named Plaintiff, suffered the same FCRA
 4 violation based upon Defendant’s preparation of background reports with
 5 criminal information more than seven years old, it is manifestly clear that
 6 Named Plaintiff’s claims are typical. Claims of this sort are routinely found
 7 typical. See *Hawkins*, 2016 WL 3999458, at *4 (“Plaintiff’s claims are typical
 8 of the class. Like potential class members, his consumer report contained non-
 9 conviction criminal history older than seven years.”); *Massey*, 285 F.R.D. at
 10 245 (“plaintiff has demonstrated that she is typical of the class. Defendant
 11 issued a report about her that illegally contained outdated information as a
 12 result of the flaw in defendant’s system, just as it did, by definition, for every
 13 class member”).

14 d. The Class Representative’s Interests Are Aligned
 15 with Those of the Settlement Class, and the Class
 16 Representative Will Vigorously Represent the Class
 17 Through Qualified Counsel

18 To make a determination on adequacy, the Court must evaluate both the
 19 Named Plaintiffs and their counsel:

20 Resolution of two questions determines legal adequacy: (1) do
 21 the named plaintiffs and their counsel have any conflicts of
 22 interest with other class members and (2) will the named
 23 plaintiffs and their counsel prosecute the action vigorously on
 behalf of the class?

24 *Hanlon*, 150 F.3d at 1020.

25 The resolution of the first question is simple: the Named Plaintiff and
 26 his counsel have no known conflicts of interest with the Class. Hashmall Dec.

27 ¶ 8. Second, both the Named Plaintiff and his counsel have vigorously worked
 28

1 in the best interest of the Class, and will continue to do so. *Id.* ¶ 9.

2 The Named Plaintiff has been actively engaged in this case. He
3 understands what it means to be a class representative and will put the interests
4 of the Class first in making all decisions related to this case. He has reviewed
5 the Settlement Agreement and believes that it is in the best interest of the Class.
6 *Id.* ¶ 10. Furthermore, the Named Plaintiff’s actions demonstrate his
7 involvement in, and dedication to, this litigation. Named Plaintiff has provided
8 counsel with extensive documentation regarding his experiences with
9 Defendant, stayed abreast of developments in this case, and evaluated and
10 executed the Settlement Agreement. *Id.* ¶ 11.

11 Second, Named Plaintiff’s counsel is highly experienced in complex
12 class action litigation and consumer litigation in general. *See* Hashmall Dec.,
13 Ex. 2, Firm Resume. Berger & Montague (“Berger”) was founded in 1970,
14 and has been concentrated on representing plaintiffs in complex class actions
15 ever since. *Id.* The firm has been recognized by courts for its skill and
16 experience in handling major complex litigation. *Id.* Berger has been
17 recognized by the National Law Journal in 11 of the last 15 years for its “Hot
18 List” of top plaintiffs’ oriented litigation firms in the nation. *Id.*

19 In sum, the numerosity, commonality, typicality, and adequacy
20 requirements of Rule 23(a)(1)–(4) are met here.

21 2. The Prerequisites of Rule 23(b) Are Met

22 The Settlement Class’s claims also meet the predominance and
23 superiority prerequisites of Fed. R. Civ. P. 23(b)(3). In evaluating this prong,
24 the court may consider Class Members’ interests in prosecuting their claims
25 individually, the extent and nature of litigation thus far, and the desirability of
26 concentrating the litigation in the particular forum. Fed. R. Civ. P.
27 23(b)(3)(A)–(C). In the context of a class-wide settlement, the court need not
28

1 consider whether the case, if tried, would present difficult management
2 problems. *Amchem*, 521 U.S. at 620. Those requirements are met in this case.

3 a. Common Questions of Law or Fact Predominate

4 When considering predominance, the core issue is “whether the
5 proposed classes are sufficiently cohesive to warrant adjudication by
6 representation.” *Amchem*, 521 U.S. at 623.

7 In this case, three class-wide issues predominate over any individual
8 concerns. First and most important is the question of whether the preparation
9 of reports by Defendant that included criminal non-convictions older than
10 seven years violated the FCRA. Because each Class Member was a subject of
11 one of these particular background reports, a determination of this question
12 will completely obviate the need for an examination of any individual issues
13 relative to individual Class Members. *Hawkins*, 2016 WL 3999458, at *6 (The
14 question of whether these practices [reporting outdated criminal information]
15 violated the FCRA, and whether any such violations were willful, can be
16 demonstrated on a class-wide basis.”); *Massey*, 285 F.R.D. at 245 (finding
17 commonality, because “the central issues of whether defendant issued reports
18 containing obsolete information about members of the class and whether it did
19 so willfully can be proved on a generalized basis through records and
20 testimony from defendant.”)

21 Second, the willfulness of Defendant’s violation presents a critical
22 common question. The ability of Class Members to obtain statutory damages
23 is contingent upon a finding that Defendant’s violation was willful. 15 U.S.C.
24 § 1681n(a)(1). Because Defendant is a single entity, which prepared
25 background reports in the same manner for every member of the Class, the
26 answer to the question of whether Defendant’s violation was willful can be
27 determined on a class-wide basis. *Chakejian*, 256 F.R.D. at 500 (“Thus, the
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1 inquiry is to [defendant's] state of mind in implementing its policies and
2 procedures, not on the customer's particular interaction with the CRA.... To
3 prove willfulness here, a consumer-by-consumer inquiry is not necessary.”).
4 Again, Defendant denies any liability for these claims or that it acted willfully.

5 Third, if this case were litigated, the amount of damages could also be
6 determined on a class-wide basis. Because Plaintiffs sought statutory and
7 punitive damages, no individual analysis of damages would be required. *See*
8 *Murray v. GMAC Mortg. Corp.*, 434 F.3d 948, 952-53 (7th Cir. 2006). In
9 determining the amount of statutory damages to impose pursuant to the FCRA,
10 courts have looked to “the importance, and hence the value, of the rights and
11 protections” at issue in the case. *Ashby v. Farmers Ins. Co. of Oregon*, 592 F.
12 Supp. 2d 1307, 1318 (D. Or. 2008); *In re Farmers Ins. Co., Inc., FCRA Litig.*,
13 741 F. Supp. 2d 1211, 1224 (W.D. Okla. 2010). Consideration of this factor
14 requires no individual analysis. Thus, virtually every aspect of this case can
15 be determined on a class-wide basis, and the predominance requirement is met.

16 b. A Class Action Is the Superior Vehicle for
17 Adjudication

18 To be certified, a class action must be “superior to other available
19 method for fairly and efficiently adjudicating the controversy.” Fed. R. Civ.
20 P. 23(b)(3). Again, in the settlement context, the Court need not address the
21 manageability requirements of Rule 23(b)(3)(D). *Amchem*, 521 U.S. at 620.
22 Courts in this district have found that “[i]f no viable alternative to a class action
23 is available, the class action is necessarily the superior method of adjudication.
24 Where plaintiffs’ anticipated award is relatively small, class actions . . . may
25 permit the plaintiffs to pool claims which would be uneconomical to litigate
26 individually.” *Grannan v. Alliant Law Grp., P.C.*, C10-02803 HRL, 2012 WL
27 216522, *5 (N.D. Cal. Jan. 24, 2012) (internal citation and quotation omitted).

1 Such is the case here.

2 In a matter such as this, where the claims of all Class Members are
3 identical and are based on the same common core of facts, it is clear that
4 adjudicating this matter as a class action will achieve economies of time, effort,
5 and expense, and promote uniformity of results. *Hawkins*, 2016 WL 3999458,
6 at *6 (noting amount of statutory damages, finding that “[a]bsent a class action,
7 individuals would be unlikely to pursue such a relatively small claim given the
8 costs of litigation. A class action is therefore a superior method for resolving
9 these disputes.”); *Massey*, 285 F.R.D. at 245 (finding superiority).

10 **B. THE SETTLEMENT TERMS ARE FAIR, REASONABLE, AND**
11 **ADEQUATE AS SET FORTH UNDER RULE 23(E)**

12 Under Fed. R. Civ. P. 23(e), court approval is required for any
13 settlement agreement that will bind absent class members. *In re Charles*
14 *Schwab Corp. Secs. Litig.*, No. 08-01510, 2011 WL 1481424, at *4 (Apr. 19,
15 2011). This involves a “two-step process.” MANUAL FOR COMPLEX
16 LITIGATION § 30.41, at 236 (3d ed. 1995).

17 First, counsel submit the proposed terms of the Settlement to the court,
18 and the court makes a preliminary fairness evaluation. *Id.*

19 Second, following preliminary approval of the Settlement, Class
20 Members are provided notice of a formal fairness hearing, at which time
21 arguments and evidence may be presented in support of, or in opposition to,
22 the Settlement. *Id.*

23 The determination of whether a proposed Settlement is fair falls within
24 the sound discretion of the district court. *Class Plaintiffs v. City of Seattle*, 955
25 F.2d 1268, 1276 (9th Cir. 1992). However, this discretion is exercised
26 somewhat differently, depending on whether preliminary or final approval is
27 being sought. At the preliminary approval stage, the court is not required to
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1 answer the ultimate question of whether the settlement is fair, reasonable, and
2 adequate. *See* 5 Moore’s Federal Practice § 23.83[a], at 23-336.2 to 23-339.
3 Rather, the court simply makes an initial determination concerning whether
4 the Settlement

5 (1) appears to be the product of serious, informed, non-collusive
6 negotiations; (2) has no obvious deficiencies; (3) does not
7 improperly grant preferential treatment to class representatives
8 or segments of the class; and (4) falls within the range of possible
approval.

9 *Harris v. Vector Mktg. Corp.*, C-08-5198 EMC, 2011 WL 1627973 (N.D. Cal.
10 Apr. 29, 2011). In the absence of any “obvious deficiencies,” preliminary
11 approval should be granted, and notice of the settlement should be directed to
12 the Class so that Class Members may have a chance to be heard. NEWBERG
13 ON CLASS ACTIONS § 11:25, *supra*.

14 **C. THE PROPOSED SETTLEMENT MORE THAN SATISFIES THE**
15 **STANDARD FOR PRELIMINARY APPROVAL**

16 The proposed Settlement Agreement in this case, which provides for
17 substantial prospective relief and a non-reversionary monetary recovery of
18 \$400,000, more than meets the standard for preliminary approval.

19 **1. The Settlement Is the Product of Serious, Informed,**
20 **Non-Collusive Negotiations**

21 As recounted above, the Settlement in this case was the result of arm’s-
22 length negotiations facilitated by an experienced and well-respected mediator
23 after substantial pre-mediation discovery. *See* § III.A.3, *infra*. “An initial
24 presumption of fairness is usually involved if the settlement is recommended
25 by class counsel after arm's-length bargaining.” *Riker v. Gibbons*, 2010 WL
26 4366012, at *2 (D. Nev. Oct. 28, 2010); *see also Hanlon*, 150 F.3d at 1027
27 (affirming approval of settlement after finding “no evidence to suggest that the
28

1 settlement was negotiated in haste or in the absence of information
2 illuminating the value of plaintiffs' claims.").

3 **2. The Settlement Has No Deficiencies**

4 This settlement achieves a remarkable recovery for the Class, and
5 contains none of the deficiencies which can stand in the way of judicial
6 approval. For instance, the totality of the Settlement will be paid out; there is
7 no reversion to the Defendant. All deductions from the settlement fund, such
8 as attorneys' fees, settlement administration expenses and Named Plaintiff
9 service awards, require judicial approval, and the Settlement is not contingent
10 upon approval of the requested amounts.

11 Additionally, there is no claim form or other unduly burdensome
12 process in place in this proposed Settlement. Rather, every Class Member who
13 does not opt out will receive a payment from the net settlement fund. Class
14 Members do not need to take any action whatsoever in order to receive their
15 payment, making the process as easy as possible.

16 **3. The Settlement Does Not Grant Preferential Treatment**

17 Preferential treatment is also not a concern in this case. The Settlement
18 does call for higher settlement payments for those whose reports contained
19 criminal information older than seven years, as opposed to traffic or other type
20 of information, but this is a rational distinction based on the determination that
21 this population was more likely to have lost a job opportunity based on the
22 reporting of the information at issue.

23 Further, the settlement does call for a service award for the Named
24 Plaintiff, but that award is subject to the Court's review and approval. The
25 Ninth Circuit has recognized that service awards to named plaintiffs in a class
26 action are permissible and do not render a settlement unfair or unreasonable.
27 *See Stanton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003); *Rodriguez v. W.*

1 *Publ'g Corp.*, 563 F.3d 948, 958-69 (9th Cir. 2009).

2 **4. The Settlement Falls Well Within The Range of**
3 **Approval**

4 The Settlement in this case is impressive when considering the range of
5 possible recoveries for the Class, the Defendant's affirmative defenses, and the
6 number of procedural hurdles between Plaintiffs and a final judgment. While
7 the exact amount that each Class Member will recover is unknown until the
8 amount of attorneys' fees, Class Representative awards, and administration
9 costs are finalized, the Gross Settlement Amount of \$400,000 is substantial,
10 and Class Members are likely to recover a substantial portion of what they
11 could have recovered in litigation. In circumstances such as this, where a
12 settlement fund is calculated to pay out in its entirety, and where class
13 members are likely to receive a good result, a settlement should be approved.

14 This recovery is substantial. Plaintiffs filed this case seeking statutory
15 damages under the FCRA, which provides for damages of between \$100 and
16 \$1000 for each willful violation. 15 U.S.C. § 1681n(a)(1). The settlement
17 here, a \$400,000 fund for a class of 2,717 individuals, is just shy of \$150 per
18 Class Member – well within the range of recovery.² Additionally, the FCRA
19 itself does not provide any guidance to courts in choosing the appropriate
20 recovery for a statutory violation, *see* 15 U.S.C. § 1681n(a)(1), but in
21 determining the amount of statutory damages to impose pursuant to the FCRA,
22 courts have looked to “the importance, and hence the value, of the rights and
23

24 ² This number is based on the simple division of the gross settlement fund by
25 the number of Class Members, and is not an indication of the amount that each
26 Class Member will receive. As described above, the actual recovery for each
27 Class Member will depend on (1) the amount of attorneys' fees, costs and class
28 member service award approved by the Court, and (2) the relative proportion
of the class with criminal, rather than traffic, charges on their reports.

1 protections” at issue in the case. *Ashby*, 592 F. Supp. 2d at 1318; *In re Farmers*
2 *Ins. Co., Inc., FCRA Litig.*, 741 F. Supp. 2d at 1224. It is uncertain here how
3 much the court would choose to award for statutory damages. A recovery of
4 a substantial percentage of the likely award if this case had proceeded all the
5 way through final judgment is an excellent recovery for the Class. *See City of*
6 *Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 n. 2 (2d Cir. 1974) (“there is no
7 reason, at least in theory, why a satisfactory settlement could not amount to a
8 hundredth or even a thousandth part of a single percent of the potential
9 recovery”) *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*,
10 209 F.3d 43 (2d Cir. 2000).

11 The impressive nature of this recovery comes into even sharper focus
12 when the risks of further litigation are considered. Plaintiff had yet to survive
13 a motion for class certification, summary judgment or trial. Plaintiff was
14 confident that these obstacles could have been overcome, but each of these
15 phases of litigation presents serious risks, which the Settlement allows Named
16 Plaintiff and Class Members to avoid. *See, e.g., In re Painwebber Ltd.*
17 *P’ships Litig.*, 171 F.R.D. 104, 126 (S.D.N.Y. 1997) (“Litigation inherently
18 involves risks.”).

19 Viewed in the context of the litigation risks faced, as well as the
20 substantial delay and costs that Class Members would have experienced in
21 order to receive proceeds from an adversarially-obtained judgment, not to
22 mention the judicial resources required, this Settlement is in the best interests
23 of the Named Plaintiff and the Settlement Class Members, and should be
24 approved.

25 **D. THE COURT SHOULD APPROVE DISSEMINATION OF THE**
26 **PROPOSED CLASS NOTICE**

27 With this motion, Plaintiff has provided two forms of proposed class
28

1 notice: one to be sent to all Class Members by first-class mail and one to be
2 posted on the settlement website. Settlement Agreement, Exs. B, E. These
3 proposed notices include all of the information required by Fed. R. Civ. P.
4 23(c)(2)(B). The Long Form Notice, which is to be posted at the settlement
5 website, and which the Postcard Notice directs Class Members to consult,
6 contains details about the definition of the Class, the proposed class counsel,
7 the size of the settlement fund, the methodology for opting out of or objecting
8 to the Settlement, the potential size of Plaintiff's request for attorneys' fees,
9 expenses, and Class Representative incentive awards, and the date and location
10 of the final approval hearing. This notice program exceeds the requirements
11 of Fed. R. Civ. P. 23, and should be approved.

12 **IV. CONCLUSION**

13 Based on the foregoing, the Court should grant preliminary approval to
14 the proposed Settlement.

15
16 Dated: January 30, 2017

17
18 COUNSEL FOR PLAINTIFF

BERGER & MONTAGUE, P.C.

19
20 Dated: January 30, 2017

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23 ** *pro hac vice* application forthcoming

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25 *[Additional Attorneys Listed on Next Page]*

26 **UNITED STATES DISTRICT COURT**
27 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

28 JOHN SMITH, individually and as
a representative of the Class,

Plaintiff,

v.

A-CHECK AMERICA INC. d/b/a
A-CHECK GLOBAL,

Defendant.

Case No.: 5:16-cv-00174-VAP-KK

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Attorneys for Defendant A-Check America Inc. d/b/a A-Check Global

1 I, Joseph C. Hashmall, hereby declare as follows:

2 1. I am one of Plaintiff's attorneys in the above-captioned matter.

3 2. I submit this Declaration in support of Plaintiff's Motion for
4 Preliminary Approval of the Proposed Settlement.

5 3. Prior to settlement being reached in this matter, both parties
6 produced hundreds of pages of documents. Plaintiff also received significant
7 discovery from a third-party subpoena directed at an industry organization and
8 deposed Defendant's Rule 30(b)(6) designee.

9 4. In advance of mediation, the parties also worked cooperatively to
10 exchange information regarding how Defendant's electronic systems could be
11 queried to identify members of the classes.

12 5. The parties engaged in numerous conference calls, some of which
13 included technical consultants advising the parties on how best to extract
14 information from Defendant's databases.

15 6. On December 1, 2016, the parties attended a full-day mediation
16 with Joan Kessler, an experienced third-party mediator. Both parties prepared
17 mediation briefs indicating their positions on the merits of Plaintiff's claims
18 and on an appropriate settlement value and structure.

19 7. The mediation culminated in both parties signing a binding Terms
20 Sheet, which served as the basis for the instant Settlement Agreement.

21 8. The Named Plaintiff and his counsel have no known conflicts of
22 interest with the Settlement Class.

23 9. Both the Named Plaintiff and his counsel have vigorously worked
24 in the best interest of the Class, and will continue to do so.

25 10. The Named Plaintiff has been actively engaged in this case. He
26 understands what it means to be a Class Representative and will put the
27 interests of the Class first in making all decisions related to this case. He has
28

1 reviewed the Settlement Agreement and believes that it is in the best interest
2 of the Class.

3 11. The Plaintiff's actions demonstrate his involvement in, and
4 dedication to, this litigation. Plaintiff has provided counsel with extensive
5 documentation regarding his experiences with Defendant, stayed abreast of
6 developments in this case, and evaluated and executed the Settlement
7 Agreement.

8 12. Attached as Exhibits are true and correct copies of the following:

9 a. Exhibit 1: Settlement Agreement and exhibits:

- 10 (1) Exhibit A: Declaration of Gary Hanley Regarding
11 Settlement Agreement;
12 (2) Exhibit B: Postcard Notice;
13 (3) Exhibit C: [Proposed] Preliminary Approval Order;
14 (4) Exhibit D: [Proposed] Final Approval Order;
15 (5) Exhibit E: Long Form Notice; and

16 b. Exhibit 2: Berger & Montague firm resume.

17 The foregoing statement is made under penalty of perjury and is true
18 and correct to the best of my knowledge and belief.

19
20 Dated: January 30, 2017

/s/ Joseph C. Hashmall

Joseph C. Hashmall

21
22
23
24
25
26
27
28

Exhibit 1

1 LAW OFFICES OF ROBERT F. BRENNAN APC
2 Robert F. Brennan, SBN 132449
3 3150 Montrose Avenue
4 La Crescenta, CA 91214

5 BERGER & MONTAGUE, P.C.
6 E. Michelle Drake, MN Bar No. 0387366*
7 emdrake@bm.net
8 Joseph C. Hashmall, MN Bar No. 0392610*
9 jhashmall@bm.net
10 43 SE Main Street, Suite 505
11 Minneapolis, MN 55414
12 Tel: 612.594.5999; Fax: 612.584.4470

13 FRANCIS & MAILMAN, P.C.
14 James A. Francis, PA Bar No. 77474*
15 jfrancis@consumerlawfirm.com
16 David A. Searles, PA Bar No. 21471**
17 dsearles@consumerlawfirm.com
18 Land Title Bldg, 19th Floor
19 100 South Broad Street
20 Philadelphia, PA 19110
21 Tel: 215.735.8600; Fax: 215.940.8000

22 *admitted *pro hac vice*

23 ** *pro hac vice* application forthcoming

24 *Attorneys for Plaintiff and the Proposed Class*
25 *[Additional Attorneys Listed on Next Page]*

26 **UNITED STATES DISTRICT COURT**
27 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

28 JOHN SMITH, individually and as
a representative of the Class,

Plaintiff,

v.

A-CHECK AMERICA INC. d/b/a
A-CHECK GLOBAL,

Defendant.

Case No.: 5:16-cv-00174-VAP-KK

**SETTLEMENT AGREEMENT
AND RELEASE**

1 THE TATAR LAW FIRM, APC
2 Stephanie R. Tatar, SBN 237792
3 stephanie@thetatarlawfirm.com
4 3500 West Olive Ave, Suite 300
5 Burbank, CA 91505
6 Tel: 323.744.1146; Fax: 888.778.5695

7 NICHOLS KASTER, PLLP
8 Eleanor E. Frisch (SBN 304408)
9 E-mail: efrisch@nka.com
4600 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
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Facsimile: (612) 338-4878

10 *Attorneys for Plaintiff and the Proposed Class*

11 SEYFARTH SHAW LLP
12 Pamela Q. Devata
13 E-mail: pdevata@seyfarth.com
14 131 South Dearborn Street, Suite 2400
15 Chicago, Illinois 60603
Telephone: (312) 460-5000
Facsimile: (312) 460-7000

16 SEYFARTH SHAW LLP
17 Timothy L. Hix (SBN 184372)
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333 S. Hope Street, Suite 3900
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20 SEYFARTH SHAW LLP
21 Jonathan L. Brophy (SBN 245223)
22 E-mail: jbrophy@seyfarth.com
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24 E-mail: morodriguez@seyfarth.com
2029 Century Park East, Suite 3500
25 Los Angeles, California 90067-3021
Telephone: (310) 277-7200
Facsimile: (310) 201-5219

26 *Attorneys for Defendant A-Check America Inc. d/b/a A-Check Global*
27
28

1 Plaintiff John Smith (“Named Plaintiff” or “Class Representative”),
2 individually and on behalf of the proposed Settlement Class, and Defendant
3 A-Check America Inc. d/b/a A-Check Global (“Defendant” or “A-Check”),
4 hereby enter into this Settlement Agreement to resolve this class action.
5 The parties hereto are together the “Parties.”

6 **I. RECITALS**

7 1. On December 3, 2015, Named Plaintiff John Smith filed this
8 proposed class action against Defendant A-Check America Inc., d/b/a A-
9 Check Global in Superior Court of the State of California. On January 29,
10 2016, A-Check removed the lawsuit to this Court. On February 17, 2016,
11 Plaintiff filed his First Amended Complaint. (*See* Dkt. No. 15.)

12 2. The operative complaint in this Action alleges that Defendant
13 willfully violated the Fair Credit Reporting Act (“FCRA”) by preparing
14 background reports that contained information in violation of 15 U.S.C.
15 § 1681c.

16 3. On December 1, 2016, the Parties attended a full-day
17 mediation with mediator Joan Kessler and signed a binding Terms Sheet.
18 Prior to that mediation, the Parties exchanged numerous pieces of
19 information related to this Action, through both formal and informal
20 discovery. Defendant provided information on its databases, class size,
21 recordkeeping systems, and internal policies and controls. Plaintiff also
22 deposed Defendant’s corporate representative and the Parties engaged in
23 numerous conference calls, some of which included technical consultants
24 for each side who exchanged views on how to extract information from
25 Defendant’s databases.

26 4. Prior to mediation the Parties provided the mediator with
27 mediation briefs, setting forth their positions on the merits of Named
28

1 Plaintiff's claims, the prospects of class certification, and their views on an
2 appropriate settlement structure and value.

3 5. Defendant denies that it has engaged in any wrongdoing and
4 does not admit or concede any liability in connection with any facts or
5 claims that have been alleged against it, but has agreed to this Settlement
6 Agreement because of the substantial expense of litigation, the length of
7 time necessary to resolve the issues presented, and the disruption to its
8 business operations.

9 6. Based upon their analysis and evaluation of several factors,
10 Class Counsel recognize the substantial risks of continued litigation and
11 delay, including the likelihood that the case, if not settled now, might not
12 result in any recovery for the Named Plaintiff and Settlement Class.

13 7. Class Counsel have conducted a thorough study and
14 investigation of the law and facts relating to the claims that were asserted and
15 that could have been asserted, as well as a thorough study and investigation
16 of the scope and identity of the Settlement Class (which are based in part on
17 the Defendant's discovery responses), and have concluded, taking into
18 account the benefits of this Settlement and the risks and delay of further
19 litigation, that this Settlement is fair and reasonable and in the best interests
20 of the Named Plaintiff and Settlement Class.

21 8. Subject to the approval of the Court, the Parties wish to settle
22 this Action, effect a compromise, and terminate the Action. In light of the
23 above recitals, the Parties understand and agree that the claims asserted here
24 shall be settled, compromised, and released, subject to the approval of the
25 Court, upon and subject to the following terms and conditions:

26 **II. DEFINITIONS**

27 9. Action or Litigation means this lawsuit, styled as *John Smith v.*
28 *A-Check America Inc. d/b/a A-Check Global*, No. 5:16-cv-00174-VAP-KK

1 (C.D. Cal.).

2 10. Agreement means this Settlement Agreement and Release.

3 11. Class Counsel means Berger & Montague, P.C.

4 12. Class List means a list of all members of the Settlement Class, to
5 be generated by Defendant and provided to Class Counsel and the Settlement
6 Administrator not more than seven business days after the Court enters a
7 preliminary approval order. The Class List shall include full names and last
8 known addresses, in Excel or another agreed-upon format, which shall be at
9 Defendant's expense.

10 13. Class Representative or Named Plaintiff means John Smith.

11 14. Court means the United States District Court for the Central
12 District of California.

13 15. Cy Pres Recipient means Southern Center for Human Rights in
14 Atlanta, an internationally recognized non-profit organization that advocates
15 for criminal-justice-system reforms and engages in advocacy on behalf of
16 criminal defendants, incarcerated individuals, and individuals with criminal
17 records.

18 16. Declaration means the sworn statement provided by Defendant
19 to Class Counsel after execution of the Parties' Terms Sheet and prior to the
20 execution of this Agreement, attached hereto as Exhibit A.

21 17. Defendant or Released Parties or A-Check means Defendant A-
22 Check America Inc. d/b/a A-Check Global and its respective present, former
23 and future parents, subsidiaries, corporate family members, officers,
24 directors, and employees, individually, jointly and severally. This term does
25 not include the entities from whom Defendant purchases data nor does this
26 term include Innovative Enterprises, Inc.

27 18. Effective Date means the first day after the first date on which
28 all of the following have occurred:

- 1 a. all Parties, Class Counsel, and Defendant’s counsel have
- 2 executed this Agreement;
- 3 b. the Court has issued a preliminary approval order;
- 4 c. reasonable notice has been given to Settlement Class Members
- 5 including providing them an opportunity to opt out of or object
- 6 to the Settlement;
- 7 d. the Court has held a fairness hearing, entered Final Judgment
- 8 approving the Settlement, awarded the Class Representative any
- 9 service payment, and awarded Class Counsel their reasonable
- 10 attorneys’ fees and costs; and
- 11 e. Only if there are written objections filed before the fairness
- 12 hearing and those objections are not later withdrawn, the last of
- 13 the following events to occur:
 - 14 i. if no appeal is filed, then the date on which the objector’s
 - 15 time to appeal the Final Judgment has expired with no appeal
 - 16 or any other judicial review having been taken or sought; or
 - 17 ii. if an appeal of the Final Judgment has been timely filed or
 - 18 other judicial review was taken or sought, the date that order
 - 19 is finally affirmed by an appellate court with no possibility of
 - 20 subsequent appeal or other judicial review or the date the
 - 21 appeals or any other judicial review are finally dismissed
 - 22 with no possibility of subsequent appeal or other judicial
 - 23 review.

24 It is the intention of the Parties that the Settlement shall not become effective
25 until the Court’s Final Judgment has become final.

26 19. Final Approval Order or Final Judgment means the Court’s
27 order granting final approval of this Settlement.
28

1 20. Gross Maximum Settlement Amount or "GSA" means
2 \$400,000, which shall be the maximum total amount from which the Named
3 Plaintiff and Settlement Class Members will be paid, from which all out-of-
4 pocket costs of settlement administration will be paid, and from which Class
5 Counsel's attorneys' fees, costs, and expenses and Named Plaintiff's service
6 payment, if approved by the Court, will be paid. Defendant will pay the GSA
7 into a common fund, which shall be established and maintained by the
8 Settlement Administrator as a Qualified Settlement Fund for federal tax
9 purposes pursuant to Treas. Reg. § 1.468B-1. The Settlement Administrator,
10 on behalf of the Settlement Class, shall be responsible for all administrative,
11 accounting and tax compliance activities in connection with the Qualified
12 Settlement Fund, including any filing necessary to obtain Qualified
13 Settlement Fund status pursuant to Treas. Reg. § 1.468B-1. Defendant shall
14 provide to the Settlement Administrator any documentation necessary to
15 facilitate obtaining Qualified Settlement Fund status. The GSA shall
16 represent the full extent of Defendant's financial obligations under this
17 Settlement Agreement. There shall be no reversion to Defendant from the
18 GSA under any circumstance.

19 21. Net Settlement Fund means the amount of money remaining
20 after the Gross Maximum Settlement Amount is reduced by the following
21 amounts, as approved by the Court: (a) the service payment to the Named
22 Plaintiff; (b) reasonable attorneys' fees and costs to Class Counsel; and (c)
23 the fees of the Settlement Administrator.

24 22. Opt-Out Deadline or Objections Deadline means the date the
25 Court establishes as the deadline by which Settlement Class Members must
26 mail and postmark a written notice of their intent to opt-out of the Settlement
27 and by which objections to the preliminarily approved Settlement must be
28

1 filed with the Court. The Parties shall jointly request that this date shall be no
2 less than forty-five days after the mailing of Postcard Notice.

3 23. Postcard Notice means the double-sided postcard attached
4 hereto as Exhibit B, subject to Court approval, which the Settlement
5 Administrator will mail, via first-class U.S. mail, to each Settlement Class
6 Member.

7 24. Parties means the Class Representative and Defendant.

8 25. Settlement or Agreement means this Settlement Agreement and
9 Release.

10 26. Settlement Administrator means Kurzman, Carson Consultants
11 who were chosen by Class Counsel following a competitive bidding process.
12 Kurzman, Carson Consultants shall remain neutral when executing their
13 duties. The Settlement Administrator shall be bound to the terms of this
14 Settlement Agreement.

15 27. Settlement Class means the following:

16 *All persons who were the subject of a background report*
17 *prepared by Defendant, whose report contained one or more*
18 *items of criminal information which were non-convictions,*
19 *where such information antedated the report by more than*
20 *seven years, and whose report was issued at any time dating*
from February 17, 2014 to the date of execution of this
Agreement.

21 The Parties, in good faith, estimate that Settlement Class comprises 2,717
22 individuals.¹

23 28. Settlement Class Member means any individual who is a
24 member of the Settlement Class who does not file a timely and valid written
25 notice of intent to opt-out by the Opt-Out Deadline.

26
27 ¹ The Parties agree that Plaintiff can withdraw from the Settlement if additional review
28 indicates the Settlement Class is larger than 2,922 individuals.

1 29. Settlement Website means a website to be established and
2 maintained by the Settlement Administrator, at a URL to be agreed upon by
3 the Parties, and as described below in paragraph 42.

4 **III. RELIEF AND BENEFITS**

5 **A. NON-MONETARY RELIEF**

6 30. As a direct result of the filing of this Action, Defendant has
7 implemented an automated process to screen out information that should not
8 be reported pursuant to 15 U.S.C. § 1861c. See Ex. A. As part of this
9 Agreement, Defendant agrees to keep an automated screening process in
10 place for at least two years after the Effective Date unless Defendant
11 believes in good faith that a change in existing law or regulation warrants a
12 departure from this practice, at which time Defendant shall notify Class
13 Counsel of the change and the basis therefore. Nothing in this Agreement
14 shall prohibit Defendant from exercising reasonable business judgment to
15 make appropriate adjustments to the manner in which the automated review
16 is conducted (e.g., changing algorithms to account for new terms, etc.).

17 31. As a direct result of the filing of this Action, Defendant has
18 implemented procedures to confirm that charges which are dismissed or
19 dropped due to amendment of the charge prior to conviction are no longer
20 reported after seven years. See Ex. A. As part of this Agreement,
21 Defendant agrees to keep this procedure in place for at least two years after
22 the Effective Date unless Defendant believes in good faith that a change in
23 existing law or regulation warrants a departure from this practice, at which
24 time Defendant shall notify Class Counsel of the change and the basis
25 therefore. Nothing in this Agreement shall prohibit Defendant from
26 exercising reasonable business judgment to make appropriate adjustments to
27 the manner in which the automated review is conducted (e.g., changing
28 algorithms to account for new terms, etc.).

1 32. Defendant agrees to provide a copy of their report to all
2 Settlement Class Members who contact Defendant to request a copy per the
3 method stated on the notice and the Settlement Website.

4 **B. MONETARY RELIEF**

5 33. In exchange for the release of claims described below,
6 Defendant shall deposit the GSA of \$400,000 with the Settlement
7 Administrator, which shall be distributed as discussed in this section.

8 34. The GSA shall represent the full and complete extent of
9 Defendant's financial obligations under this Settlement Agreement, and
10 Defendant's financial obligations shall be complete when Defendant
11 deposits the GSA with the Settlement Administrator. There shall be no
12 reversion to Defendant from the GSA under any circumstance.

13 35. Distribution of Net Settlement Fund to Settlement Class
14 Members: Any Settlement Class Members who does not opt-out shall
15 receive a payment from the Net Settlement Fund. Defendant, in assembling
16 the class list, shall note which Settlement Class Members had outdated
17 information related to criminal charges on their reports, and which
18 Settlement Class Members had only outdated information related to traffic
19 offenses on their reports. The Net Settlement Fund shall be distributed to
20 Settlement Class Members such that individuals with any outdated criminal
21 charges on their reports shall receive a payment four times greater than
22 those with only outdated traffic violations on their reports.

23 36. Service Payment to Class Representative: Class Counsel will
24 petition the Court for a \$3,500 service payment to Class Representative, in
25 consideration for his service as a Named Plaintiff. If approved by the Court,
26 this service payment will be paid to the Class Representative by the
27 Settlement Administrator at the same time that checks are issued to the
28 Settlement Class Members. This amount shall be in addition to the amount

1 paid to the Class Representative as a class payment described in paragraph
2 34 above, but shall come out of the GSA. By signing this Agreement, the
3 Parties warrant that the Class Representative's service payment was
4 negotiated only after the amount to the class had been agreed upon. Should
5 the Court decline to approve any requested payment, or reduce such
6 payment, the Settlement shall still be effective.

7 37. Attorneys' Fees and Costs: Class Counsel may apply to the
8 Court for an award of fees and costs to be paid from the GSA. The
9 application for attorneys' fees shall be in an aggregate sum not to exceed
10 one-third of the GSA. Costs and out-of-pocket expenses shall be paid in
11 addition to attorneys' fees in the amount in which they were or are incurred
12 by Class Counsel and are approved for reimbursement by the Court. Costs
13 incurred by Class Counsel that are associated with the administration of the
14 Settlement shall also be eligible for reimbursement if approved by the
15 Court. By signing this Agreement, the Parties warrant that Class Counsel's
16 attorneys' fees and costs were negotiated only after the amount of the GSA
17 and method of distribution to Settlement Class Members had been agreed
18 upon. Should the Court decline to approve any requested payment, or
19 reduce such payment, the Settlement shall still be effective.

20 38. Settlement Administrator's Expenses: Reasonable expenses of
21 the Settlement Administrator shall be paid from the GSA up to a total of
22 \$23,000. In no event will Defendant be responsible for any further
23 administration expenses outside of the GSA.

24 39. Cy Pres: Settlement Class Members shall have 180 days after
25 checks are mailed to negotiate their checks. Thirty days following the close
26 of the check-negotiation period, the Settlement Administrator shall
27 distribute any remaining amounts in the Net Settlement Fund to the *Cy Pres*
28 Recipient.

1 40. Taxes: The Settlement Administrator on Defendant's behalf
2 will issue to each Settlement Class Member who received and cashed his or
3 her settlement check, an IRS Form 1099 if required by law and within the
4 time required by law. Nothing in this Agreement shall be construed as
5 Defendant or Class Counsel providing any advice regarding the payment of
6 taxes or the tax consequences of a Settlement Class Member's participation
7 in any portion of this Agreement.

8 **IV. NOTICE, OBJECTIONS, AND OPT-OUTS**

9 **A. NOTICE, WEBSITE, CONSUMER REPORTS AND**
10 **PHONE SUPPORT**

11 41. Within thirty days of receiving the Class List from Defendant,
12 the Settlement Administrator shall mail the Postcard Notice to Settlement
13 Class Members via first-class U.S. mail.

14 42. Prior to mailing, the Settlement Administrator shall utilize the
15 U.S. Postal Office's National Change of Address System and appropriate
16 proprietary software to verify and/or update Settlement Class Members'
17 addresses. Should any Postcard Notice be returned as undeliverable or
18 returned with a forwarding address, the Settlement Administrator shall re-
19 mail the Postcard Notice to the forwarding address and, if no forwarding
20 addresses is provided, utilize any other legally available database for the
21 purpose of finding new addresses and re-mailing.

22 43. The Settlement Administrator shall cause the Settlement
23 Website to "go live" on the date that the Postcard Notice is mailed and once
24 the Parties have agreed to the content of the Settlement Website. The
25 Settlement Website shall:

- 26 a. Provide Settlement Class Members with an opportunity to
27 update their contact information;

1 the Settlement by written notice correctly directed to the Settlement
2 Administrator and containing the requisite information shall remain a
3 member of the Settlement Class and shall be bound by any orders of the
4 Court about the Settlement or the Settlement Class. In no event shall
5 individuals who purport to opt out of the Settlement as a group, aggregate,
6 collective, or class be considered a successful opt out. Any individual in the
7 Settlement Class who fails to timely and validly opt out of the Settlement
8 Class under this Settlement Agreement shall be bound by the terms of this
9 Settlement.

10 46. Objections: Any Settlement Class Member who wishes to object
11 to the Settlement must file a timely written statement of objection with the
12 Clerk of Court, and mail a copy of that objection with the requisite postmark
13 to the Settlement Administrator no later than the Objections Deadline. The
14 Settlement Administrator shall transmit the objection to Class Counsel and
15 Defendant's counsel within one business day of receipt. The objection must
16 state the case name and number; the basis for and an explanation of the
17 objection; the name, address, telephone number, and email address of the
18 Settlement Class Member making the objection; and a statement of whether
19 the Settlement Class Member intends to appear at the fairness hearing, either
20 with or without counsel. In addition, any objection must be personally signed
21 by the Settlement Class Member and, if represented by counsel, then by
22 counsel. Any Settlement Class Member who fails to make objections in the
23 manner specified above shall be deemed to have waived any objections and
24 shall be foreclosed from making any objections, whether by appeal or
25 otherwise, to the Settlement. No Settlement Class Member shall be entitled to
26 contest in any way the approval of the terms and conditions of this
27 Agreement or the Court's Final Approval Order or Final Judgment except by
28 filing and serving written objections in accordance with the provisions of this

1 Agreement. Class Counsel and Defendant agree that no payments or other
2 consideration shall be provided to any objector or to counsel for any objector
3 to the Settlement in connection with the objector withdrawing an objection,
4 foregoing the right to appeal an objection, or withdrawing an appeal unless
5 such payment is disclosed to and approved by the Court.

6 **V. CLASS CERTIFICATION PURSUANT TO FED. R. CIV. P. 23**

7 47. The Parties stipulate to class certification pursuant to Fed. R.
8 Civ. P. 23 for purposes of settlement only. Should the Settlement not be
9 approved by the Court, Defendant specifically reserves its right to contest a
10 future motion for class certification. The Parties will request approval of a
11 Settlement Class for purposes of administration and resolution of this Action
12 only. If the Court does not grant either preliminary or final approval of this
13 Settlement, then the Parties agree to revert to their previous positions.

14 **VI. RELEASE OF CLAIMS**

15 48. Settlement Class Release: On the Effective Date of this
16 Settlement Agreement, for the Settlement Class benefits and for other good
17 and valuable consideration, the receipt and sufficiency of which are hereby
18 acknowledged by Named Plaintiff and Class Counsel, all Settlement Class
19 Members fully and forever release, waive, acquit, and discharge the Released
20 Parties from any and all claims the Settlement Class has under 15 U.S.C. §
21 1681c of the Fair Credit Reporting Act and any analogous state law claims
22 (collectively, the "Settlement Class Member Released Claims"). This release
23 explicitly includes claims for actual damages, statutory damages, and
24 punitive damages, as well as for attorneys' fees and costs. The Parties agree
25 that the payments made hereunder are meant to compensate Settlement Class
26 Members for all harms incurred as a result of the allegations set forth in the
27 First Amended Complaint. It is expressly intended and understood by the
28 Parties that this Settlement Agreement is to be construed as a complete

1 settlement, accord, and satisfaction of the Settlement Class Member Released
2 Claims.

3 **VII. NO ADMISSION OF LIABILITY**

4 49. Defendant does not admit any liability, and this Settlement shall
5 not constitute an admission of liability by Defendant. Nothing in this
6 Agreement nor any action taken under it shall be deemed or construed as an
7 admission of wrongdoing of any nature on the part of Defendant with respect
8 to any allegations or claims, nor does it constitute an admission that others
9 are similarly situated or that any putative class meets the requirements for
10 class certification.

11 **VIII. TIMING OF BRIEFING, CAFA NOTICE, FINAL FAIRNESS**
12 **HEARING, AND PAYMENTS**

13 50. Named Plaintiff shall endeavor to move for preliminary
14 settlement approval by January 30, 2017, shall propose the preliminary
15 approval order attached hereto as Exhibit C, and shall request that the
16 Settlement be preliminarily approved without a formal hearing and based on
17 the submission of pleadings only. The Parties agree that Named Plaintiff can
18 cite to the Federal Rule 30(b)(6) witness transcript in settlement approval
19 briefing. Defendant shall not oppose the motion for preliminary approval.

20 51. Within ten days of the Named Plaintiff moving for preliminary
21 settlement approval, Defendant shall serve upon the appropriate state
22 officials of each state in which a Named Plaintiff or a Settlement Class
23 Member resides and upon the pertinent U.S. Attorney General for each such
24 state, a notice of this proposed Settlement, and other filings required by the
25 Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715. Defendant
26 will provide a copy of this notice to Class Counsel and will file with the
27 Court a notice of compliance with CAFA’s requirements.

28

1 52. Named Plaintiff will file his Motion for Attorneys' Fees and
2 Costs, Class Representative service payment, and Payment of the Settlement
3 Administrator's Expenses no later than fourteen days before the Opt-Out
4 Deadline.

5 53. Named Plaintiff shall move for final settlement approval no later
6 than thirty days after the Opt-Out Deadline, and in cooperation with
7 Defendant's counsel, Class Counsel shall propose the Final Approval Order
8 attached hereto as Exhibit D, Defendant shall not oppose that motion, and the
9 Parties shall jointly request a fairness hearing as soon as is practicable but no
10 sooner than forty-five days after the Opt-Out Deadline.

11 54. No later than five business days following the Effective Date,
12 Defendant shall wire transfer the GSA to the account established by the
13 Settlement Administrator.

14 55. As soon as is practicable, but no later than twenty days
15 following the Effective Date, the Settlement Administrator shall mail checks
16 to all Settlement Class Members, including the service payment to the Class
17 Representative.

18 56. As soon as is practicable, but no later than twenty days
19 following the Effective Date, the Settlement Administrator shall wire any
20 approved attorneys' fees and costs to Class Counsel.

21 **IX. SETTLEMENT CONTINGENT ON APPROVAL**

22 57. Settlement Contingent on Final Approval: This Settlement is
23 contingent upon final approval of a class action settlement on behalf of the
24 Settlement Class described herein. In the event that a court of competent
25 jurisdiction rejects any portion of this Settlement Agreement, the Parties
26 agree that they will return to mediation with a mutually acceptable mediator.
27 In the event that a court of competent jurisdiction does not finally approve
28 such settlement for the Settlement Class, this Agreement shall have no effect.

1 58. Settlement Modification. The Parties may agree by stipulation
2 executed by counsel to modify the exhibits to this Agreement to effectuate
3 the purpose of this Agreement or to conform to guidance from the Court
4 about the contents of such exhibits without the need to further amend this
5 Agreement. Any stipulation modifying the Settlement must be filed with the
6 Court and is subject to the Court's approval.

7 **X. MISCELLANEOUS**

8 59. Entire Agreement: This Agreement, together with its exhibits,
9 constitutes the full and entire agreement among the Parties with regard to the
10 subject matter and supersedes all prior representations, agreements, promises,
11 or warranties, written, oral, or otherwise. No party shall be liable or bound to
12 any other party for any prior representation, agreement, promise, or warranty,
13 oral or otherwise, except for those that are expressly set forth in or attached
14 to this Agreement.

15 60. No Prior Assignments: The Named Plaintiff represents,
16 covenants, and warrants that he has not directly or indirectly, assigned,
17 transferred, encumbered, or purported to assign, transfer, or encumber to any
18 person or entity any portion of any liability, claim, demand, action, cause of
19 action, or that are rights released or discharged in this Settlement except as
20 set forth in this Agreement.

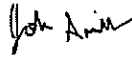
21 61. Construction: The Parties agree that the terms and conditions of
22 this Agreement are the result of lengthy, arm's-length negotiations between
23 the Parties and that this Agreement will not be construed in favor of or
24 against any party by reason of the extent to which any party or the party's
25 counsel participated in the drafting of this Agreement.


26 62. Construction of Captions and Interpretations: Paragraph titles,
27 captions, or headings in this Agreement are inserted as a matter of
28 convenience and for reference and in no way define, limit, extend, or

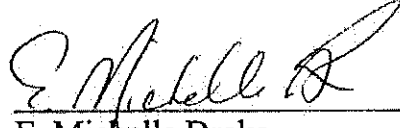
1 describe the scope of this Agreement or any provision in it. Each term of this
2 Agreement is contractual and is not merely a recital.

3 63. This Agreement may be executed in one or more counterparts.
4 All executed counterparts and each of them shall be deemed to be one and
5 the same Agreement. This Agreement may be executed by signature
6 delivered by facsimile, PDF, text, or .jpg and need not be the original "ink"
7 signature. A complete set of executed counterparts shall be filed with the
8 Court. This Agreement shall become binding upon its execution by the Class
9 Representative, Defendant, and counsel.

10
11 IN WITNESS WHEREOF the Parties and their counsel have caused this
12 Settlement Agreement to be duly executed.

13
14 Date: 1/20/2017 
15 _____
16 John Smith

17 A-CHECK AMERICA INC.
18 d/b/a A-CHECK GLOBAL
19 Date: 1/26/17 By: 
20 Its: DON SHIMIZU

21 COUNSEL FOR PLAINTIFF
22 BERGER & MONTAGUE, P.C.
23
24 Dated: January 24, 2017 By: 
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Dated: 1/27/2017, 2017

By: 
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EXHIBIT A

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13 Attorneys for Defendant
14 A-CHECK AMERICA INC. d/b/a
A-CHECK GLOBAL

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 JOHN SMITH, individually and as
18 a representative of the Classes,

19 Plaintiff,

20 v.

21 A-CHECK AMERICA INC. d/b/a
22 A-CHECK GLOBAL,

23 Defendant.

CLASS ACTION

Case No. 16-cv-00174-VAP-KK

Assigned to the Hon. Virginia A. Phillips

Magistrate Judge Hon. Kenly Kiya Kato

**DECLARATION OF GARY
HANLEY REGARDING
SETTLEMENT AGREEMENT**

Hearing:
24 FAC Filed: February 17, 2016
Discovery Cut Off: January 2, 2017
25 Trial Date: None set

1 I, Gary Hanley, declare and state as follows:

2 1. I have personal knowledge of the facts contained in this declaration,
3 and if called as a witness, I could and would testify as to their accuracy.

4 2. I am the Compliance Director for A-Check America, Inc., d/b/a A-
5 Check Global ("A-Check"). In this position, I am familiar with A-Check's
6 policies, practices, and procedures regarding its compliance with the Fair Credit
7 Reporting Act ("FCRA") and state equivalent laws.

8 3. A-Check takes compliance with the FCRA and state equivalent laws
9 seriously. A-Check ensures compliance through various means, including:
10 extensive training of its employees and clients; enforcement of comprehensive
11 policies, procedures, and practices; detailed review of every consumer report for
12 compliance before it is sent to the client; and periodic auditing of its quality and
13 control department to ensure that it is properly reviewing consumer reports.

14 4. In July 2015, Plaintiff John Smith ("Plaintiff") filed a class action
15 complaint against A-Check alleging that it violated Section 1681c(a) of the FCRA
16 by preparing consumer background reports that contained dismissed charges that
17 pre-date the consumer reports by more than seven years. Specifically, Plaintiff
18 alleged that A-Check should not have reported original charges older than seven
19 years that were later amended even if there was ultimately a conviction for a
20 different offense.

21 5. After Plaintiff filed this lawsuit in July 2015, A-Check reviewed its
22 policy in connection with Plaintiff's allegations. Because a charge ultimately
23 resulted in a conviction, albeit for a different offense, A-Check believed that it was
24 lawful to report the original charge so that it was reporting complete data as
25 required under Section 1681k.

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EXHIBIT B

COURT ORDERED

NOTICE

Smith v. A-Check

America Inc.

Class Action Notice

Smith v. A-Check America Inc.
c/o ADMINISTRATOR
ADDRESS
ADDRESS

FIRST CLASS
MAIL
US POSTAGE
PAID
Permit# _



Postal Service: Please do not mark barcode

ABC-1234567-8

First Last
Address1
Address2
City, State, Zip Code

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
Case No. 5:16-CV-00174

Class Action Notice

Smith v. A-Check America Inc.
c/o ADMINISTRATOR
ADDRESS



Name/Address Changes:

«First1» «Last1»
«CO»
«Addr1» «Addr2»
«City», «St» «Zip» «Country»

IF YOU MOVE, send your CHANGE OF ADDRESS to ADMINISTRATOR at the above address.

If the Court approves the Settlement and all requested attorneys' fees, costs, administration expenses, and service awards, your estimated settlement payment will be \$___. Your payment may be smaller or larger depending on the number of Settlement Class Members that choose to participate in the Settlement. YOU DO NOT NEED TO DO ANYTHING TO RECEIVE THAT PAYMENT.

A settlement has been reached in a class action lawsuit against A-Check. Plaintiff alleges that A-Check prepared background reports that contained information not permitted under the Fair Credit Reporting Act, specifically criminal non-convictions older than seven years. A-Check denies that it violated any law, but has agreed to the settlement to avoid the uncertainties and expenses associated with continuing the litigation. This notice summarizes the proposed Settlement. For the precise terms and conditions of the settlement, review the Settlement Agreement, available at www.URL.com.

Am I a Class Member? A-Check's records indicate you are a Class Member.

What Can I Get? If the Settlement is approved by the Court and you do not choose to exclude yourself from the Settlement Class, you will receive a settlement payment. The amount of your payment will depend on the amount of attorneys' fees, Class Representative service payment, and administration costs approved by the Court. The total gross maximum settlement amount is \$400,000. After court-approved deductions, this fund will be divided among the class members, with those whose reports contained dismissed criminal charges (rather than traffic violations) receiving more. Class Counsel estimates that those in your category will receive approximately \$___, although this number will vary depending on the amount of attorneys' fees, Class Representative service payment and administration costs. You can also obtain instructions regarding how to receive a free copy of the background report(s) A-Check produced about you by going to www.XXX.com.

How Do I Get a Payment? You do not need to take any action in order to receive a payment.

What Are My Other Options? If you do not wish to participate in the settlement, and do not wish to receive a settlement payment, you may exclude yourself from the Settlement Class by mailing a written notice to the Settlement Administrator by **Date**. If you exclude yourself, you cannot receive a settlement payment, but you keep any rights you may have to sue A-Check over the legal issues in this litigation. If you do not exclude yourself, you and/or your lawyer have the right to appear before the Court and/or object to the Settlement. Your written objection must be filed with the Court no later than **Date**. Specific instructions on how to object to or exclude yourself from the Settlement are available at www.URL.com.

Who Represents Me? The Court has appointed a team of lawyers from Berger & Montague, P.C. to serve as Class Counsel. They will petition to be paid legal fees and expenses up to \$XX from the settlement fund. However, you may hire your own lawyer at your expense if you so choose.

When Will the Court Consider the Settlement? The Court will hold a final approval hearing on **DATE** at **TIME** at **Location**. At that hearing, the Court will hear any objections concerning the fairness of the Settlement, decide whether to approve the requested attorneys' fees, Class Representative awards, and administration costs, and determine the final fairness of the Settlement.

How Do I Get More Information? For more information, including the full Notice and Settlement Agreement, go to www.URL.com, or contact the Settlement Administrator at 1-800-XXX-XXXX.

Business Reply Mail
Artwork

EXHIBIT C

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

JOHN SMITH, individually and as
a representative of the Class,

Plaintiff,

v.
A-CHECK AMERICA INC. d/b/a
A-CHECK GLOBAL,

Defendant.

Case No.: 5:16-cv-00174-VAP-KK

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Based on Plaintiff's Unopposed Motion for Preliminary Approval for the Proposed Class Action Settlement between Plaintiff John Smith ("Named Plaintiff" or "Class Representative") and A-Check America Inc. d/b/a A-Check Global ("A-Check" or "Defendant") in the above-captioned matter ("Lawsuit"), as set forth in the Settlement Agreement entered into between Plaintiff and Defendant (the "Settlement Agreement"), and for good cause shown therein, IT IS HEREBY ORDERED:

1. Unless defined herein, all capitalized terms in this Order shall have the same meanings as set forth in the Settlement Agreement.

2. For settlement purposes only, the Court preliminarily finds that the Settlement of the Lawsuit, on the terms and conditions set forth in the Settlement Agreement, including all exhibits thereto, is fair, reasonable, adequate and in the best interest of the Settlement Class Members and within the range of reasonableness for preliminary settlement approval. The Court finds that: (a) the Settlement Agreement resulted from extensive arm's-length negotiations; and (b) the Settlement Agreement is sufficiently reasonable to

warrant notice of the Settlement to persons in the Settlement Class and a full hearing on the approval of the Settlement.

3. Pursuant to Fed. R. Civ. P. 23(b)(3), the Court conditionally certifies, for settlement purposes only, the following Settlement Class with respect to the claims asserted against A-Check in the Lawsuit:

All persons who were the subject of a background report prepared by Defendant, whose report contained one or more items of criminal information which were non-convictions, where such information antedated the report by more than seven years, and whose report was issued at any time dating from February 17, 2014 to [Date]

4. The Court preliminarily finds, for purposes of settlement only, that the Lawsuit meets all the prerequisites of Rule 23 of the Federal Rules of Civil Procedure, including that:

(a) The Settlement Class appears to be so numerous that joinder of all members is impracticable;

(b) There appear to be questions of law or fact common to the Settlement Class for purposes of determining whether this Settlement should be approved;

(c) The Named Plaintiff's claims appear to be typical of the claims being resolved through the proposed Settlement;

(d) The Named Plaintiff appears to be capable of fairly and adequately protecting the interests of the Settlement Class in connection with the proposed Settlement;

(e) Common questions of law and fact appear to predominate over questions affecting only individual persons in the Settlement Classes. Accordingly, the Settlement Class appears to be sufficiently cohesive to warrant settlement by representation; and

(f) Certification of the Settlement Class appears to be superior to

other available methods for the fair and efficient resolution of the claims of the Settlement Class.

5. For settlement purposes only, the Court preliminarily certifies Plaintiff John Smith as the Class Representative. The Court preliminarily appoints Berger & Montague, P.C. as Class Counsel. The Court preliminarily finds that Class Counsel have and will fairly and adequately represent the interests of the Settlement Class Members.

6. The court appoints Kurzman, Carson Consultants as the Settlement Administrator in this case, to carry out the tasks set forth in the Settlement Agreement.

7. The Court approves the Postcard Notice, attached to the Settlement Agreement as Exhibit B, for distribution in accordance with the schedule set forth in the Settlement Agreement. The Court finds that the proposed method of class notice fully satisfies the requirements of due process, the Federal Rules of Civil Procedure, and constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

8. All Settlement Class Members have the right to either opt-out or object to this Settlement pursuant to the procedures and schedule included in the Settlement. The opt-out and objection deadlines shall be calculated as set forth in the Settlement Agreement and shall be included on the Postcard Notices where so indicated.

9. A Final Approval Hearing shall take place before the Honorable Virginia A. Phillips on _____, 2017 at _____, at the United States District Court, Central District of California, First Street Courthouse, Courtroom 8A, 8th Floor, 350 West 1st Street, Los Angeles, CA 90012, to determine: whether the proposed Settlement of the Lawsuit on the terms and conditions provided for in the Settlement Agreement is fair, reasonable and

adequate and should be approved; whether the Final Approval Order, as provided for in the Settlement Agreement, should be entered; and the amount of any fees and costs that may be awarded to Class Counsel, and the amount of any service award that may be awarded to the Named Plaintiff, as provided for in the Settlement Agreement. The Court will also hear and consider any properly lodged objections at that time under the process set forth in the Settlement Agreement. The Final Approval Hearing may be postponed, adjourned, or rescheduled by order of the Court without further notice to the Settlement Class Members.

10. Objections by any Settlement Class Member to the Settlement Agreement shall be heard by the Court at the Final Approval Hearing. Written objections shall be sent to the Clerk of Court and the Settlement Administrator and must state the case name and number; the basis for and an explanation of the objection; the name, address, telephone number, and email address of the Settlement Class Member making the objection; and a statement of whether the Settlement Class Member intends to appear at the fairness hearing, either with or without counsel. In addition, any objection must be personally signed by the Settlement Class Member and, if represented by counsel, then by counsel. Any Settlement Class Member who fails to object in the manner prescribed herein shall be deemed to have waived his or her objections and shall be foreclosed from making any objections, whether by appeal or otherwise, to the Settlement.

11. Class Counsel shall file any application for an award of attorneys' fees and costs, Class Representative Service Payment, and payment of the Settlement Administrator's expenses no later than fourteen (14) days prior to the Opt-Out Deadline.

12. All proceedings in the Lawsuit are stayed pending final approval of the Settlement, except as may be necessary to implement the Settlement or comply with the terms of the Settlement Agreement.

13. Counsel for the parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the settlement that are not materially inconsistent with either this Order or the terms of the Settlement Agreement.

SO ORDERED:

Dated: _____

Hon. VIRGINIA A. PHILLIPS
Chief United States District Judge

EXHIBIT D

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

JOHN SMITH, individually and as
a representative of the Class,

Plaintiff,

v.
A-CHECK AMERICA INC. d/b/a
A-CHECK GLOBAL,

Defendant.

Case No.: 5:16-cv-00174-VAP-KK

**[PROPOSED] FINAL
APPROVAL ORDER**

The Court, having considered Plaintiff's Unopposed Motion for Final Approval of the Proposed Class Action Settlement between Plaintiff John Smith ("Named Plaintiff" or "Class Representative") and A-Check America Inc. d/b/a A-Check Global ("A-Check" or "Defendant") in the above-captioned matter ("Lawsuit"), the Settlement Agreement entered into between Plaintiff and Defendant (the "Settlement Agreement"), the any objections received, the record, the submissions and arguments presented by counsel, and, having held a Final Approval Hearing on [DATE], finds that:

1. Unless defined herein, for purposes of this Final Approval Order, all capitalized terms in this Final Approval Order shall have the same meanings as set forth in the Settlement Agreement.

2. This Court has jurisdiction over the subject matter of this action and over the settling parties hereto.

3. On [DATE], this Court preliminarily approved the Settlement and certified, for settlement purposes, the Settlement Class as defined in the Settlement Agreement.

4. Pursuant to the Court's Preliminary Approval Order, the Postcard

Notice was mailed. The Court hereby finds and concludes that the Postcard Notice was disseminated to members of the Settlement Class in accordance with the terms set forth in the Settlement Agreement and in compliance with this Court's Preliminary Approval Order. The Court further finds and concludes that the Postcard Notice and the distribution procedures set forth in the Settlement Agreement fully satisfy Fed. R. Civ. P. 23 and the requirements of due process, was the best notice practicable under the circumstances, provided individual notice to all members of the Settlement Class who could be identified through reasonable effort, provided an opportunity for the Settlement Class Members to object or exclude themselves from the Settlement, and support the Court's exercise of jurisdiction over the Settlement Class as contemplated in the Settlement and this Final Approval Order. The Court hereby finds and concludes that the notice provided by Defendant to the appropriate state and federal officials pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, fully satisfied the requirements of that statute.

5. The Settlement Class Members were given an opportunity to object to the settlement. The Settlement Class Members who made valid and timely requests for exclusion are excluded from the Settlement and are not bound by this Final Approval Order. Only _____ Settlement Class Members requested exclusion. The identities of such persons are set forth in the Settlement Administrator's Declaration, ECF No. _____.

6. The Settlement Agreement was arrived at as a result of arm's-length negotiations conducted in good faith by experienced attorneys familiar with the legal and factual issues of this case.

7. The Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class in light of the complexity, expense, and duration of litigation, as well as the risk involved in establishing liability and damages and in maintaining the class action through trial and appeal.

8. The settlement consideration provided by the Settlement Agreement constitutes fair value given in exchange for the release of the Released Claims against the Released Parties. The Court finds that the consideration provided to members of the Settlement Class is reasonable, considering that facts and circumstances of the claims and affirmative defenses asserted in the Lawsuit, and the potential risks and likelihood of success of alternatively pursuing trial on the merits.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

9. The Settlement Agreement is finally approved as fair, reasonable, adequate, just, and in compliance with all applicable requirements all applicable laws, and in the best interest of the Settlement Class. Any objections have been considered and are hereby overruled. The Settlement Agreement, which shall be deemed incorporated herein, and the Settlement are finally approved and shall be consummated in accordance with the terms and provisions thereof, except as amended by any subsequent order issued by this Court.

10. Pursuant to Fed. R. Civ. P. 23(b)(3), the Lawsuit is hereby certified, for settlement purposes only, as a class action on behalf of the following Settlement Class Members with respect to the claims asserted:

All persons who were the subject of a background report prepared by Defendant, whose report contained one or more items of criminal information which were non-convictions, where such information antedated the report by more than seven years, and whose report was issued at any time dating from February 17, 2014 to [Date].

11. Pursuant to Fed. R. Civ. P. 23, the Court certifies Named Plaintiff John Smith as the Class Representative and appoints Berger & Montague, P.C. as Class Counsel.

12. For settlement purposes only, the Court finds that the Lawsuit satisfies the applicable prerequisites for class action treatment under Fed. R. Civ. P. 23, namely:

- The Settlement Class is so numerous that joinder of all members is impracticable;
- There are questions of law and fact common to the Settlement Class Members;
- The claims of the Class Representative are typical of the claims of the Settlement Class Members;
- The Class Representative and Class Counsel have fairly and adequately represented and protected the interests of all of the Settlement Class Members;
- Common questions of law and fact predominate over questions affecting only individual Settlement Class Members; and
- Class treatment of these claims will be efficient and manageable, thereby achieving an appreciable measure of judicial economy, and a class action is superior to other available methods for a fair and efficient adjudication of this controversy.

13. The Plaintiff and the Settlement Class Members are permanently enjoined from prosecuting any of the Settlement Class Member Released Claims against any of the Released Parties, as set forth in the Settlement Agreement.

14. This Final Approval Order is binding on all Settlement Class Members, except those individuals who validly and timely excluded themselves from the Settlement.

15. The Court hereby retains continuing jurisdiction over the parties and matters relating to the Lawsuit and/or Settlement Agreement, including the administration, interpretation, construction, effectuation, enforcement,

and consummation of the Settlement, including its injunctive provisions, and this Final Approval Order.

16. The Court approves Class Counsel's application for \$ _____ in attorneys' fees and costs, and for a service award to the Named Plaintiff in the amount of \$ _____, to be paid from the Settlement Fund. The Court further approves and authorizes the deduction of an amount not to exceed \$ _____ from the Settlement Fund to cover the Settlement Administrator's fees and costs. These amounts are to be deducted from the Settlement Funds as set forth in the Settlement Agreement.

17. This Court hereby dismisses the Lawsuit against Defendant, including all claims against said Defendant, with prejudice, without costs to any party, except as expressly provided for in the Settlement Agreement.

18. Finding that there is no just reason for delay, the Court orders that Final Approval Order shall constitute a final judgment pursuant to Fed. R. Civ. P. 54 that is binding on the settling parties and the Settlement Class.

SO ORDERED:

Dated: _____

Hon. VIRGINIA A. PHILLIPS
Chief United States District Judge

EXHIBIT E

- This is a Court-authorized notice of a proposed Settlement in a class-action lawsuit.
- The lawsuit is about background checks that A-Check America Inc. d/b/a A-Check Global (“A-Check”) produced on class members.
- You do not need to do anything in order to receive a payment from this Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
No Response Needed	You do not need to do anything to participate in this Settlement. If the Settlement is approved by the Court, unless you choose to exclude yourself, you will receive a payment.
Exclude Yourself	This is the only option that allows you to be part of any other lawsuit or legal action against A-Check about the matters being resolved in this Settlement. However, you will not receive payment in this Settlement.
Object	Write to the Court about why you object to the Settlement.
Go to a Hearing	Ask to speak in Court about the fairness of the Settlement.

- Your rights and options—and the deadlines to exercise them—are explained in this Notice.

This Notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, you may view the Settlement Agreement at www.URL.com. You may also contact the Settlement Administrator at 1-800-XXX-XXXX, access the Court docket in this case through the Court’s Public Access to Court Electronic Records (PACER) system at www.cacd.uscourts.gov, or visit the Office of the Clerk of the Court for the Central District of California, Western Division, Los Angeles Courthouse, 312 N. Spring Street, Room G-8, Los Angeles, CA 90012, between 9:00 AM and 4:00 PM, Monday-Friday, excluding Court holidays.

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BASIC INFORMATION

1. Why did I get this Notice?

The Court in this case approved the posting of this Notice so that it could be viewed by potential members of the Settlement Class. The Settlement Class includes:

All persons who were the subject of a background report prepared by A-Check, whose report contained one or more items of criminal information which were non-convictions older than seven years, and whose report was issued at any time dating from February 17, 2014 to to the DATE.

If you are unsure of whether you are in the Settlement Class, you can contact the Settlement Administrator at XX.

Composition of the Settlement Class is based upon A-Check's records.

This Notice has been posted because members of the Settlement Class have a right to know about a proposed settlement of a class-action lawsuit in which they are class members, and about all of their options, before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after objections or appeals relating to that Settlement are resolved, the benefits provided for by the Settlement will be available to members of the Settlement Class.

This Notice explains the Litigation, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. A full copy of the Settlement Agreement may be reviewed at the Settlement Website: www.URL.com. This Notice contains only a summary of the Settlement Agreement.

The Court in charge of this case is the United States District Court for the Central District of California, and the case is known as *Smith v. A-Check America Inc. d/b/a A-Check Global*, Case No. 5:16-cv-00174 (the "Litigation"). The person who filed this Litigation is called the Named Plaintiff, and A-Check is the Defendant.

2. What is the Litigation about?

Named Plaintiff alleges that A-Check violated the Fair Credit Reporting Act by preparing background reports that contained information which legally could not be reported, specifically criminal non-convictions older than seven years.

A-Check disputes the Named Plaintiff's allegations and denies all liability to Named Plaintiff and the Settlement Class. A-Check denies Named Plaintiff's allegations and has raised a number of defenses to the claims asserted.

The Parties are settling the Litigation to avoid the risk and expense of further litigation. No court has found A-Check to have violated the law in any way. No court has found that the Named Plaintiff could recover any certain amount in this Litigation.

Although the Court has authorized notice to be given of the proposed Settlement, this Notice does not express the opinion of the Court on the merits of the claims or defenses asserted by either side in the Litigation.

3. Why is this case a class action?

Class actions are lawsuits in which the claims and rights of many people are decided in a single proceeding. In a class action, representative plaintiffs are called "Class Representatives." They seek to assert claims on behalf of

all members of a class or classes of similarly situated people. By doing this, they can conserve resources by asserting their claims in a single lawsuit. Class actions often involve circumstances where claimed individual damages are too small for people to proceed on their own, but where the defendant's conduct affected a lot of people all in the same way.

Lawyers who represent people who file class actions are called "class counsel." To date, the lawyers who brought this case ("Class Counsel") have not been paid any money for their work and have paid all their expenses out of pocket. They will only be paid if they win the Litigation or if the Court approves the Settlement.

4. Why is there a Settlement?

The Court did not decide this case in favor of the Named Plaintiff or in favor of A-Check. If approved, the Settlement will stop the Litigation from being litigated any more. If the Litigation continued to be litigated, there is a possibility that the Settlement Class would receive nothing. There is also the possibility that A-Check would be required to pay more than it has agreed to pay as a result of the Settlement.

Class Counsel investigated the facts and applicable law regarding the Named Plaintiff's claims and A-Check's defenses. The Parties engaged in lengthy and arm's-length negotiations to reach this Settlement. Named Plaintiff and Class Counsel believe that the proposed Settlement is fair, reasonable, and adequate and in the best interests of the Settlement Class.

Both sides agree that, by settling, A-Check is not admitting any liability or that it did anything wrong. Both sides want to avoid the uncertainties and expense of further litigation.

WHO IS IN THE SETTLEMENT

5. How do I know if I am part of the Settlement?

Everyone who fits into this description is a part of the Settlement:

All persons who were the subject of a background report prepared by A-Check, whose report contained one or more items of criminal information which were non-convictions older than seven years, and whose report was issued at any time dating from February 17, 2014 to [DATE].

If you received a Postcard Notice, A-Check's records indicate you are a member of the Settlement Class. If you are not certain as to whether you are a member of the Settlement Class, you may contact the Settlement Administrator to find out. The Administrator can be reached at 1-800-XXX-XXXX. The question of class membership will be determined based on A-Check's records.

THE SETTLEMENT BENEFITS—WHAT YOU GET

6. What does the Settlement provide?

The Settlement provides non-monetary and monetary benefits for Settlement Class Members.

First, A-Check has agreed to implement an automated process to screen out information that should not be reported on background reports. As part of this agreement, A-Check will keep an automated screening process in place for at least two years. A-Check has already implemented procedures to confirm that charges which are

dismissed or dropped due to amendment of a criminal charge prior to conviction are no longer reporter after seven years.

Second, A-Check will provide members of the Settlement Class with free copies of background report(s) that A-Check produced about them upon the Settlement Class Member's request.

Third, A-Check will provide a Settlement fund of \$400,000. This money will be divided among the Settlement Class Members, and will also be used to pay for any Court-approved attorneys' fees, Class Representative awards, and administration costs. After Court-approved deductions, the Settlement Fund will be divided among Class Members, with those Class Members whose reports contained dismissed criminal charges receiving four times more than those whose reports contained dismissed civil violations (such as traffic tickets). The exact amount each Settlement Class Member will receive will depend on the amount of fees, awards and costs, as well as the number of Settlement Class Members participating in the Settlement. The parties estimate those with criminal information on their reports will receive approximately \$XX and those with traffic information on their reports will receive approximately \$XX. The postcard notice you received tells you which group you are in.

7. How can I get a benefit?

You do not need to do anything to be eligible to receive a payment under this Settlement. Unless you exclude yourself from the Class, you will automatically receive a payment.

Your interest as a member of the Settlement Class will be represented by the Named Plaintiff and Class Counsel. You will be bound by any judgment arising from the Settlement. If the Settlement is approved, the Settlement Administrator will send you a check for any money to which you are entitled under the Settlement.

If you change your address, you must mail a notification of your new address to the Settlement Administrator or submit a change of address online at www.URL.com.

8. When would I get my benefit?

The Court will hold a final approval hearing on DATE at TIME to decide whether to approve the Settlement. If the Settlement is approved, there may be appeals. Payments to members of the Settlement Class will be made only if the Settlement is finally approved. This may take some time, so please be patient.

9. What am I giving up to get a benefit or stay in the Settlement Class?

Upon the Court's approval of the Settlement, all members of the Settlement Class who have not filed a timely and proper notice to exclude themselves from the Settlement Class (as well as their spouses, heirs, and others who may possess rights on their behalf), fully release A-Check from any and all claims arising under 15 U.S.C. § 1681c of the Fair Credit Reporting Act and any analogous state law claims (collectively, the "Settlement Class Member Released Claims"). This release explicitly includes claims for actual damages, statutory damages, and punitive damages, as well as for attorneys' fees and costs, relating to the Settlement Class Member Released Claims. This release is limited to the Settlement Class Member Released Claims and is not intended to be construed as a general release of all employment related claims.

This release may affect your rights, and may carry obligations, in the future. To view the full terms of this release, which are contained in the Settlement Agreement, please visit www.URL.com.

10. How do I get out of the Settlement?

If you choose to be excluded from the Settlement (or “opt out”), you will not be bound by any judgment or other final disposition of the Litigation and you will not receive any settlement payment. You will retain any claims against A-Check you might have. To opt out, you must state in writing your desire to be excluded from the Settlement Class. **Your request for exclusion must be sent by first-class mail, postmarked on or before DATE**, addressed to:

DATE TO BE POSTMARKED
c/o Settlement Administrator
ADDRESS
ADDRESS

If the request is not postmarked on or before DATE, your request for to exclude yourself will be invalid, and you will be bound by the terms of the Settlement approved by the Court, including without limitation, the judgment ultimately rendered in the case, and you will be barred from bringing any claims which arise out of or relate in any way to the claims in the Litigation as specified in the release referenced in paragraph 9 above.

11. If I don't exclude myself, can I sue A-Check for the same thing later?

No. Unless you exclude yourself, you give up any right to sue A-Check for the claims that this Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that case immediately.

12. If I exclude myself, can I get benefits from this Settlement?

No. If you exclude yourself, you are not part of the Settlement.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court has appointed Berger & Montague, P.C., as Class Counsel:

E. Michelle Drake
Berger & Montague, P.C.
43 SE Main Street, Suite 505
Minneapolis, MN 55414

You may hire your own attorney to advise you, but if you hire your own attorney, you will be responsible for paying that attorneys' fees.

14. How will the lawyers and Class Representative be paid?

Class Counsel have not been paid anything for their representation of the Settlement Class to date. They have paid all the expenses of litigation out of their own pockets. If they were to lose the case, they would be paid nothing.

In connection with this Settlement, Class Counsel intend to apply to the Court for an award of attorneys' fees, in an amount not to exceed \$133,333.33. That amount is equal to one-third of the Settlement fund. They also intend to seek out-of-pocket litigation expenses incurred during the Litigation. The Court will evaluate whether this fee

request is reasonable in light of Class Counsel's skill and the risk they undertook in bringing the Litigation. The Court may award less.

The Court has appointed Named Plaintiff John Smith as Class Representative. Class Counsel also will seek service awards for the Named Plaintiff of no more than \$3,500 for Plaintiff John Smith. The award is intended to compensate the Class Representative for the time and effort he has put into bringing this Litigation on behalf of everyone in the Settlement Class.

The costs of Settlement Administration are expected to be approximately \$XX. If awarded by the Court, all of these amounts will be paid directly out of the Settlement Fund.

OBJECTING TO THE SETTLEMENT

15. How do I tell the Court that I don't like the Settlement?

You can ask the Court to deny approval of the Settlement by filing an objection. You cannot ask the Court to order a larger Settlement; the Court can only approve or deny the Settlement as-is. If the Court denies approval, no Settlement payments will be sent out and the Litigation will continue. If that is what you want to happen, you must object.

You may object to the proposed Settlement in writing. You may also appear at the final approval hearing, either in person, or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney.

All written objections and supporting papers must (a) clearly identify the case name and number (*Smith v. A-Check America Inc. d/b/a A-Check Global*, Case No. 5:16-cv-00174); (b) contain the basis for and an explanation of the objection; (c) contain your name, address, telephone number, and email address (if you have one), and be signed by you or any attorney representing you; (d) include a statement of whether you intend to appear at the final approval hearing, either with or without an attorney; (e) be submitted to the Court, either by mail to the Clerk of Court, United States District Court for the Central District of California, Los Angeles Courthouse, 312 N. Spring Street, Room G-8, Los Angeles, CA 90012, or by filing your objection in person at any location of the United States District Court for the Central District of California, and (f) a copy mailed to the Settlement Administrator. Your objection must be filed and/or postmarked on or before **DATE**.

Any member of the Settlement Class who does not file and serve an objection in the time and manner described above will not be permitted to raise that objection later.

The Parties have agreed and it is a term of the Settlement that no payments will be made to any objector, or any objector's counsel, for any reason, without district court approval.

16. What's the difference between objecting and excluding?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement. Excluding yourself is telling the Court that you don't want to be part of the Settlement. If you exclude yourself, you have no basis to object, because the Litigation no longer affects you.

17. Where and when will the Court decide whether to approve the Settlement?

There will be a final approval hearing to consider approval of the proposed Settlement on DATE at TIME at the United States District Court for the Central District of California, First Street Courthouse, Courtroom 8A, 8th Floor, 350 West 1st Street, Los Angeles, CA 90012. The hearing may be postponed to a later date without further notice; Settlement Class Members should check www.URL.com regularly for any changes to this date. The purpose of the hearing is to determine the fairness, reasonableness, and adequacy of the terms of Settlement; whether the Settlement Class is adequately represented by the Class Representative and Class Counsel; and whether an order and Final Judgment should be entered approving the proposed Settlement. The Court also will consider Class Counsel's application for an award of attorneys' fees and expenses and Class Representative's compensation.

You will be represented at the final approval hearing by Class Counsel, unless you choose to enter an appearance in person or through your own counsel. The appearance of your own attorney is not necessary to participate in the hearing.

18. Do I have to come to the hearing?

No. Class Counsel will represent the Settlement Class at the final approval hearing, but you are welcome to come at your own expense. If you send any objection, you do not have to come to Court to talk about it, but you may if you wish. As long as you filed and mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, if you wish.

19. May I speak at the hearing?

You may ask the Court for permission to speak at the final approval hearing. To do so, you must send with your objection a notice of intention to appear at the hearing as described in Paragraph 15 above. You cannot speak at the hearing if you excluded yourself.

GETTING MORE INFORMATION

20. Are there more details about the Settlement?

This Notice is only a summary. For a more detailed statement of the matters involved in the Litigation or the Settlement, you may refer to the papers filed in this case during regular business hours at the Office of the Clerk of Court, United States District Court for the Central District of California, Los Angeles Courthouse, 312 N. Spring Street, Room G-8, Los Angeles, CA 90012, File: *Smith v. A-Check America Inc. d/b/a A-Check Global*, Case No. 5:16-cv-00174. The full Settlement Agreement and certain pleadings filed in the case are also available at www.URL.com or can be requested, in writing or by phone, from the Settlement Administrator.

21. How do I get more information?

You can visit www.URL.com or contact the lawyers representing the Settlement Class, identified in Paragraph 13 above. **Please do not contact the Court for information.**

Exhibit 2

Berger & Montague, P.C.

ATTORNEYS AT LAW

1622 Locust Street | Philadelphia, PA 19103

info@bm.net

bergermontague.com

800-424-6690

About Berger & Montague

Berger & Montague is a full-spectrum class action and complex civil litigation firm, with nationally known attorneys highly sought after for their legal skills. The firm has been recognized by courts throughout the country for its ability and experience in handling major complex litigation, particularly in the fields of antitrust, securities, mass torts, civil and human rights, whistleblower cases, employment, and consumer litigation. In numerous precedent-setting cases, the firm has played a principal or leadrole.

The *National Law Journal*, which recognizes a select group of law firms each year that have done “exemplary, cutting-edge work on the plaintiffs side,” has selected Berger & Montague in 11 out of the last thirteen years (2003-05, 2007-13, 2015) for its “Hot List” of top plaintiffs’ oriented litigation firms in the United States. The firm has also achieved the highest possible rating by its peers and opponents as reported in *Martindale-Hubbell*.

Currently, the firm consists of 56 lawyers; 18 paralegals; and an experienced support staff. Few firms in the United States have our breadth of practice and match our successful track record in such a broad array of complex litigation.

History of the Firm

Berger & Montague was founded in 1970 by the late David Berger to concentrate on the representation of plaintiffs in a series of antitrust class actions. David Berger helped pioneer the use of class actions in antitrust litigation and was instrumental in extending the use of the class action procedure to other litigation areas, including securities, employment discrimination, civil and human rights, and mass torts. The firm’s complement of nationally recognized lawyers has represented both plaintiffs and defendants in these and other areas, and has recovered billions of dollars for its clients. In complex litigation, particularly in areas of class action litigation, Berger & Montague has established new law and forged the path for recovery.

The firm has been involved in a series of notable cases, some of them among the most important in the last 40 years of civil litigation. For example, the firm was one of the principal counsel for plaintiffs in the *Drexel Burnham Lambert/Michael Milken* securities and bankruptcy litigation. Claimants in these cases recovered approximately \$2 billion in the aftermath of the collapse of the junk bond market and the bankruptcy of *Drexel* in the late 1980’s. The firm was also among the principal trial counsel in the *Exxon Valdez Oil Spill* litigation in Anchorage, Alaska, a trial resulting in a record jury award of \$5 billion against Exxon, later reduced by the U.S. Supreme Court to \$507.5 million. Berger & Montague was lead

counsel in the *School Asbestos Litigation*, in which a national class of secondary and elementary schools recovered in excess of \$300 million to defray the costs of asbestos abatement. The case was the first mass tort property damage class action certified on a national basis. Berger & Montague was also lead/liaison counsel in the *Three Mile Island Litigation* arising out of a serious nuclear incident.

Additionally, in the human rights area, the firm, through its membership on the executive committee in the *Holocaust Victim Assets Litigation*, helped to achieve a \$1.25 billion settlement with the largest Swiss banks on behalf of victims of Nazi aggression whose deposits were not returned after the Second World War. The firm also played an instrumental role in bringing about a \$4.37 billion settlement with German industry and government for the use of slave and forced labor during the Holocaust.

Practice Areas and Case Profiles

Antitrust

In antitrust litigation, the firm has served as lead, co-lead or co-trial counsel on many of the most significant civil antitrust cases over the last 40 years, including *In re Corrugated Container Antitrust Litigation* (recovery in excess of \$366 million), the *Infant Formula* case (recovery of \$125 million), the *Brand Name Prescription Drug* price fixing case (settlement of more than \$700 million), the *State of Connecticut Tobacco Litigation* (settlement of \$3.6 billion), the *Graphite Electrodes Antitrust Litigation* (settlement of more than \$134 million), and the *High-Fructose Corn Syrup Litigation* (\$531 million). Most recently, the firm is one of three co-lead counsel *In re Payment Cards Antitrust Litigation*, which has resulted in the highest private class action settlement in U.S. history of \$7.2B ((reduced to \$5.7 billion after opt outs)). The firm has also played a leading role in cases in the pharmaceutical arena, especially in cases involving the delayed entry of generic or other rival drug competition, having achieved over \$1 billion in settlements in such cases over the past decade.

The *Legal 500*, a guide to worldwide legal services providers, ranked Berger & Montague as a Top-Tier Firm for Antitrust: Civil Litigation and Class Actions in the United States in its 2015 guide and has repeatedly cited Berger & Montague's antitrust practice as "stand[ing] out by virtue of its first-class trial skills."

For five straight years, Berger & Montague has been selected by *Chambers and Partners' USA's* America's Leading Lawyers for Business as one of Pennsylvania's top antitrust firms.

- ***In re Currency Conversion Fee Antitrust Litigation:*** Berger & Montague, as one of two co-lead counsel, spearheaded a class action lawsuit alleging that the major credit cards had conspired to fix prices for foreign currency conversion fees imposed on credit card transactions. After eight years of litigation, a settlement of \$336 million was approved in October, 2009, with a Final Judgment entered in November, 2009. Following the resolution of eleven appeals, the District Court, on October 5, 2011, directed distribution of the settlement funds to more than 10 million timely filed claimants, among the largest class of claimants in an antitrust consumer class action. (MDL No. 1409 (S.D.N.Y)).
- ***In re Marchbanks Truck Service Inc., et al. v. Comdata Network, Inc.:*** Berger & Montague was co-lead counsel in this antitrust class action brought on behalf of a class of thousands of Independent Truck Stops. The lawsuit alleged that defendant Comdata Network, Inc. had monopolized the market for specialized Fleet Cards used by long haul truckers. Comdata imposed anticompetitive provisions in its agreements with

Independent Truck Stops that artificially inflated the fees Independents paid when accepting the Comdata's Fleet Card for payment. These contractual provisions, commonly referred to as anti-steering provisions or merchant restraints, barred Independents from taking various competitive steps that could have been used to steer fleets to rival payment cards. The settlement for \$130 million and valuable prospective relief was preliminary approved on March 17, 2014, and finally approved on July 14, 2014. In its July 14, 2014 order approving Class Counsel's fee request, entered contemporaneously with its order finally approving the settlement, the Court described this outcome as "substantial, both in absolute terms, and when assessed in light of the risks of establishing liability and damages in this case."

- ***Ross, et al. v. Bank of America (USA) N.A., et al.***: Berger & Montague, as lead counsel for the cardholder classes, obtained final approval of settlements reached with Chase, Bank of America, Capital One and HSBC, on claims that the defendant banks unlawfully acted in concert to require cardholders to arbitrate disputes, including debt collections, and to preclude cardholders from participating in any class actions. The case was brought for injunctive relief only. The settlements remove arbitration clauses nationwide for 3.5 years from the so-called "cardholder agreements" for over 100 million credit card holders. This victory for consumers and small businesses came after nearly five years of hard-fought litigation, including obtaining a decision by the Court of Appeals reversing the order dismissing the case, and will aid consumers and small businesses in their ability to resist unfair and abusive credit card practices. A proposed settlement has been reached with the non-bank defendant arbitration provider (NAF), and, after defeating summary judgment, Berger & Montague is preparing the case for trial against the remaining two bank defendants.
- ***In re High Fructose Corn Syrup Antitrust Litigation***: Berger & Montague was one of three co-lead counsel in this nationwide class action alleging a conspiracy to allocate volumes and customers and to price-fix among five producers of high fructose corn syrup. After nine years of litigation, including four appeals, the case was settled on the eve of trial for \$531 million. (MDL No. 1087, Master File No. 95-1477 (C.D. Ill.)).
- ***In re Linerboard Antitrust Litigation***: Berger & Montague was one of a small group of court-appointed executive committee members who led this nationwide class action against producers of linerboard. The complaint alleged that the defendants conspired to reduce production of linerboard in order to increase the price of linerboard and corrugated boxes made therefrom. At the close of discovery, the case was settled for more than \$200 million. (98 Civ. 5055 and 99-1341 (E.D. Pa.)).
- ***Johnson, et al. v. AzHHA, et al.***: Berger & Montague is co-lead counsel in this litigation on behalf of a class of temporary nursing personnel, against the Arizona Hospital and Healthcare Association, and its member hospitals, for agreeing and conspiring to fix the rates and wages for temporary nursing personnel, causing class members to be underpaid. The court approved a nearly \$22.5 million settlement on behalf of this class of nurses. (Case No. 07-1292 (D. Ariz.)).
- ***In re Graphite Electrodes Antitrust Litigation***: Berger & Montague was one of the four co-lead counsel in a nationwide class action price-fixing case. The case settled for in excess of \$134 million and over 100% of claimed damages. (02 Civ. 99-482 (E.D. Pa.)).
- ***North Shore Hematology-Oncology Assoc., Inc. v. Bristol-Myers Squibb Co.***: The firm was one of several prosecuting an action complaining of Bristol Myers's use of invalid patents to block competitors from marketing more affordable generic versions of its life-saving cancer drug, Platinol (cisplatin). The case settled for \$50 million. (No. 1:04CV248 (EGS) (D.D.C.)).
- ***In re Catfish Antitrust Litig. Action***: The firm was co-trial counsel in this action which settled with the last defendant a week before trial, for total settlements approximating \$27 million. (No. 2:92CV073-D-O, MDL No. 928 (N.D. Miss.)).

- ***In re Carbon Dioxide Antitrust Litigation:*** The firm was co-trial counsel in this antitrust class action which settled with the last defendant days prior to trial, for total settlements approximating \$53 million, plus injunctive relief. (MDL No. 940 (M.D. Fla.)).
- ***In re Infant Formula Antitrust Litigation:*** The firm served as co-lead counsel in an antitrust class action where settlement was achieved two days prior to trial, bringing the total settlement proceeds to \$125 million. (MDL No. 878 (N.D. Fla.)).
- ***Red Eagle Resources Corp., Inc., v. Baker Hughes, Inc.:*** The firm was a member of the plaintiffs' executive committee in this antitrust class action which yielded a settlement of \$52.5 million. (C.A. No. H-91-627 (S.D. Tex.)).
- ***In re Corrugated Container Antitrust Litigation:*** The firm, led by H. Laddie Montague, was co-trial counsel in an antitrust class action which yielded a settlement of \$366 million, plus interest, following trial. (MDL No. 310 (S.D. Tex.)).
- ***Bogosian v. Gulf Oil Corp.:*** With Berger & Montague as sole lead counsel, this landmark action on behalf of a national class of more than 100,000 gasoline dealers against 13 major oil companies led to settlements of over \$35 million plus equitable relief on the eve of trial. (No. 71-1137 (E.D. Pa.)).
- ***In re Master Key Antitrust Litigation:*** The firm served as co-lead counsel in an antitrust class action that yielded a settlement of \$21 million during trial. (MDL No. 45 (D. Conn.)).

The firm has also played a leading role in cases in the pharmaceutical arena, especially in cases involving the delayed entry of generic competition, having achieved over \$1 billion in settlements in such cases over the past decade, including:

- ***In re Prandin Direct Purchaser Antitrust Litigation:*** Berger & Montague served as co-lead counsel and recovered \$19 million on behalf of direct purchasers of the diabetes medication Prandin. (Case No. 2:10-cv-12141 (E.D. Mich.)).
- ***Mylan Pharmaceuticals, Inc. v. Warner Chilcott Public Ltd. Co.:*** Berger & Montague was appointed as co-lead counsel in a case challenging Warner Chilcott's alleged anticompetitive practices with respect to the branded drug Doryx. The case was settled for \$15 million. (Case No. 2:12-cv-03824 (E.D. Pa.)).
- ***In re Neurontin Antitrust Litigation:*** Berger & Montague served as part of a small group of firms challenging the maintenance of a monopoly relating to the pain medication Neurontin. The case settled for \$190 million. (Case No. 02-1830 (D.N.J.)).
- ***In re Skelaxin Antitrust Litigation:*** Berger & Montague was among a small group of firms litigating on behalf of direct purchasers of the drug Skelaxin. The case settled for \$73 million. (Case No. 2:12-cv-83 / 1:12-md-02343) (E.D. Tenn.)).
- ***In re Wellbutrin XL Antitrust Litigation:*** Berger & Montague is serving as co-lead counsel for a class of direct purchasers of the antidepressant Wellbutrin XL. A settlement of \$37.5 million was reached with Valeant Pharmaceuticals (formerly Biovail), one of two defendants in the case. Litigation is proceeding against the remaining defendant, GlaxoSmithKline. (Case No. 08-cv-2431 (E.D. Pa.)).
- ***Rochester Drug Co-Operative, Inc. v. Braintree Labs., Inc.:*** Berger & Montague, appointed as co-lead counsel, prosecuted this case on behalf of direct purchasers alleging sham litigation led to the delay of generic forms of the brand drug Miralax. The case settled for \$17.25 million. (Case No. 07-142 (D. Del.)).

- ***In re Oxycontin Antitrust Litigation:*** Berger & Montague served as co-lead counsel on behalf of direct purchasers of the prescription drug Oxycontin. The case settled in 2011 for \$16 million. (Case No. 1:04-md-01603 (S.D.N.Y)).
- ***Meijer, Inc., et al. v. Abbott Laboratories:*** Berger & Montague served as co-lead counsel in a class action on behalf of pharmaceutical wholesalers and pharmacies charging Abbott Laboratories with illegally maintaining monopoly power and overcharging purchasers in violation of the federal antitrust laws. Plaintiffs alleged that Abbott had used its monopoly with respect to its anti-HIV medicine Norvir (ritonavir) to protect its monopoly power for another highly profitable Abbott HIV drug, Kaletra. This antitrust class action settled for \$52 million after four days of a jury trial in federal court in Oakland, California. (Case No. 07-5985 (N.D. Cal.)).
- ***In re Nifedipine Antitrust Litigation:*** Berger & Montague played a major role (serving on the executive committee) in this antitrust class action on behalf of direct purchasers of generic versions of the anti-hypertension drug Adalat (nifedipine). After eight years of hard-fought litigation, the court approved a total of \$35 million in settlements. (Case No. 1:03-223 (D.D.C.)).
- ***In re DDAVP Direct Purchaser Antitrust Litigation:*** Berger & Montague served as co-lead counsel in a case that charged defendants with using sham litigation and a fraudulently obtained patent to delay the entry of generic versions of the prescription drug DDAVP. Berger & Montague achieved a \$20.25 million settlement only after winning a precedent-setting victory before the United States Court of Appeals for the Second Circuit that ruled that direct purchasers had standing to recover overcharges arising from a patent-holder's misuse of an allegedly fraudulently obtained patent. (Case No. 05-2237 (S.D.N.Y.)).
- ***In re Terazosin Antitrust Litigation:*** Berger & Montague was one of a small group of counsel in a case alleging that Abbott Laboratories was paying its competitors to refrain from introducing less expensive generic versions of Hytrin. The case settled for \$74.5 million. (Case No. 99-MDL-1317 (S.D. Fla.)).
- ***In re Remeron Antitrust Litigation:*** Berger & Montague was one of a small group of counsel in a case alleging that the manufacturer of this drug was paying its competitors to refrain from introducing less expensive generic versions of Remeron. The case settled for \$75 million. (2:02-CV-02007-FSH (D. N.J.)).
- ***In re Tricor Antitrust Litigation:*** Berger & Montague was one of a small group of counsel in a case alleging that the manufacturer of this drug was paying its competitors to refrain from introducing less expensive generic versions of Tricor. The case settled for \$250 million. (No. 05-340 (D. Del.)).
- ***In re Relafen Antitrust Litigation:*** Berger & Montague was one of a small group of firms who prepared for the trial of this nationwide class action against GlaxoSmithKline, which was alleged to have used fraudulently-procured patents to block competitors from marketing less-expensive generic versions of its popular nonsteroidal anti-inflammatory drug, Relafen (nabumetone). Just before trial, the case was settled for \$175 million. (No. 01-12239-WGY (D. Mass.)).
- ***In re Cardizem CD Antitrust Litigation:*** Berger & Montague served on the executive committee of firms appointed to represent the class of direct purchasers of Cardizem CD. The suit charged that Aventis (the brand-name drug manufacturer of Cardizem CD) entered into an illegal agreement to pay Andrx (the maker of a generic substitute to Cardizem CD) millions of dollars to delay the entry of the less expensive generic product. On November 26, 2002, the district court approved a final settlement against both defendants for \$110 million. (No. 99-MD-1278, MDL No. 1278 (E.D. Mich.)).
- ***In re Buspirone Antitrust Litigation:*** The firm served on the court-appointed steering committee in this class action, representing a class of primarily pharmaceutical wholesalers and resellers. The Buspirone class action alleged that pharmaceutical manufacturer BMS engaged in a pattern of illegal conduct

surrounding its popular anti-anxiety medication, Buspar, by paying a competitor to refrain from marketing a generic version of Buspar, improperly listing a patent with the FDA, and wrongfully prosecuting patent infringement actions against generic competitors to Buspar. On April 11, 2003, the Court approved a \$220 million settlement. (MDL No. 1410 (S.D.N.Y.)).

- ***North Shore Hematology-Oncology Assoc., Inc. v. Bristol-Myers Squibb Co.***: The firm was one of several prosecuting an action complaining of Bristol Myers's use of invalid patents to block competitors from marketing more affordable generic versions of its life-saving cancer drug, Platinol (cisplatin). The case settled for \$50 million. (No. 1:04CV248 (EGS) (D.D.C.)).

Commercial Litigation

Berger & Montague helps business clients achieve extraordinary successes in a wide variety of complex commercial litigation matters. Our attorneys appear regularly on behalf of clients in high stakes federal and state court commercial litigation across the United States. We work with our clients to develop a comprehensive and detailed litigation plan, and then organize, allocate and deploy whatever resources are necessary to successfully prosecute or defend the case.

- ***Erie Power Technologies, Inc. v. Aalborg Industries A/S, et al.***: Berger & Montague represented a trustee in bankruptcy against officers and directors and the former corporate parent and obtained a very favorable confidential settlement. (No. 04-282E (W.D. Pa.)).
- ***Moglia v. Harris et al.***: Berger & Montague represented a liquidating trustee against the officers of U.S. Aggregates, Inc. and obtained a settlement of \$4 million. (No. C 04 2663 (CW) (N.D. Cal.)).
- ***Gray v. Gessow et al.***: The firm represented a litigation trust and brought two actions, one against the officers and directors of Sunterra Inc. an insolvent company, and the second against Sunterra's accountants, Arthur Andersen and obtained an aggregate settlement of \$4.5 million. (Case No. MJG 02-CV-1853 (D. Md.) and No. 6:02-CV-633-ORL-28JGG (M.D. Fla.)).
- ***Fitz, Inc. v. Ralph Wilson Plastics Co.***: The firm served as sole lead counsel and obtained, after 7 years of litigation, in 2000 a settlement whereby fabricator class members could obtain full recoveries for their losses resulting from defendants' defective contact adhesives. (No. 1-94-CV-06017 (D.N.J.)).
- ***Provident American Corp. and Provident Indemnity Life Insurance Company v. The Loewen Group Inc. and Loewen Group International Inc.***: Berger & Montague settled this individual claim, alleging a 10-year oral contract (despite six subsequent writings attempting to reduce terms to writing, each with materially different terms added, all of which were not signed), for a combined payment in cash and stock of the defendant, of \$30 Million. (No. 92-1964 (E.D. Pa.)).
- ***Marilou Whitney (Estate of Cornelius Vanderbilt Whitney) v. Turner/Time Warner***: Berger & Montague settled this individual claim for a confidential amount, seeking interpretation of the distribution agreement for the movie, *Gone with the Wind* and undistributed profits for the years 1993-1997, with forward changes in accounting and distribution.
- ***American Hotel Holdings Co., et. al v. Ocean Hospitalitys, Inc., et. al.***: Berger & Montague defended against a claim for approximately \$16 million and imposition of a constructive trust, arising out of the purchase of the Latham Hotel in Philadelphia. Berger & Montague settled the case for less than the cost of the trial that was avoided. (June Term, 1997, No. 2144 (Pa. Ct. Com. Pl., Phila. Cty.))
- ***Creative Dimensions and Management, Inc. v. Thomas Group, Inc.***: Berger & Montague defended this case against a claim for \$30 million for breach of contract. The jury rendered a verdict in favor of Berger

& Montague's client on the claim (i.e., \$0), and a verdict for the full amount of Berger & Montague's client on the counterclaim against the plaintiff. (No. 96-6318 (E.D. Pa.)).

- ***Robert S. Spencer, et al. v. The Arden Group, Inc., et al.***: Berger & Montague represented an owner of limited partnership interests in several commercial real estate partnerships in a lawsuit against the partnerships' general partner. The terms of the settlement are subject to a confidentiality agreement. (Aug. Term, 2007, No. 02066 (Pa. Ct. Com. Pl., Phila. Cty. - Commerce Program)).
- ***Forbes v. GMH***: Berger & Montague represented a private real estate developer/investor who sold a valuable apartment complex to GMH for cash and publicly-held securities. The case which claimed securities fraud in connection with the transaction settled for a confidential sum which represented a significant portion of the losses experienced. (No. 07-cv-00979 (E.D. Pa.)).

Commodities and Options

Berger & Montague ranks among the country's preeminent firms for managing and trying complex commodities and options related cases on behalf of individuals and as class actions. The Firm's commodities clients include individual hedge and speculation traders, hedge funds, energy firms, investment funds, and precious metals clients.

- ***In re MF Global Holdings Ltd. Investment Litigation***: Berger & Montague is one of two co-lead counsel representing thousands of commodities account holders who fell victim to the alleged massive theft and misappropriation of client funds at the major global commodities brokerage firm MF Global. Over the last year, substantial settlements have been reached with JPMorgan Chase Bank, the MF Global SIPA Trustee, and the CME Group. These settlements will ultimately enable MF Global customers to recover over one billion dollars. Berger & Montague is continuing to pursue claims against former directors and officers of MF Global, including Jon Corzine, and against MF Global's former auditor, PricewaterhouseCoopers. (No. 11-cv-07866 (S.D.N.Y.)).
- ***In re Commodity Exchange, Inc., Gold Futures and Options Trading Litigation***: Berger & Montague is one of two co-lead counsel representing traders of gold-based derivative contracts, physical gold, and gold-based securities against The Bank of Nova Scotia, Barclays Bank plc, Deutsche Bank AG, HSBC Bank plc, Société Générale and the London Gold Market Fixing Limited. Plaintiffs allege that the defendants, members of the London Gold Market Fixing Limited, which sets an important benchmark price for gold, conspired to manipulate this benchmark for their collective benefit. (1:14-md-02548 (S.D.N.Y.)).
- ***In re Libor-Based Financial Instruments Antitrust Litigation***: Berger & Montague represents investors who transacted in Eurodollar futures contracts and options on futures contracts on the Chicago Mercantile Exchange ("CME") between August 2007 and May 2010. The lawsuit alleges that the defendant banks knowingly and intentionally understated their true borrowing costs. By doing so, the defendant banks caused Libor to be calculated or suppressed at artificially low rates. The defendants' alleged manipulation of Libor allowed their banks to pay artificially low interest rates to purchasers of Libor-based financial instruments. (No. 1:11-md-02262-NRB (S.D.N.Y.)).
- ***In re North Sea Brent Crude Oil Futures Litigation***: Berger & Montague, P.C. filed a proposed class action on behalf of traders of Brent Crude Oil futures contracts against Royal Dutch Shell plc, BP plc, Statoil ASA, Morgan Stanley, Trafigura Beheer B.V., Trafigura AG, Phibro Trading LLC, and Vitol, S.A. (collectively, "Defendants") during the period of at least 2002 through the present. The complaint alleges that the Defendants violated the antitrust laws and the Commodity Exchange Act by using Platts reporting service's methodology for reporting prices to control the Brent Crude Oil physical market and thereby to manipulate Brent Crude Oil prices and the prices of Brent Crude oil futures contracts traded on the New York Mercantile Exchange ("NYMEX") and the Intercontinental Exchange ("ICE"). (No. 13-cv-8240 (S.D.N.Y.)).

- ***Brown, et al. v. Kinross Gold, U.S.A., et al.***: Berger & Montague was one of two co-lead counsel in this action alleging that a leading gold mining company illegally forced out preferred shareholders. The action resulted in a settlement of \$29.25 million in cash and \$6.5 million in other consideration (approximately 100% of damages and accrued dividends after fees and costs). (No. 02-cv-00605 (D.N.V.)).

Consumer Protection

Berger & Montague's Consumer Protection Group protects consumers when they are injured by false or misleading advertising, defective products, data privacy breaches, and various other unfair trade practices. Consumers too often suffer the brunt of corporate wrongdoing, particularly in the area of false or misleading advertising, defective products, and data or privacy breaches.

- ***Countrywide Predatory Lending Enforcement Action***: Berger & Montague advised the Ohio Attorney General (and several other state attorneys general) regarding predatory lending in a landmark law enforcement proceeding against *Countrywide* (and its parent, Bank of America) culminating in 2008 in mortgage-related modifications and other relief for borrowers across the country valued at some \$8.6 billion.
- ***In re Pet Foods Product Liability Litigation***: The firm served as one of plaintiffs' co-lead counsel in this multidistrict class action suit seeking to redress the harm resulting from the manufacture and sale of contaminated dog and cat food. The case settled for \$24 million. Many terms of the settlement are unique and highly beneficial to the class, including allowing class members to recover up to 100% of their economic damages without any limitation on the types of economic damages they may recover. (1:07-cv-02867 (D.N.J.), MDL Docket No. 1850 (D.N.J.)).
- ***In re TJX Companies Retail Security Breach Litigation***: The firm served as co-lead counsel in this multidistrict litigation brought on behalf of individuals whose personal and financial data was compromised in the then-largest theft of personal data in history. The breach involved more than 45 million credit and debit card numbers and 450,000 customers' driver's license numbers. The case was settled for benefits valued at over \$200 million. Class members whose driver's license numbers were at risk were entitled to 3 years of credit monitoring and identity theft insurance (a value of \$390 per person based on the retail cost for this service), reimbursement of actual identity theft losses, and reimbursement of driver's license replacement costs. Class members whose credit and debit card numbers were at risk were entitled to cash of \$15-\$30 or store vouchers of \$30-\$60. (No. 1:07-cv-10162-WGY, (D. Mass.)).
- ***In Re: Heartland Payment Systems, Inc. Customer Data Security Breach Litigation***: The firm served on the Executive Committee of this multidistrict litigation and obtained a settlement of cash and injunctive relief for a class of 130 million credit card holders whose credit card information was stolen by computer hackers. The breach was the largest known theft of credit card information in history. The settlement is subject to court approval. (No. 4:09-MD-2046 (S.D. Tex. 2009)).
- ***In re: Countrywide Financial Corp. Customer Data Security Breach Litigation***: The firm served on the Executive Committee of this multidistrict litigation and obtained a settlement for a class of 17 million individuals whose personal information was at risk when a rogue employee sold their information to unauthorized third parties. Settlement benefits included: (i) reimbursement of several categories of out-of-pocket costs; (ii) credit monitoring and identity theft insurance for 2 years for consumers who did not accept Countrywide's prior offer of credit monitoring; and (iii) injunctive relief. The settlement was approved by the court in 2010. (3:08-md-01998-TBR (W.D. Ky. 2008)).
- ***In re Educational Testing Service Praxis Principles of Learning and Teaching: Grades 7-12 Litigation***: The firm served on the plaintiffs' steering committee and obtained an \$11.1 million settlement in 2006 on behalf of persons who were incorrectly scored on a teacher's licensing exam. (MDL No. 1643 (E.D. La.)).

- ***Vadino, et al. v. American Home Products Corporation, et al.***: The firm filed a class complaint different from that filed by any other of the filing firms in the New Jersey State Court “Fen Phen” class action, and the class sought in the firm’s complaint was ultimately certified. It was the only case anywhere in the country to include a claim for medical monitoring. In the midst of trial, the New Jersey case was folded into a national settlement which occurred as the trial was ongoing, and which was structured to include a medical monitoring component worth in excess of \$1 billion. (Case Code No. 240 (N.J. Super. Ct.)).
- ***Parker v. American Isuzu Motors, Inc.***: The firm served as sole lead counsel and obtained a settlement whereby class members recovered up to \$500 each for economic damages resulting from accidents caused by faulty brakes. (Sept. Term 2003, No. 3476 (Pa. Ct. Com. Pl., Phila. Cty.)).
- ***Salvucci v. Volkswagen of America, Inc. d/b/a Audi of America, Inc.***: The firm served as co-lead counsel in litigation brought on behalf of a nationwide class alleging that defendants failed to disclose that its vehicles contained defectively designed timing belt tensioners and associated parts and that defendants misrepresented the appropriate service interval for replacement of the timing belt tensioner system. After extensive discovery, a settlement was reached. (Docket No. ATL-1461-03 (N.J. Sup. Ct. 2007)).
- ***Burgo v. Volkswagen of America, Inc. d/b/a Audi of America, Inc.***: The firm served as co-lead counsel in litigation brought on behalf of a nationwide class against premises on defendants’ defective tires that were prone to bubbles and bulges. Counsel completed extensive discovery and class certification briefing. A settlement was reached while the decision on class certification was pending. The settlement consisted of remedies including total or partial reimbursement for snow tires, free inspection/replacement of tires for those who experienced sidewall bubbles, blisters, or bulges, and remedies for those class members who incurred other costs related to the tires’ defects. (Docket No. HUD-L-2392-01 (N.J. Sup. Ct. 2001)).
- ***Crawford v. Philadelphia Hotel Operating Co.***: The firm served as co-lead counsel and obtained a settlement whereby persons who contracted food poisoning at a business convention recovered \$1,500 each. (March Term, 2004, No. 000070 (Pa. Ct. Com. Pl., Phila. Cty.)).
- ***Block v. McDonald’s Corporation***: The firm served as co-lead counsel and obtained a settlement of \$12.5 million with McDonald’s stemming from its failure to disclose the use of beef fat in its french fries. (No. 01-CH-9137 (Ill. Cir. Ct., Cook Cty.)).

Corporate Governance and Shareholder Rights

Berger & Montague protects the interests of individual and institutional investors in shareholder derivative actions in state and federal courts across the United States. Our attorneys help individual and institutional investors reform poor corporate governance, as well as represent them in litigation against directors of a company for violating their fiduciary duty or provide guidance on shareholder rights.

- ***Emil Rossdeutscher and Dennis Kelly v. Viacom***: The firm, as lead counsel, obtained a settlement resulting in a fund of \$14.25 million for the class. (C.A. No. 98C-03-091 (JEB) (Del. Super. Ct.)).
- ***Fox v. Riverview Realty Partners, f/k/a Prime Group Realty Trust, et al.***: The firm, as lead counsel, obtained a settlement resulting in a fund of \$8.25 million for the class.

Employment Law

The Berger & Montague Employment Law group works tirelessly to safeguard the rights of employees, and devote all of their energies to helping our firm’s clients achieve their goals. Our attorneys’ understanding of federal and state wage and hour laws, federal and state civil rights and discrimination laws, ERISA, the WARN Act, laws protecting whistleblowers, such as federal and state False Claims

Acts, and other employment laws, allows us to develop creative strategies to vindicate our clients' rights and help them secure the compensation to which they are entitled.

- ***Jantz v. Social Security Administration:*** The firm served as co-lead counsel and obtained a settlement on behalf of employees with targeted disabilities (“TDEs”) alleged that SSA discriminated against TDEs by denying them promotional and other career advancement opportunities. The settlement was reached after more than ten years of litigation, and the Class withstood challenges to class certification on four separate occasions. The settlement includes a monetary fund of \$9.98 million and an unprecedented package of extensive programmatic changes valued at approximately \$20 million. EEOC No. 531-2006-00276X (2015).
- ***Ciamillo v. Baker Hughes, Incorporated:*** The firm served as lead counsel and obtained a settlement of \$5 million on behalf of a class of oil and gas workers who did not receive any overtime compensation for working hours in excess of 40 per week. (Civil Action No. 14-cv-81 (D. Alaska)).
- ***Employees Committed for Justice v. Eastman Kodak Company:*** The firm served as co-lead counsel and obtained a settlement of \$21.4 million on behalf of a nationwide class of African American employees of Kodak alleging a pattern and practice of racial discrimination. A significant opinion issued in the case is *Employees Committed For Justice v. Eastman Kodak Co.*, 407 F. Supp. 2d 423 (W.D.N.Y. 2005) (denying Kodak’s motion to dismiss). No. 6:04-cv-06098 (W.D.N.Y.).
- ***Salcido v. Cargill Meat Solutions Corp.:*** The firm served as co-lead counsel and obtained a settlement of \$7.5 million on behalf of a class of thousands of employees of Cargill Meat Solutions Corp. alleging that they were forced to work off-the-clock and during their breaks. This is one of the largest settlements of this type of case involving a single plant in U.S. history. (Civil Action Nos. 1:07-cv-01347-LJO-GSA and 1:08-cv-00605-LJO-GSA (E.D. Cal.)).
- ***Miller v. Hygrade Food Products, Inc.:*** The firm served as lead counsel and obtained a settlement of \$3.5 million on behalf of a group of African American employees of Sara Lee Foods Corp. to resolve charges of racial discrimination and retaliation at its Ball Park Franks plant. (No. 99-1087 (E.D. Pa.)).
- ***Chabrier v. Wilmington Finance, Inc.:*** The firm served as co-lead counsel and obtained a settlement of \$2,925,000 on behalf of loan officers who worked in four offices to resolve claims for unpaid overtime wages. A significant opinion issued in the case is *Chabrier v. Wilmington Finance, Inc.*, 2008 WL 938872 (E.D. Pa. April 04, 2008) (denying the defendant’s motion to decertify the class). (No. 06-4176 (E.D. Pa.)).
- ***Bonnette v. Rochester Gas & Electric Co.:*** The firm served as co-lead counsel and obtained a settlement of \$2 million on behalf of a class of African American employees of Rochester Gas & Electric Co. to resolve charges of racial discrimination in hiring, job assignments, compensation, promotions, discipline, terminations, retaliation, and a hostile work environment. (No. 07-6635 (W.D.N.Y.)).

Environmental and Mass Tort

Berger & Montague lawyers are trailblazers in the fields of environmental class action litigation and mass torts. Our attorneys have earned their reputation in the fields of environmental litigation and mass torts by successfully prosecuting some of the largest, most well-known cases of our time. Our Environmental & Mass Tort Group also prosecutes significant claims for personal injury, commercial losses, property damage, and environmental response costs.

- ***Cook v. Rockwell International Corporation:*** In February 2006, the firm won a \$554 million jury verdict on behalf of thousands of property owners whose homes were exposed to plutonium or other toxins. Judgment in the case was entered by the court in June 2008 which, with interest, totaled \$926 million (with proceedings now continuing on appeal). Recognizing this tremendous achievement, the Public Justice Foundation bestowed its prestigious Trial Lawyer of the Year Award for 2009 on Mr. Davidoff, Mr. Sorensen and the entire trial team for their “long and hard-fought” victory against “formidable corporate and government defendants.” (No. 90-cv-00181-JLK (D. Colo.)). The jury verdict in that case was vacated on appeal in 2010, but on a second trip to the Tenth Circuit, Plaintiffs secured a victory in 2015, with the case then being sent back to the district court, where it remains pending.
- ***In re Exxon Valdez Oil Spill Litigation:*** On September 16, 1994, a jury trial of several months duration resulted in a record punitive damages award of \$5 billion against the Exxon defendants as a consequence of one of the largest oil spills in U.S. history. The award was reduced to \$507.5 million pursuant to a Supreme Court decision. David Berger was co-chair of the plaintiffs’ discovery committee (appointed by both the federal and state courts). Harold Berger served as a member of the organizing case management committee. H. Laddie Montague was specifically appointed by the federal court as one of the four designated trial counsel. Both Mr. Montague and Peter Kahana shared (with the entire trial team) the 1995 “Trial Lawyer of the Year Award” given by the Trial Lawyers for Public Justice. (No. A89-0095-CVCHRH (D. Alaska)).
- ***In re Ashland Oil Spill Litigation:*** The firm led by Harold Berger served as co-lead counsel and obtained a \$30 million settlement for damages resulting from a very large oil spill. (Master File No. M-14670(W.D. Pa.)).
- ***State of Connecticut Tobacco Litigation:*** Berger & Montague was one of three firms to represent the State of Connecticut in a separate action in state court against the tobacco companies. The case was litigated separate from the coordinated nationwide actions. Although eventually Connecticut joined the national settlement, its counsel’s contributions were recognized by being awarded the fifth largest award among the states from the fifty states’ Strategic Contribution Fund.
- ***In re School Asbestos Litigation:*** As co-lead counsel, the firm successfully litigated a case in which a nationwide class of elementary and secondary schools and school districts suffering property damage as a result of asbestos in their buildings were provided relief. Pursuant to an approved settlement, the class received in excess of \$70 million in cash and \$145 million in discounts toward replacement building materials. (No. 83-0268 (E.D. Pa.)).
- ***Drayton v. Pilgrim’s Pride Corp.:*** The firm served as counsel in a consolidation of wrongful death and other catastrophic injury cases brought against two manufacturers of turkey products, arising out of a 2002 outbreak of *Listeria Monocytogenes* in the Northeastern United States, which resulted in the recall of over 32 million pounds of turkey – the second largest meat recall in U.S. history at that time. A significant opinion issued in the case is *Drayton v. Pilgrim’s Pride Corp.*, 472 F. Supp. 2d 638 (E.D. Pa. 2006) (denying the defendants’ motions for summary judgment and applying the alternative liability doctrine). All of the cases settled on confidential terms in 2006. (No. 03-2334 (E.D. Pa.)).
- ***In re SEPTA 30th Street Subway/Elevated Crash Class Action:*** Berger & Montague represented a class of 220 persons asserting injury in a subway crash. Despite a statutory cap of \$1 million on damages recovery from the public carrier, and despite a finding of sole fault of the public carrier in the investigation by the National Highway Transit Safety Administration, Berger & Montague was able to recover an aggregate of \$3.03 million for the class. (1990 Master File No. 0001 (Pa. Ct. Com. Pls., Phila. Cty.)).
- ***In re Three Mile Island Litigation:*** As lead/liaison counsel, the firm successfully litigated the case and reached a settlement in 1981 of \$25 million in favor of individuals, corporations and other entities suffering property damage as a result of the nuclear incident involved. (C.A. No. 79-0432 (M.D. Pa.)).

ERISA and Employee Benefits

Berger & Montague represents employees who have claims under the federal Employee Retirement Income Security Act. We litigate cases on behalf of employees whose 401(k) and pension investments have suffered severe losses as a result of the breach of fiduciary duties by plan administrators and the companies they represent. Berger & Montague has recovered hundreds of millions of dollars in lost retirement benefits for American workers, and also favorably structured their retirement plans.

- ***In re Unisys Corp. Retiree Medical Benefits:*** The firm, as co-lead counsel, handled the presentation of over 70 witnesses, 30 depositions, and over 700 trial exhibits in this action that has resulted in partial settlements in 1990 of over \$110 million for retirees whose health benefits were terminated. (MDL No. 969 (E.D. Pa.)).
- ***Local 56 U.F.C.W. v. Campbell Soup Co.:*** The firm represented a class of retired Campbell Soup employees in an ERISA class action to preserve and restore retiree medical benefits. A settlement yielded benefits to the class valued at \$114.5 million. (No. 93-MC-276 (SSB) (D.N.J.)).

Insurance and Financial Services Products / Services

When insurance companies and affiliated financial services entities engage in fraudulent, deceptive or unfair practices, Berger & Montague helps injured parties recover their losses. We focus on fraudulent, deceptive and unfair business practices across all lines of insurance and financial products and services sold by insurers and their affiliates, which include annuities, securities and other investment vehicles.

- ***Spencer v. Hartford Financial Services Group, Inc.:*** The firm, together with co-counsel, prosecuted this national class action against The Hartford Financial Services Group, Inc. and its affiliates in the United States District Court for the District of Connecticut (*Spencer v. Hartford Financial Services Group, Inc.*, Case No. 05-cv-1681) on behalf of approximately 22,000 claimants, each of whom entered into structured settlements with Hartford property and casualty insurers to settle personal injury and workers' compensation claims. To fund these structured settlements, the Hartford property and casualty insurers purchased annuities from their affiliate, Hartford Life. By purchasing the annuity from Hartford Life, The Hartford companies allegedly were able to retain up to 15% of the structured amount of the settlement in the form of undisclosed costs, commissions and profit - all of which was concealed from the settling claimants. On March 10, 2009, the U.S. District Court certified for trial claims on behalf of two national subclasses for civil RICO and fraud (256 F.R.D. 284 (D. Conn. 2009)). On October 14, 2009, the Second Circuit Court of Appeals denied The Hartford's petition for interlocutory appeal under Federal Rule of Civil Procedure 23(f). On September 21, 2010, the U.S. District Court entered judgment granting final approval of a \$72.5 million cash settlement.
- ***Nationwide Mutual Insurance Company v. O'Dell:*** The firm, together with co-counsel, prosecuted this class action against Nationwide Mutual Insurance Company in West Virginia Circuit Court, Roane County (*Nationwide Mutual Insurance Company v. O'Dell*, Case No. 00-C-37), on behalf of current and former West Virginia automobile insurance policyholders, which arose out of Nationwide's failure, dating back to 1993, to offer policyholders the ability to purchase statutorily-required optional levels of underinsured ("UIM") and uninsured ("UM") motorist coverage in accordance with West Virginia Code 33-6-31. The court certified a trial class seeking monetary damages, alleging that the failure to offer these optional levels of coverage, and the failure to provide increased first party benefits to personal injury claimants, breached Nationwide's insurance policies and its duty of good faith and fair dealing, and violated the West Virginia Unfair Trade Practices Act. On June 25, 2009, the court issued final approval of a settlement that provided a minimum estimated value of \$75 million to Nationwide auto policyholders and their passengers who were injured in an accident or who suffered property damage.

Lending Practices and Borrowers' Rights

Berger & Montague's attorneys fight vigorously to protect the rights of borrowers when they are injured by the practices of banks and other financial institutions that lend money or service borrowers' loans. Berger & Montague has successfully obtained multi-million dollar class action settlements for nationwide classes of borrowers against banks and financial institutions and works tirelessly to protect the rights of borrowers suffering from these and other deceptive and unfair lending practices.

Representing Opt-Outs in Class Actions

Berger & Montague offers exceptional representation of businesses, institutional investors, employee benefit or ERISA plans and governmental entities when they wish to opt out of securities and antitrust class actions filed by others and file an individual lawsuit to maximize their recovery or have a say in the proceedings. We advise and represent clients who may opt out of class actions filed by others – often securities fraud cases and price-fixing and monopolization antitrust claims – and help them pursue their claims independently of the class action, where they often stand to receive a much greater financial recovery.

Securities Litigation

In the area of securities litigation, the firm has represented public institutional investors – such as the retirement funds for the States of Pennsylvania, Connecticut, New Hampshire, New Jersey, Louisiana and Ohio, as well as the City of Philadelphia and numerous individual investors and private institutional investors. The firm was co-lead counsel in the *Melridge Securities Litigation* in the Federal District Court in Oregon, in which jury verdicts of \$88.2 million and a RICO judgment of \$239 million were obtained. Berger & Montague has served as lead or co-lead counsel in numerous other major securities class action cases where substantial settlements were achieved on behalf of investors.

- ***In re Merrill Lynch Securities Litigation:*** Berger & Montague, as co-lead counsel, obtained a recovery of \$475 million for the benefit of the class in one of the largest recoveries among the recent financial crisis cases. (No. 07-cv-09633 (S.D.N.Y.)).
- ***In re Sotheby's Holding, Inc. Securities Litigation:*** The firm, as lead counsel, obtained a \$70 million settlement, of which \$30 million was contributed, personally, by an individual defendant. (No. 00-cv-1041 (DLC) (S.D.N.Y.)).
- ***In re: Oppenheimer Rochester Funds Group Securities Litigation:*** The firm, as co-lead counsel, obtained a \$89.5 million settlement on behalf of investors in six tax-exempt bond mutual funds managed by OppenheimerFunds, Inc. (No. 09-md-02063-JLK (D. Col.)).
- ***In re KLA Tencor Securities Litigation:*** The firm, as a member of Plaintiffs' Counsel's Executive Committee, obtained a cash settlement of \$65 million in an action on behalf of investors against KLA-Tencor and certain of its officers and directors. (No. 06-cv-04065 (N.D. Cal.)).
- ***Ginsburg v. Philadelphia Stock Exchange, Inc., et al.:*** The firm represented certain shareholders of the Philadelphia Stock Exchange in the Delaware Court of Chancery and obtained a settlement valued in excess of \$99 million settlement. (C.A. No. 2202-CC (Del. Ch.)).
- ***In re Sepracor Inc. Securities Litigation:*** The firm, as co-lead counsel, obtained a settlement of \$52.5 million for the benefit of bond and stock purchaser classes. (No. 02-cv-12235-MEL (D. Mass.)).

- ***In re CIGNA Corp. Securities Litigation:*** The firm, as co-lead counsel, obtained a settlement of \$93 million for the benefit of the class. (Master File No. 2:02-cv-8088 (E.D. Pa.)).
- ***In re Fleming Companies, Inc. Securities Litigation:*** The firm, as lead counsel, obtained a class settlement of \$94 million for the benefit of the class. (No. 5-03-MD-1530 (TJW) (E.D. Tex.)).
- ***In re Xcel Energy Inc. Securities, Derivative & “ERISA” Litigation:*** The firm, as co-lead counsel in the securities actions, obtained a cash settlement of \$80 million on behalf of investors against Xcel Energy and certain of its officers and directors. (No. 02-cv-2677 (DSD/FLN) (D. Minn.)).
- ***In re NetBank, Inc. Securities Litigation:*** The firm served as lead counsel in this certified class action on behalf of the former common shareholders of NetBank, Inc. The \$12.5 million settlement, which occurred after class certification proceedings and substantial discovery, is particularly noteworthy because it is one of the few successful securities fraud class actions litigated against a subprime lender and bank in the wake of the financial crisis. (No. 07-cv-2298-TCB (N.D. Ga.)).
- ***Brown v. Kinross Gold U.S.A. Inc.:*** The firm represented lead plaintiffs as co-lead counsel and obtained \$29.25 million cash settlement and an additional \$6,528,371 in dividends for a gross settlement value of \$35,778,371. (No. 02-cv-0605 (D. Nev.)) All class members recovered 100% of their damages after fees and expenses.
- ***In re Campbell Soup Co. Securities Litigation:*** The firm, as co-lead counsel, obtained a settlement of \$35 million for the benefit of the class. (No. 00-cv-152 (JEI) (D.N.J.)).
- ***In re Premiere Technologies, Inc. Securities Litigation:*** The firm, as co-lead counsel, obtained a class settlement of over \$20 million in combination of cash and common stock. (No.1:98-cv-1804-JOF (N.D. Ga.)).
- ***In re PSINet, Inc., Securities Litigation:*** The firm, as co-lead counsel, obtained a settlement of \$17.83 million on behalf of investors. (No. 00-cv-1850-A (E.D. Va.)).
- ***In re Safety-Kleen Corp. Securities Litigation :*** The firm, as co-lead counsel, obtained a class settlement in the amount of \$45 million against Safety-Kleen’s outside accounting firm and certain of the Company’s officers and directors. The final settlement was obtained 2 business days before the trial was to commence. (No. 3:00-cv-736-17 (D.S.C.)).
- ***The City Of Hialeah Employees’ Retirement System v. Toll Brothers, Inc.:*** The firm, as co-lead counsel, obtained a class settlement of \$25 million against Home Builder Toll Brothers, Inc. (No. 07-cv-1513 (E.D. Pa.)).
- ***In re Rite Aid Corp. Securities Litigation:*** The firm, as co-lead counsel, obtained settlements totaling \$334 million against Rite Aid’s outside accounting firm and certain of the company’s former officers. (No. 99-cv-1349 (E.D. Pa.)).
- ***In re Sunbeam Inc. Securities Litigation:*** As co-lead counsel and designated lead trial counsel (by Mr. Davidoff), the firm obtained a settlement on behalf of investors of \$142 million in the action against Sunbeam’s outside accounting firm and Sunbeam’s officers. (No. 98-cv-8258 (S.D. Fla.)).
- ***In re Waste Management, Inc. Securities Litigation:*** In 1999, the firm, as co-lead counsel, obtained a class settlement for investors of \$220 million cash which included a settlement against Waste Management’s outside accountants. (No. 97-cv-7709 (N.D. Ill.)).

- ***In re IKON Office Solutions Inc. Securities Litigation:*** The firm, serving as both co-lead and liaison counsel, obtained a cash settlement of \$111 million in an action on behalf of investors against IKON and certain of its officers. (MDL Dkt. No. 1318 (E.D. Pa.)).
- ***In re Melridge Securities Litigation:*** The firm served as lead counsel and co-lead trial counsel for a class of purchasers of Melridge common stock and convertible debentures. A four-month jury trial yielded a verdict in plaintiffs' favor for \$88.2 million, and judgment was entered on RICO claims against certain defendants for \$239 million. The court approved settlements totaling \$57.5 million. (No. 87-cv-1426 FR (D. Ore.)).
- ***Aldridge v. A.T. Cross Corp.:*** The firm represented a class of investors in a securities fraud class action against A.T. Cross, and won a significant victory in the U.S. Court of Appeals for the First Circuit when that Court reversed the dismissal of the complaint and lessened the pleading standard for such cases in the First Circuit, holding that it would not require plaintiffs in a shareholder suit to submit proof of financial restatement in order to prove revenue inflation. *See Aldridge v. A.T. Cross Corp.*, 284 F.3d 72 (1st Cir. 2002). The case ultimately settled for \$1.5 million. (C.A. No. 00-203 ML (D.R.I.)).
- ***Silver v. UICI:*** The firm, as co-lead counsel, obtained a settlement resulting in a fund of \$16 million for the class. (No. 3:99-cv-2860-L (N.D. Tex.)).
- ***In re Alcatel Alsthom Securities Litigation:*** The firm, as co-lead counsel, obtained a class settlement for investors of \$75 million cash. (MDL Docket No. 1263 (PNB) (E.D. Tex.)).
- ***Walco Investments, Inc. et al. v. Kenneth Thenen, et al. (Premium Sales):*** The firm, as a member of the plaintiffs' steering committee, obtained settlements of \$141 million for investors victimized by a Ponzi scheme. Reported at: 881 F. Supp. 1576 (S.D. Fla. 1995); 168 F.R.D. 315 (S.D. Fla. 1996); 947 F. Supp. 491 (S.D. Fla. 1996)).
- ***In re The Drexel Burnham Lambert Group, Inc.:*** The firm was appointed co-counsel for a mandatory non-opt-out class consisting of all claimants who had filed billions of dollars in securities litigation-related proofs of claim against The Drexel Burnham Lambert Group, Inc. and/or its subsidiaries. Settlements in excess of \$2.0 billion were approved in August 1991 and became effective upon consummation of Drexel's Plan of Reorganization on April 30, 1992. (No. 90-cv-6954 (MP), Chapter 11, Case No. 90 B 10421 (FGC), Jointly Administered, reported at, *inter alia*, 960 F.2d 285 (2d Cir. 1992), *cert. dismissed*, 506 U.S. 1088 (1993) ("Drexel I") and 995 F.2d 1138 (2d Cir. 1993) ("Drexel II")).
- ***In re Michael Milken and Associates Securities Litigation:*** As court-appointed liaison counsel, the firm was one of four lead counsel who structured the \$1.3 billion "global" settlement of all claims pending against Michael R. Milken, over 200 present and former officers and directors of Drexel Burnham Lambert, and more than 350 Drexel/Milken-related entities. (MDL Dkt. No. 924, M21-62-MP (S.D.N.Y.)).
- ***RJR Nabisco Securities Litigation:*** The firm represented individuals who sold RJR Nabisco securities prior to the announcement of a corporate change of control. This securities case settled for \$72 million. (No. 88-cv-7905 MBM (S.D.N.Y.)).

Whistleblower, Qui Tam, and False Claims Act

Berger & Montague has represented whistleblowers in matters involving healthcare fraud, defense contracting fraud, IRS fraud, securities fraud, and commodities fraud, helping to return more than \$1.1 billion to federal and state governments. In return, whistleblower clients retaining Berger & Montague to represent them in state and federal courts have received more than \$100 million in rewards. Berger &

Montague's time-tested approach in Whistleblower/Qui Tam representation involves cultivating close, productive attorney-client relationships with the maximum degree of confidentiality for our clients.

Judicial Praise for Berger & Montague Attorneys

Berger & Montague's record of successful prosecution of class actions and other complex litigation has been recognized and commended by judges and arbitrators across the country. Some remarks on the skill, efficiency, and expertise of the firm's attorneys are excerpted below.

Antitrust

From **Judge Madeline Cox Arleo** of the U.S. District Court for the District of New Jersey praising the efforts of all counsel:

I just want to thank you for an outstanding presentation. I don't say that lightly . . . it's not lost on me at all when lawyers come very, very prepared. And really, your clients should be very proud to have such fine lawyering. I don't see lawyering like this every day in the federal courts, and I am very grateful. And I appreciate the time and the effort you put in, not only to the merits, but the respect you've shown for each other, the respect you've shown for the Court, the staff, and the time constraints. And as I tell my law clerks all the time, good lawyers don't fight, good lawyers advocate. And I really appreciate that more than I can express.

Transcript of the September 9 to 11, 2015 Daubert Hearing in *Castro v. Sanofi Pasteur*, No. 11-cv-07178 (D.N.J.) at 658:14-659:4.

From **Judge William H. Pauley, III**, of the U.S. District Court of the Southern District of New York:

"Class Counsel did their work on their own with enormous attention to detail and unflagging devotion to the cause. Many of the issues in this litigation . . . were unique and issues of first impression."

* * *

"Class Counsel provided extraordinarily high-quality representation. This case raised a number of unique and complex legal issues The law firms of Berger & Montague and Coughlin Stoia were indefatigable. They represented the Class with a high degree of professionalism, and vigorously litigated every issue against some of the ablest lawyers in the antitrust defense bar."

In re Currency Conversion Fee Antitrust Litigation, 263 F.R.D. 110, 129 (2009).

From **Judge Faith S. Hochberg** of the United States District court for the District of New Jersey:

"[W]e sitting here don't always get to see such fine lawyering, and it's really wonderful for me both to have tough issues and smart lawyers . . . I want to congratulate all of you for the really hard work you put into this, the way you presented the issues, . . . On behalf of the entire federal judiciary I want to thank you for the kind of lawyering we wish everybody would do."

In re Remeron Antitrust Litig., Civ. No. 02-2007 (Nov. 2, 2005).

From U.S. District **Judge Jan DuBois**, of the U.S. District Court of the Eastern District of Pennsylvania:

“[T]he size of the settlements in absolute terms and expressed as a percentage of total damages evidence a high level of skill by petitioners ... The Court has repeatedly stated that the lawyering in the case at every stage was superb, and does so again.”

In Re Linerboard Antitrust Litig., 2004 WL 1221350, at *5-*6 (E.D. Pa. 2004).

From **Judge Nancy G. Edmunds**, of the U.S. District Court of the Eastern District of Michigan:

“[T]his represents an excellent settlement for the Class and reflects the outstanding effort on the part of highly experienced, skilled, and hard working Class Counsel....[T]heir efforts were not only successful, but were highly organized and efficient in addressing numerous complex issues raised in this litigation[.]”

In re Cardizem CD Antitrust Litig., MDL No. 1278 (E.D. Mich., Nov. 26, 2002).

From **Judge Charles P. Kocoras** of the U.S. District Court for the Northern District of Illinois:

“The stakes were high here, with the result that most matters of consequence were contested. There were numerous trips to the courthouse, and the path to the trial court and the Court of Appeals frequently traveled. The efforts of counsel for the class has [sic] produced a substantial recovery, and it is represented that the cash settlement alone is the second largest in the history of class action litigation. . . . There is no question that the results achieved by class counsel were extraordinary[.]”

Regarding the work of Berger & Montague in achieving more than \$700 million in settlements with some of the defendants in *In Re Brand Name Prescription Drugs Antitrust Litigation*, 2000 U.S. Dist. LEXIS 1734, at *3-*6 (N.D. Ill. Feb. 9, 2000).

From **Judge Peter J. Messitte** of the U.S. District Court for the District of Maryland:

“The experience and ability of the attorneys I have mentioned earlier, in my view in reviewing the documents, which I have no reason to doubt, the plaintiffs’ counsel are at the top of the profession in this regard and certainly have used their expertise to craft an extremely favorable settlement for their clients, and to that extent they deserve to be rewarded.”

Settlement Approval Hearing, Oct. 28, 1994, in *Spawd, Inc. and General Generics v. Bolar Pharmaceutical Co., Inc.*, CA No. PJM-92-3624 (D. Md.).

From **Judge Donald W. Van Arsdale** of the U.S. District Court for the Eastern District of Pennsylvania:

“As to the quality of the work performed, although that would normally be reflected in the not immodest hourly rates of all attorneys, for which one would expect to obtain excellent quality work at all times, the results of the settlements speak for themselves. Despite the extreme uncertainties of trial, plaintiffs’ counsel were able to negotiate a cash settlement of a not insubstantial sum, and in addition, by way of equitable relief, substantial concessions by the

defendants which, subject to various condition, will afford the right, at least, to lessee-dealers to obtain gasoline supply product from major oil companies and suppliers other than from their respective lessors. The additional benefits obtained for the classes by way of equitable relief would, in and of itself, justify some upward adjustment of the lodestar figure.”

Bogolian v. Gulf Oil Corp., 621 F. Supp. 27, 31 (E.D. Pa. 1985).

From **Judge Krupansky**, who had been elevated to the Sixth Circuit Court of Appeals:

Finally, the court unhesitatingly concludes that the quality of the representation rendered by counsel was uniformly high. The attorneys involved in this litigation are extremely experienced and skilled in their prosecution of antitrust litigation and other complex actions. Their services have been rendered in an efficient and expeditious manner, but have nevertheless been productive of highly favorable result.

In re Art Materials Antitrust Litigation, 1984 CCH Trade Cases ¶65,815 (N.D. Ohio 1983).

From **Judge Joseph Blumenfeld** of the U.S. District Court for the District of Connecticut:

“The work of the Berger firm showed a high degree of efficiency and imagination, particularly in the maintenance and management of the national class actions.”

In re Master Key Antitrust Litigation, 1977 U.S. Dist. LEXIS 12948, at *35 (Nov. 4, 1977).

Securities Litigation

From **Judge Jed Rakoff** of the U.S. District Court for the Southern District of New York:

Court stated that lead counsel had made “very full and well-crafted” and “excellent submissions”; that there was a “very fine job done by plaintiffs’ counsel in this case”; and that this was “surely a very good result under all the facts and circumstances.”

In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation, Master File No. 07-cv-9633(JSR)(DFE) (S.D.N.Y., July 27, 2009).

From **Judge Michael M. Baylson** of the U.S. District Court for the Eastern District of Pennsylvania:

“The Court is aware of and attests to the skill and efficiency of class counsel: they have been diligent in every respect, and their briefs and arguments before the Court were of the highest quality. The firm of Berger & Montague took the lead in the Court proceedings; its attorneys were well prepared, articulate and persuasive.”

In re CIGNA Corp. Sec. Litig., 2007 U.S. Dist. LEXIS 51089, at *17-*18 (E.D. Pa. July 13, 2007).

From **Chancellor William Chandler, III** of the Delaware Chancery Court:

“All I can tell you, from someone who has only been doing this for roughly 22 years, is that I have yet to see a more fiercely and intensely litigated case than this case. Never in 22 years have I seen

counsel going at it, hammer and tong, like they have gone at it in this case. And I think that's a testimony – Mr. Valihura correctly says that's what they are supposed to do. I recognize that; that is their job, and they were doing it professionally.”

Ginsburg v. Philadelphia Stock Exchange, Inc., No. 2202 (Del. Ch., Oct. 22, 2007).

From **Judge Stewart Dalzell** of the U.S. District Court for the Eastern District of Pennsylvania:

“Thanks to the nimble class counsel, this sum, which once included securities worth \$149.5 million is now all cash. Seizing on an opportunity Rite Aid presented, class counsel first renegotiated what had been stock consideration into Rite Aid Notes and then this year monetized those Notes. Thus, on February 11, 2003, Rite Aid redeemed those Notes from the class, which then received \$145,754,922.00. The class also received \$14,435,104 in interest on the Notes.”

“Co-lead counsel ... here were extraordinarily deft and efficient in handling this most complex matter... they were at least eighteen months ahead of the United States Department of Justice in ferreting out the conduct that ultimately resulted in the write down of over \$1.6 billion in previously reported Rite Aid earnings. In short, it would be hard to equal the skill class counsel demonstrated here.”

In re Rite Aid Corp. Securities Litigation, 269 F. Supp. 2d 603, 605, n.1, 611 (E.D. Pa.2003).

From **Judge Helen J. Frye**, United States District Judge for the U.S. District Court for the District of Oregon:

“In order to bring about this result [partial settlements then totaling \$54.25 million], Class Counsel were required to devote an unusual amount of time and effort over more than eight years of intense legal litigation which included a four-month long jury trial and full briefing and argument of an appeal before the Ninth Circuit Court of Appeals, and which produced one of the most voluminous case files in the history of this District.”

* * *

“Throughout the course of their representation, the attorneys at Berger & Montague and Stoll, Stoll, Berne, Lokting & Shlachter who have worked on this case have exhibited an unusual degree of skill and diligence, and have had to contend with opposing counsel who also displayed unusual skill and diligence.”

In Re Melridge, Inc. Securities Litigation, No. CV 87-1426-FR (D. Ore. April 15, 1996).

From **Judge Marvin Katz** of the U.S. District Court for the Eastern District of Pennsylvania:

“[T]he co-lead attorneys have extensive experience in large class actions, experience that has enabled this case to proceed efficiently and professionally even under short deadlines and the pressure of handling thousands of documents in a large multi-district action... These counsel have also acted vigorously in their clients' interests....”

* * *

“The management of the case was also of extremely high quality.... [C]lass counsel is of high caliber and has extensive experience in similar class action litigation.... The submissions were of consistently high quality, and class counsel has been notably diligent in preparing filings in a timely manner even when under tight deadlines.”

Commenting on class counsel, where the firm served as both co-lead and liaison counsel in *In re Ikon Office Solutions, Inc. Securities Litigation*, 194 F.R.D. 166, 177, 195 (E.D. Pa. 2000).

From **Judge William K. Thomas**, Senior District Judge for the United States District Court for the Northern District of Ohio:

“In the proceedings it has presided over, this court has become directly familiar with the specialized, highly competent, and effective quality of the legal services performed by Merrill G. Davidoff, Esq. and Martin I. Twersky, Esq. of Berger & Montague....”

* * *

“Examination of the experience-studded biographies of the attorneys primarily involved in this litigation and review of their pioneering prosecution of many class actions in antitrust, securities, toxic tort matters and some defense representation in antitrust and other litigation, this court has no difficulty in approving and adopting the hourly rates fixed by Judge Aldrich.”

Commenting in *In re Revco Securities Litigation*, Case No. 1:89CV0593, Order (N.D. Oh. September 14, 1993).

Civil/Human Rights Cases

From **Deputy Treasury Secretary Stuart E. Eizenstat**:

“We must be frank. It was the American lawyers, through the lawsuits they brought in U.S. courts, who placed the long-forgotten wrongs by German companies during the Nazi era on the international agenda. It was their research and their work which highlighted these old injustices and forced us to confront them. Without question, we would not be here without them.... For this dedication and commitment to the victims, we should always be grateful to these lawyers.”

In his remarks at the July 17, 2000, signing ceremony for the international agreements which established the German Foundation to act as a funding vehicle for the payment of claims to Holocaust survivors.

Insurance Litigation

From **Judge Janet C. Hall**, of the U.S. District Court of the District of Connecticut:

Noting the “very significant risk in pursuing this action” given its uniqueness in that “there was no prior investigation to rely on in establishing the facts or a legal basis for the case....[and] no other prior or even now similar case involving parties like these plaintiffs and a party like these defendants.” Further, “the quality of the representation provided to the plaintiffs ... in this case has been consistently excellent.... [T]he defendant[s] ... mounted throughout the course of the five years the case pended, an extremely vigorous defense.... [B]ut for counsel’s outstanding work in this case and substantial effort over five years, no member of the class would have recovered a penny.... [I]t was an extremely complex and substantial class ... case ... [with an] outstanding result.”

Regarding the work of Berger & Montague attorneys Peter R. Kahana and Steven L. Bloch, among other co-class counsel, in *Spencer, et al. v. The Hartford Financial Services Group, Inc., et al.*, in the Order approving the \$72.5 million final settlement of this action, dated September 21, 2010 (No. 3:05-cv-1681, D. Conn.).

Customer/Broker Arbitrations

From **Robert E. Conner**, Public Arbitrator with the National Association of Securities Dealers, Inc.:

“[H]aving participated over the last 17 years in 400 arbitrations and trials in various settings, ... the professionalism and the detail and generally the civility of everyone involved has been not just a cause for commentary at the end of these proceedings but between ourselves [the arbitration panel] during the course of them, and ... the detail and the intellectual rigor that went into the documents was fully reflective of the effort that was made in general. I wanted to make that known to everyone and to express my particular respect and admiration.”

About the efforts of Berger & Montague shareholders Merrill G. Davidoff and Eric L. Cramer, who achieved a \$1.1 million award for their client, in *Steinman v. LMP Hedge Fund, et al.*, NASD Case No. 98-04152, at Closing Argument, June 13, 2000.

Other

From **Stephen M. Feiler, Ph.D.**, Director of Judicial Education, Supreme Court of Pennsylvania, Administrative Office of Pennsylvania Courts, Mechanicsburg, PA *on behalf of the Common Pleas Court Judges (trial judges) of Pennsylvania*:

“On behalf of the Supreme Court of Pennsylvania and AOPC’s Judicial Education Department, thank you for your extraordinary commitment to the *Dealing with Complexities in Civil Litigation* symposia. We appreciate the considerable time you spent preparing and delivering this important course across the state. It is no surprise to me that the judges rated this among the best programs they have attended in recent years.”

About the efforts of Berger & Montague attorneys Merrill G. Davidoff, Peter Nordberg and David F. Sorensen in planning and presenting a CLE Program to trial judges in the Commonwealth of Pennsylvania.

Attorneys in *Smith v. A-Check* Litigation

E. Michelle Drake - Shareholder

E. Michelle Drake is a Shareholder in Berger & Montague's Minneapolis office. With career settlements and verdicts valued at more than \$150 million, Michelle has had great success at a young age and in a wide variety of cases.

Michelle focuses her practice primarily on consumer protection, improper credit reporting and financial services class actions. Michelle is empathetic towards her clients and unyielding in her desire to win. Possessing a rare combination of an elite academic pedigree and real world trial skills, Michelle has successfully gone toe-to-toe with some of the world's most powerful companies.

Michelle helped achieve one of the largest class action settlements in a case involving improper mortgage servicing practices associated with force-placed insurance, resulting in a settlement valued at \$110 million for a nationwide class of borrowers who were improperly force-placed with overpriced insurance. Michelle also served a liaison counsel and part of the Plaintiffs' Steering Committee on behalf of consumers harmed in the Target data breach, a case she helped successfully resolve on behalf of over ninety million consumers whose data was affected by the breach. In 2015, Michelle resolved a federal class action on behalf of a group of adult entertainers in New York for \$15 million. Most recently, Michelle has been successful in litigating numerous cases protecting consumers' federal privacy rights under the Fair Credit Reporting Act, securing settlements valued at over \$10 million on behalf of tens of thousands of consumers harmed by improper background checks and inaccurate credit reports in the last two years alone.

Michelle was admitted to the bar in 2001 and has since served as lead class counsel in over fifty class and collective actions alleging violations of the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, the Fair Labor Standards Act, various states' unfair and deceptive trade practices acts, breach of contract and numerous other pro-consumer and pro-employee causes of action.

Michelle serves on the Board of the National Association of Consumer Advocates, is a member of the Partner's Council of the National Consumer Law Center, and is an At-Large Council Member for the Consumer Litigation Section for the Minnesota State Bar Association. She was named as a Super Lawyer in both 2013 and 2014, and was named as a Rising Star prior to that. Michelle was also appointed to the Federal Practice Committee in 2010 by the United States District Court for the District of Minnesota. She has been quoted in the New York Times and the National Law Journal, and her cases were named as "Lawsuits of the Year" by Minnesota Law & Politics in both 2008 and 2009.

Michelle began her practice of law by defending high stakes criminal cases as a public defender in Atlanta.

Joseph C. Hashmall - Associate

Joe Hashmall is an associate at Berger & Montague, P.C. He concentrates his practice on consumer class-action litigation.

Mr. Hashmall has represented consumers and employees in numerous class actions under the Fair Credit Reporting Act, including actions against consumer reporting agencies for reporting inaccurate or outdated information, and actions against employers for failing to comply with the Act's requirements. Mr. Hashmall has also represented classes of mortgage and student loan borrowers in actions against banks, insurance companies, and other financial institutions.

Prior to beginning his litigation career, Mr. Hashmall clerked for President Judge Bonnie B. Leadbetter of the Pennsylvania Commonwealth Court and for the Honorable David J. Ten Eyck of the Minnesota District Court. Mr. Hashmall graduated cum laude from Cornell Law School, where he was an executive editor with the Cornell Legal Information Institute and an editor of the Cornell International Law Journal.

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

JOHN SMITH, individually and as
a representative of the Class,

Plaintiff,

v.
A-CHECK AMERICA INC. d/b/a
A-CHECK GLOBAL,

Defendant.

Case No.: 5:16-cv-00174-VAP-KK

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Based on Plaintiff’s Unopposed Motion for Preliminary Approval for the Proposed Class Action Settlement between Plaintiff John Smith (“Named Plaintiff” or “Class Representative”) and A-Check America Inc. d/b/a A-Check Global (“A-Check” or “Defendant”) in the above-captioned matter (“Lawsuit”), as set forth in the Settlement Agreement entered into between Plaintiff and Defendant (the “Settlement Agreement”), and for good cause shown therein, IT IS HEREBY ORDERED:

1. Unless defined herein, all capitalized terms in this Order shall have the same meanings as set forth in the Settlement Agreement.

2. For settlement purposes only, the Court preliminarily finds that the Settlement of the Lawsuit, on the terms and conditions set forth in the Settlement Agreement, including all exhibits thereto, is fair, reasonable, adequate and in the best interest of the Settlement Class Members and within the range of reasonableness for preliminary settlement approval. The Court finds that: (a) the Settlement Agreement resulted from extensive arm’s-length negotiations; and (b) the Settlement Agreement is sufficiently reasonable to

warrant notice of the Settlement to persons in the Settlement Class and a full hearing on the approval of the Settlement.

3. Pursuant to Fed. R. Civ. P. 23(b)(3), the Court conditionally certifies, for settlement purposes only, the following Settlement Class with respect to the claims asserted against A-Check in the Lawsuit:

All persons who were the subject of a background report prepared by Defendant, whose report contained one or more items of criminal information which were non-convictions, where such information antedated the report by more than seven years, and whose report was issued at any time dating from February 17, 2014 to January 27, 2017.

4. The Court preliminarily finds, for purposes of settlement only, that the Lawsuit meets all the prerequisites of Rule 23 of the Federal Rules of Civil Procedure, including that:

(a) The Settlement Class appears to be so numerous that joinder of all members is impracticable;

(b) There appear to be questions of law or fact common to the Settlement Class for purposes of determining whether this Settlement should be approved;

(c) The Named Plaintiff's claims appear to be typical of the claims being resolved through the proposed Settlement;

(d) The Named Plaintiff appears to be capable of fairly and adequately protecting the interests of the Settlement Class in connection with the proposed Settlement;

(e) Common questions of law and fact appear to predominate over questions affecting only individual persons in the Settlement Classes. Accordingly, the Settlement Class appears to be sufficiently cohesive to warrant settlement by representation; and

(f) Certification of the Settlement Class appears to be superior to other available methods for the fair and efficient resolution of the claims of the Settlement Class.

5. For settlement purposes only, the Court preliminarily certifies Plaintiff John Smith as the Class Representative. The Court preliminarily appoints Berger & Montague, P.C. as Class Counsel. The Court preliminarily finds that Class Counsel have and will fairly and adequately represent the interests of the Settlement Class Members.

6. The court appoints Kurzman, Carson Consultants as the Settlement Administrator in this case, to carry out the tasks set forth in the Settlement Agreement.

7. The Court approves the Postcard Notice, attached to the Settlement Agreement as Exhibit B, for distribution in accordance with the schedule set forth in the Settlement Agreement. The Court finds that the proposed method of class notice fully satisfies the requirements of due process, the Federal Rules of Civil Procedure, and constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

8. All Settlement Class Members have the right to either opt-out or object to this Settlement pursuant to the procedures and schedule included in the Settlement. The opt-out and objection deadlines shall be calculated as set forth in the Settlement Agreement and shall be included on the Postcard Notices where so indicated.

9. A Final Approval Hearing shall take place before the Honorable Virginia A. Phillips on , 2017 at , at the United States District Court, Central District of California, First Street Courthouse, Courtroom 8A, 8th Floor, 350 West 1st Street, Los Angeles, CA 90012, to determine: whether the proposed Settlement of the Lawsuit on the terms and

conditions provided for in the Settlement Agreement is fair, reasonable and adequate and should be approved; whether the Final Approval Order, as provided for in the Settlement Agreement, should be entered; and the amount of any fees and costs that may be awarded to Class Counsel, and the amount of any service award that may be awarded to the Named Plaintiff, as provided for in the Settlement Agreement. The Court will also hear and consider any properly lodged objections at that time under the process set forth in the Settlement Agreement. The Final Approval Hearing may be postponed, adjourned, or rescheduled by order of the Court without further notice to the Settlement Class Members.

10. Objections by any Settlement Class Member to the Settlement Agreement shall be heard by the Court at the Final Approval Hearing. Written objections shall be sent to the Clerk of Court and the Settlement Administrator and must state the case name and number; the basis for and an explanation of the objection; the name, address, telephone number, and email address of the Settlement Class Member making the objection; and a statement of whether the Settlement Class Member intends to appear at the fairness hearing, either with or without counsel. In addition, any objection must be personally signed by the Settlement Class Member and, if represented by counsel, then by counsel. Any Settlement Class Member who fails to object in the manner prescribed herein shall be deemed to have waived his or her objections and shall be foreclosed from making any objections, whether by appeal or otherwise, to the Settlement.

11. Class Counsel shall file any application for an award of attorneys' fees and costs, Class Representative Service Payment, and payment of the Settlement Administrator's expenses no later than fourteen (14) days prior to the Opt-Out Deadline.

12. All proceedings in the Lawsuit are stayed pending final approval of the Settlement, except as may be necessary to implement the Settlement or comply with the terms of the Settlement Agreement.

13. Counsel for the parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the settlement that are not materially inconsistent with either this Order or the terms of the Settlement Agreement.

SO ORDERED:

Dated: _____

Hon. VIRGINIA A. PHILLIPS
Chief United States District Judge