IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

MICHAELT. DREHER,
on behalf of himself and others
similarly situated,

Plaintiff

CIVIL ACTION NO. 3:11-cv-00624-JAG

v.

EXPERIAN INFORMATION SOLUTIONS, INC.,

Defendant.

PLAINTIFF'S MEMORANDUM IN SUPPORT
OF MOTION FOR CLASS CERTIFICATION

Pursuant to Federal Rule of Civil Procedure 23, Plaintiff MICHAEL DREHER, on behalf of himself and others similarly situated, moves the Court for class certification for the alleged violations of the Fair Credit Reporting Act against Defendant EXPERIAN INFORMATION SOLUTIONS, INC. Plaintiff submits this memorandum of law in support for his request for class certification.

I. OVERVIEW

This is a class action case brought pursuant to the federal Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681, *et seq* challenging a uniform policy and procedure of Experian Information Solutions, Inc. ("Experian" or "Defendant") by which Experian deliberately withholds and inaccurately states the identity of the source of reported credit information. Between two classes brought under 15 U.S.C. §§1681g(a)(2) and 1681e(b), there are roughly 150,000 affected consumers.

Some class cases are more challenging than others. Procedures vary over time, or by consumer. Individual issues matter. But not this case. After a year or more of substantial

litigation, the exchange of tens of thousands of pages of documents and discovery, numerous depositions and negotiation of stipulations, Plaintiff has not discovered a single material variance in Experian's process and conduct relevant to this motion. From the moment Cardworks was appointed to service the Advanta accounts in or around August 2010, Experian never disclosed to consumers that Cardworks was the exclusive entity that supplied the information appearing on the Advanta tradelines. In fact, Experian continued to report Cardworks as the exclusive source of the information in the Advanta tradelines after this lawsuit was commenced in September 2011. And even after the Court's Memorandum Opinion on Experian's Motion for Partial Summary Judgment on May 30, 2013, Experian admittedly did not change its policy. Plaintiff's claims and those of the putative class members arise from Experian's adoption of a uniform practice in violation of the FCRA. Experian's misconduct is uniform, unvaried, and the same for each class member. [1] It has responded to factual contention interrogatories as follows:

> **INTERROGATORY NO. 8**: If you deny that the named Plaintiff or any of his counsel of record would adequately represent the putative classes, state all reasons why you contend this is true and describe all documents you believe may support or regard your denial.
>
> **RESPONSE**: Subject to and without waiving its general and specific objections, Experian does not contend that Plaintiff's counsel of record is inadequate to represent the putative class member. Experian further states that an investigation to assess whether Plaintiff can adequately represent the putative class is ongoing. Therefore, Experian reserves the right to supplement this response.
>
> **INTERROGATORY NO. 9**: If you deny that any of the Plaintiffs claims as alleged in the complaint are typical of the claims of the putative classes or the

[1] In response to Plaintiff's discovery requests as to the factual defenses for specific elements for Rule 23 class certification, Experian either fairly conceded the elements or failed to articulate a single fact or legal reason why certification is improper. Plaintiff's targeted discovery on these issues precludes Experian from now raising new facts or argument omitted from its discovery responses, especially in light of the Court's Order dated December 31, 2013, reminding the parties of their Rule 26(e) duties. (Docket # 126). ("The Court reminds [the] parties that they both have a duty to supplement discovery responses. ***Failure to supplement in a timely manner will result in the exclusion of evidence.***").

> claims lack commonality as alleged in the Complaint, state all reasons why you contend this is true and describe all documents you believe may support or regard the same.
>
> **RESPONSE**: Subject to and without waiving its general and specific objections, Experian states that an investigation is ongoing to assess whether the claims are typical of the claim of the putative class and whether the claims lack commonality. Therefore, Experian reserves the right to supplement this response.
>
> …
>
> **INTERROGATORY NO. 11**: Identify and describe all facts and evidence to support your contention that there are alternatives for the prosecution of the class claims as alleged in this case that are superior to class treatment, identify these alternatives to class and list and describe all evidence that supports this contention.
>
> **RESPONSE**: Subject to and without waiving its general and specific objections, Experian states that an investigation is ongoing to assess whether there are alternatives for the prosecution of the class claims that are superior to class treatment. Therefore, Experian reserves the right to supplement this response

(Ex. 1, Experian's Responses to Plaintiff's First Set of Interrogatories, Nos. 8, 9, and 11).

And it has responded "Admitted" to these Requests for Admission:

> 63. Admit that you can identify potential class members as defined in paragraph 21(a) of the Complaint through your records.[2]
>
> ANSWER: ADMIT.
>
> 64. Admit that you can identify potential class members as defined in paragraph 21(b) of the Complaint through your records.[3]
>
> ANSWER: ADMIT.
>
> 67. Admit that there are more than 1000 potential class members as defined in paragraph 21(a) of the Complaint.
>
> ANSWER: ADMIT.
>
> 69. Admit that there are more than 1000 potential class members as defined in paragraph 21(b) of the Complaint.

[2] Paragraph 21(a) of the Second Amended Complaint defines the proposed 1681e(b) class.
[3] Paragraph 21(b)of the Second Amended Complaint defines the proposed 1681g(a)(2) class.

ANSWER: ADMIT.

(Ex. 2, Experian's Responses to Plaintiff's First Request for Admissions, Nos. 63, 64, 67 and 69).

Plaintiff asks the Court to certify this case for trial and mediation as a class action pursuant to Fed. R. Civ. P. 23(b)(3).

II. STATEMENT OF FACTS AND PROPOSED CLASS CLAIMS

The Court properly applies a liberal construction to Rule 23 in conducting the rigorous analysis as to whether certification is appropriate. *Fisher v. Virginia Elec. & Power Co.*, 217 F.R.D. 201, 210 (E.D. Va. 2003) (citing *In re A.H. Robins*, 880 F.2d at 728, for the Fourth Circuit view that Rule 23 receive a liberal construction and that, in applying the rule, it is the district court's responsibility to perform a rigorous analysis of the particular facts of the case). A Rule 23 motion is not the proper posture to determine, or even litigate, the merit of a case. The Court should "inquire no further into the merits than is necessary to determine the likely contours of this action should it proceed on a representative basis." *Id*. at 211. The merits of plaintiffs' claims are not a relevant consideration at the certification stage. *Thorn.* 445 F.3d at 319; *Harris v. Rainey*, 5:13CV077, 2014 WL 352188 (W.D. Va. Jan. 31, 2014) ("The likelihood of the plaintiffs' success on the merits ... is not relevant to the issue of whether certification is proper."). Nevertheless, Plaintiff provides the following overview and explanation of the putative class's case in order to provide context for this motion.

A. Michael Dreher's Experiences

In November 2010, Mr. Dreher's security clearance was being processed by the National Security Agency ("NSA"). During this process, an NSA investigator advised him that it had discovered a delinquent account on Dreher's credit reports. The tradeline was reporting under the

name "Advanta Bank" and "Advanta Credit Cards". Mr. Dreher was advised that he had to prove that he had made payments on the Advanta account or it could severely impact his Top Secret Level III clearance.

As a result of the NSA investigation, Mr. Dreher contacted Experian to request his own copy of his full credit file. The consumer reports furnished to Mr. Dreher by Experian pursuant to 15 U.S.C. § 1681g(a) are dated November 16, 2010, March 16, 2011, June 21, 2011 and November 3, 2011. In each and every report, Experian made a materially false representation: that "Advanta Bank Corp" and "Advanta Credit Cards" were the "source of the information" in the tradelines actually supplied by Cardworks Servicing, LLC ("Cardworks"). Mr. Dreher did not learn that Cardworks was the source of the information for the Advanta tradeline until after he filed this lawsuit.

B. Experian's Uniform Practice of Listing Advanta as the Sole Source of Information Reported by Cardworks.

Experian's practice of listing as Advanta as the sole source of information occurred from the moment Cardworks first communicated with Experian that Cardworks was performing all aspects of the credit reporting on the Advanta card credits after Advanta collapsed around March 19, 2010. In its discovery responses, Experian admits that it never listed Cardworks on any tradeline reported as Advanta Bank or Advanta Credit Cards. Experian further admits that practice continued during the pendency of this lawsuit even after the Court issued its Memorandum Opinion on May 30, 2013. For example, on **August 29, 2013**, Experian stated as follows:

> **INTERROGATORY NO. 2**: State and describe all changes you have made during the pendency of this lawsuit to the way you identify the source of the information in trade lines reported by Cardworks.
>
> **RESPONSE**: Subject to and without waiving its general and specific objections,

> Experian states that it has made no changes during the pendency of this lawsuit to the way it identifies the source of information in tradelines reported by Cardworks. Experian further states that, although there have not been any such changes during the pendency of this lawsuit, Experian has been in communications with Cardworks about potential changes to the way it identifies the source of information in tradelines. ***Experian states that none of these communications resulted in changes to the reporting of the Advanta tradeline.***
>
> **INTERROGATORY NO. 12**: If you contend that the Defendant's procedures have varied in any material manner over time or by any other classification such that the Plaintiffs' facts would not be typical of the facts as to the group of the other class members, state in detail the time period(s) during which such procedure(s) varied or other classification, how they varied and why this variance was material, and identify all documents that describe how Defendant's procedures have varied by time or any other classification.
>
> **RESPONSE**: Subject to and without waiving its general and specific objections, ***Experian does not contend that its procedures have varied in any material manner over time or by any other classification. Experian admits that it does not list Cardworks, Inc. or Cardworks Servicing, LLC on any tradeline reported as 'Advanta Bank' or 'Advanta Credit Cards.***'"

(Ex. 1, Experian's Responses to Plaintiff's First Set of Interrogatories, Nos. 2, 12) (emphasis added).

Experian's discovery responses and documents produced confirm that there is no variance whatsoever in Experian's reporting of the Advanta tradeline. Simply put, Experian never listed Cardworks as a source of the information on the Advanta tradeline. Never - from the moment Cardworks first communicated with Experian through the pendency of this lawsuit. Thus, a class action will promote the fair and expeditious resolution of all claims by Mr. Dreher and the putative class members.

C. The Purpose and Requirements of the §§ 1681g(a)(2) and 1681e(b).

The FCRA's notice provisions, including § 1681g(a), are the foundation of consumer oversight on which FCRA compliance is built. The notices that Congress included in the FCRA provide consumers with the information necessary to inform themselves and then engage in self-

help. The indispensable first step in the process for a consumer is to examine the contents of her credit file by using the disclosure rights provided pursuant to § 1681g. *See* National Consumer Law Center, Fair Credit Reporting, at 73 (7th ed. 2010) ("Consumers can review a report of the file contents to determine if there is inaccurate or incomplete information. Understanding the nature of negative information in the file also is an aid to improving the consumer's credit profile. Disclosure of the consumer's file is an essential first step to handling almost any problem relating to a consumer's credit file and consumer reports related to the file"); *Gillespie v. Equifax Info. Servs., L.L.C.* 484 F.3d 938, 941 (7th Cir. 2007) ("A primary purposes of the statutory scheme provided by the disclosure in § 1681g(a)(1) is to allow consumers to identify inaccurate information in their credit files and correct this information *via* the grievance procedure established under § 1681i.").

Similarly, § 1681e(b) is one of the core provisions of the FCRA obligating CRAs to follow "reasonable procedures to assure maximum possible accuracy" in their credit reporting. 15 U.S.C. § 1681e(b). "[A] consumer reporting agency violates § 1681e(b) if (1) the consumer report contains inaccurate information and (2) the reporting agency did not follow reasonable procedures to assure ***maximum possible accuracy***." *Dalton v. Capital Associated Indus., Inc.*, 257 F.3d 409, 415 (4th Cir. 2001). (emphasis added). This requirement is independent of a consumer's right to dispute and obtain correction of inaccurate information. As the objective of § 1681e(b) is to ensure "maximum possible accuracy," the statute accordingly imposes a high standard for CRAs. *Andrews v. TRW, Inc.*, 225 F.3d 1063 (9th Cir. 2000) ("very high standard set by statute"), *rev'd on other grounds*, 534 U.S. 19 (2001). They must adopt procedures not just to catch many of the errors, but to ensure "maximum possible accuracy." "[W]hen a consumer reporting agency learns or should reasonably be aware of errors in its reports that may

indicate systematic problems (by virtue of information from consumers, report users, from periodic review of its reporting system, or otherwise) it must review its procedures for assuring accuracy." 16 C.F.R. Part 600 FTC Commentary Appendix 607 (3)(A). In short, by the plain language of the statute, CRAs should be doing everything possible, within the limits of economic reality, to ensure *maximum possible accuracy*.

Counts I and III of the Amended Complaint, which are the subject of this motion[4], allege that Experian failed to clearly and accurately disclose "the sources of information" within Plaintiff's credit file as mandated by § 1681g(a)(2); and failed to follow reasonable procedures to ensure that it accurately reported the real identity of the source of the tradeline information to the users of class member's credit reports. Section § 1681g(a)(2) provides, in pertinent part:

> Every consumer reporting agency shall, upon request, and subject to section 1681h(a)(1) of this title, clearly and accurately disclose to the consumer:
>
> (1) All information in the consumer's file at the time of the request…
>
> …
>
> (2) ***The sources of the information****;* except that the sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed: Provided, That in the event an action is brought under this subchapter, such sources shall be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought.

15 U.S.C. § 1681g(a) (emphasis added). Plaintiff asserts and the Court has found that Experian violates § 1681g(a)(2) when it fails to disclose CardWorks as an entity that supplied the information appearing on the Advanta tradelines. Plaintiff asserts this claim on behalf of himself and 88,534 class members. There are no material differences between the Plaintiff and the class members. Mr. Dreher and each of the class members each requested a credit report from

[4] Plaintiff does not seek to certify a class as to Count II, previously a putative class claim and now simply an individual one.

Experian, each report contained the Advanta trade line, and each report failed to disclose that Cardworks was the entity that supplied the information that appeared on the Advanta trade line. These facts are exactly the same for Mr. Dreher and 100% of the § 1681g class members.

Similarly, Plaintiff asserts that Experian violated § 1681e(b), which provides "[w]henever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates." 15 U.S.C. § 1681e(b). In this instance, Experian failed to do so because it published inaccurate information concerning Mr. Dreher and the putative class members at the request of its paying client, Cardworks.

According to its discovery responses, Experian admits that – despite this litigation - it still "does not have a written policy or procedure regarding compliance with the FCRA provisions that Plaintiff has alleged to have been violated." (Ex. 1, Experian's Responses to Plaintiff's First Set of Interrogatories, No. 3). Once again, there are no material differences between Mr. Dreher and the § 1681e(b) class members. Mr. Dreher and the class members' consumer reports were each provided to a third party, each contained the same error, and each error occurred because of Experian's uniform lack of procedures to accurately disclose the Advanta trade lines.

Defendant's entire defense in this case is uniform to all of the class members – it attempts to assert that the language of § 1681g(a)(2) is ambiguous. Of course, this critical legal question is not ripe at this Rule 23 posture. However, Defendant's lone argument highlights the unquestionable commonality, typicality, and predominance arguments for class certification. The more Experian premises its defense on a single question of statutory interpretation, the more appropriate for class certification the case becomes.

III. PROPOSED CLASS DEFINITIONS

Plaintiff seeks certification of the following two classes:

a. Section 1681e(b) Class.

All natural persons for whom Experian's records note that a "hard inquiry" consumer report was furnished to a third party, on or after June 1, 2010 and in which the credit report identified "Advanta Bank" or "Advanta Credit Cards" as the only source of the information for the tradeline.

b. Section 1681g(a)(2) Class.

All natural persons who requested a copy of their consumer disclosure from Experian on or after June 1, 2010 and received a document in response that identified "Advanta Bank" or "Advanta Credit Cards" as the only source of the Information for the tradeline.

Of course, regardless of what is alleged as a proffered class definition in a complaint or in this motion, the Court is free to define the class as it finds more appropriate. *Bratcher v. Nat'l Standard Life Ins. Co.* (*In re Monumental Life Ins. Co*.), 365 F.3d 408, 414 (5th Cir. 2004) cert.denied, 125 S.Ct. 277 (2004); *Meyer v. Citizens & S. Nat'l Bank*, 106 F.R.D. 356, 360 (M.D. Ga. 1985) ("The Court has discretion in ruling on a motion to certify a class. This discretion extends to defining the scope of the class."); *Bafus v. Aspen Realty, Inc.*, 236 F.R.D. 652, 655 (D. Idaho 2006) ("At the hearing in this matter, Plaintiffs offered this revised definition. The Court finds that the revised definition better reflects Plaintiffs' claims in these actions. Therefore, the Court will consider the revised definition in making its class certification determination."). *See also Woods v. Stewart Title Guaranty Company*, 2007 WL 2872219 (D. Md. Sept. 17, 2007) (certifying a class of individuals as proposed by plaintiffs during class certification briefing that was broader than the class plaintiffs' alleged in the class action complaint after discovery uncovered a broader group of individuals harmed by the same practice alleged in the complaint).

IV. BOTH OF THE PROPOSED CLASS CLAIMS SATISFY EACH OF THE REQUIREMENTS FOR CLASS CERTIFICATION SET FORTH IN RULE

23(a) and RULE 23b(3).

A. The Class Certification Standards

While the Court must "undertake[] the 'rigorous' analysis required under Supreme Court precedent, *see Wal–Mart Stores, Inc. v. Dukes,* 131 S.Ct. 2541, 2551 (2011), [it should] nevertheless [be] mindful of our court of appeals' admonition that Rule 23 should be accorded a liberal construction 'which will in the particular case 'best serve the ends of justice for the affected parties and ... promote judicial efficiency.' '*Gunnells v. Healthplan Services, Inc.,* 348 F.3d 417, 424 (4th Cir.2003) (quoting *In re A.H. Robins,* 880 F.2d 709, 740 (4th Cir.1989))." *Coleman v. Union Carbide Corp.*, CIV.A. 2:11-0366, 2013 WL 5461855 (S.D.W. Va. Sept. 30, 2013). Federal courts have long regarded "consumer claims" as "particularly appropriate for class resolution." *see Amchem Prods. v. Windsor*, 521 U.S. 591, 625 (1997); *In re Mexican Money Transfer Litig.*, 267 F.3d 743, 747 (7th Cir. 2001); *Cavin v. Home Loan Ctr., Inc.*, 236 F.R.D. 387, 395-96 (N.D. Ill. 2006) ("[c]onsumer claims are among the most commonly certified for class treatment"). As set forth below, there is no basis for regarding this case any differently.

As the Fourth Circuit has recently summarized:

> [A] rigorous analysis into the Rule 23(a) and Rule 23(b)(3) requirements will clearly contain the following elements. **First**, a district court must decide whether "the class is so numerous that joinder of all members is impracticable." Fed.R.Civ.P. 23(a)(1). **Second**, a district court must determine whether even a *single* question of fact or law is common to the class. Such questions will depend on a "common contention," the resolution of which will resolve "an issue that is central to the validity of each one of the claims in one stroke." *Wal–Mart,* 131 S.Ct. at 2551; *see also Ross,* 667 F.3d at 908–10 (7th Cir.2012). **Third**, a district court must determine whether the claims (or defenses) of the representative parties are typical of those of the class as a whole by comparing the claims of the representatives with the claims of the absent class members and determining whether they tend to advance the same interests. *See Deiter,* 436 F.3d at 466–67.
> **Fourth**, a district court must determine whether "the representative parties will fairly and adequately protect the interests of the class." Fed.R.Civ.P. 23(a)(4).
> Finally, [**Fifth**] if seeking class certification pursuant to Rule 23(b)(3), a district court must determine whether common questions of law or fact predominate over

> individual questions such that a class action is the superior method for resolving the controversy. This separate inquiry will require a district court to balance common questions among class members with any dissimilarities between class members. *See Gunnells*, 348 F.3d at 427–30. [**Sixth**] If satisfied that common questions predominate, a district court should then also consider whether any alternative methods exist for resolving the controversy and whether the class action method is in fact superior. *See, e.g., Stillmock*, 385 Fed.Appx. at 273–75.

Ealy v. Pinkerton Gov't Servs., Inc., 514 F. App'x 299, 307-08 (4th Cir. 2013). *See* FED. R. CIV. P. 23(b)(3). Plaintiff addresses each Rule 23(a) and Rule 23(b)(3) element in turn.

B. The Class Satisfies the Requirements of Rule 23(a).

1. The Class is Sufficiently Numerous to make Joinder Impracticable.

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." *Talbott v. GC Servs., Ltd. Pshp.*, 191 F.R.D. 99, 102 (W.D.Va. 2000). Where the class numbers 25 or more, joinder is usually impracticable. *Cypress v. Newport News General & Nonsectarian Hosp. Assn*, 375 F.2d 648, 653 (4th Cir. 1967). In this case, the proposed class is more than sufficiently numerous to make joinder impossible. Experian has formally admitted that there are more than 1000 potential class members in both classes proposed by the Plaintiff. (*See, e.g.*, Ex. 2, Experian's Responses to Plaintiff's First Request for Admissions, Nos. 67 and 69). Moreover, Experian already stipulates that this element is satisfied and produced a class list identifying the members of each proposed class. (Ex. 3, October 9, 2013 e-mail from Experian's counsel stipulating to numerosity). In fact, Experian has produced class lists it compiled where the proposed classes number approximately 88,534 for the proposed §1681g(a)(2) class and 91,128 for the proposed §1681e(b) class. Clearly, the proposed classes are numerous.

a. An Ascertainable and Identifiable Class Exists.

"Though not specified in the Rule, establishment of a class action implicitly requires both that there be an identifiable class and that the plaintiff or plaintiffs be a member of such class. 7A

C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure:* Civil 2d § 1760, pp. 115 *et seq.* (2d ed. 1986)." *In re A.H. Robins Co., Inc.*, 880 F.2d 709, 728 (4th Cir. 1989) *abrogated on other grounds by Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 117 S. Ct. 2231, 138 L. Ed. 2d 689 (1997). This necessity is sometimes referred to as ascertainability – the requirement that the class description be "sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member." FPP § 1760, 7A Fed. Prac. & Proc. Civ. § 1760 (3d ed.).

The ascertainability requirement is at this early stage only a theoretical burden. "[T]he class does not have to be so ascertainable that every potential member can be identified at the commencement of the action. … If the general outlines of the membership of the class are determinable at the outset of the litigation, a class will be deemed to exist." FPP § 1760, 7A Fed. Prac. & Proc. Civ. § 1760 (3d ed.). In fact, "Where the plaintiff has demonstrated that the class of persons he or she wishes to represent exists, that they are not specifically identifiable supports rather than bars the bringing of a class action, because joinder is impracticable." *Doe v. Charleston Area Med. Ctr., Inc.*, 529 F.2d 638, 645 (4th Cir. 1975) (citing cases under both Rule 23(b)(2) and 23(b)(3)). A class like this one is ascertainable because it is "defined by the activities of the defendant[.]" *Alliance to End Repression v. Rochford*, 565 F.2d 975, 978 (7th Cir. 1977); *see also Lewis v. Tully*, 96 F.R.D. 370, 376 (N.D. Ill. 1982) *on reconsideration,* 99 F.R.D. 632 (N.D. Ill. 1983) ("a class that is defined by the contested practices of the defendant is sufficiently ascertainable.").

In this case, membership is determined by whether or not Experian furnished a credit report to a consumer or a third party on or after March 19, 2010, that did not clearly and accurately disclose Cardworks as a source of the information on the Advanta trade line. The

discovery produced by Experian in this case confirms that class membership is ascertainable and identifiable because Experian provided Plaintiff's counsel with a definitive list of the class members who fell within the class definitions for the Plaintiff's proposed §§ 1681e(b) and 1681(a)(2).[5] Such a process is particularly well-suited to a database business like Defendant's, whose very purpose is to gather, distill, and report information. Moreover, in response to a request for admission, Experian admitted that it was able to identify potential §§ 1681e(b) and 1681(a)(2).[6] Experian also vigorously defended the accuracy of its class list in response to Plaintiff's motion to compel, arguing that Plaintiff's challenges to Experian's class list were "baseless" and "wholly without merit." (*See* Def.'s Opp. Motion Com. at 6) (Docket #115). Thus, as reflected by the class list and discovery responses of Experian, class membership is simple to both ascertain and identify. Experian cannot now reasonably claim otherwise.

2. Commonality is Satisfied Because Class Member Claims Are Connected By the Same Two Common Questions.

Rule 23(a)(2) requires that there be a common question of law or fact. Commonality requires that there be at least one question of law or fact common to the members of the class. *Jeffreys v. Communications Workers,* 212 F.R.D. 320, 322 (E.D.Va. 2003); Central Wesleyan College v. W.R. Grace & Co., 143 F.R.D. 628, 636 (D.S.C. 1992), *aff'd* 6 F.3d 177 (4th Cir. 1993) (stating that commonality "does not require that all, or even most, issues be common, nor

[5] The class lists were forwarded to Plaintiff's counsel on August 30, 2013. In this correspondence, Experian's counsel explained the digital search tools used to generate the class lists. The correspondence from Experian's counsel confirms that Experian was able to identify the class members through four different searches of its databases. (Ex. 4, August 30, 2013 correspondence from Joseph W. Clark to Leonard Bennett).

[6] (Ex. 2, Experian's Responses to Plaintiff's First Request for Admissions, Nos. 63-64) ("Admit that you can identify potential class members as defined in paragraph 21 (a) of the Complaint through your records. ANSWER: ADMIT."); ("Admit that you can identify potential class members as defined in paragraph 21 (b) of the Complaint through your records. ANSWER: ADMIT.").

that common issues predominate, but only that common issues exist.") More recently, the Fourth Circuit has restated the standard for commonality, based upon the Supreme Court's clarification of the concept:

> Commonality is generally established when a Plaintiffs' claims have "questions of law or fact common to the class." Fed.R.Civ.P. 23(a)(2). As the Supreme Court recently clarified, in order to satisfy the commonality requirement, the plaintiff must "demonstrate that the class members 'have suffered the same injury,' " *Wal–Mart Stores, Inc., v. Dukes,* ––U.S. ––––, ––––, 131 S.Ct. 2541, 2551, 180 L.Ed.2d 374 (2011) (quoting *Gen. Tel. Co. of Southwest v. Falcon,* 457 U.S. 147, 156, 102 S.Ct. 2364, 72 L.Ed.2d 740 (1982)), and that the claim "depend[s] upon a common contention" that "is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke," *id.*

Gray v. Hearst Communications, Inc., 444 F. App'x 698, 700-01 (4th Cir. 2011).

"Rule 23(a)(2) 'does not require that all, or even most issues be in common.' A single common question will satisfy Rule 23(a)(2)'s commonality requirement." (Citations omitted.) *Adair v. EQT Prod. Co.*, 1:10-CV-00037, 2013 WL 5429882 (W.D. Va. Sept. 5, 2013) *report and recommendation adopted as modified sub nom. Hale v. CNX Gas Co., Inc.*, 1:10CV00059, 2013 WL 5429901 (W.D. Va. Sept. 30, 2013). The commonality requirement requires that the classes present dispositive questions which will propel the case through the system. *See Stott v. Haworth*, 916 F.2d 134, 145 (4th Cir.1990); *Lienhart v. Dryvit Systems, Inc.*, 255 F.3d 138, 146 (4th Cir. 2001). The commonality requirement of Rule 23(a)(2) is satisfied if "common questions [are] dispositive and overshadow other issues." *Id.* "'Minor differences in the underlying facts of individual class members cases do not defeat a showing of commonality where there are common questions of law.'" *DiFelice v. U.S. Airways, Inc.*, 235 F.R.D. 70, 78 (E.D. Va. 2006).

Every single material issue is this case is common between the Plaintiff and the class members. As was forecast by Experian's early Motion for Partial Summary Judgment, the core

questions in the case are purely legal questions that would be answered in common for all class members. The truly dispositive questions in this case are: (1) *whether Experian violated §§ 1681g(a)(2) and/or 1681e(b) when it failed to clearly and accurately disclose Cardworks a source of information in the Advanta tradelines; and (2) whether Experian's FCRA violations were willful.* Further, even damage remedies in this case present common questions: *What is the proper measure of statutory damages and punitive damages pursuant to 15 U.S.C. § 1681n*? Here, by definition of the class, the answers to these dispositive questions cannot vary between Mr. Dreher and the putative class members. Indeed, even with the benefit of more than two years of discovery, Experian did not suggest a single question of law or fact uncommon to the class in response to Plaintiff's contention interrogatory. Specifically, Plaintiff asked:

> If you deny that any of the Plaintiff's claims as alleged in the Complaint are typical of the claims of the putative classes or that the claims lack commonality as alleged in the Complaint, state all the reasons why you contend this is true and describe all documents that you believe may support or regard the same.[7]

In relevant part, and without later supplementation, Experian answered:

> Experian states that an investigation is ongoing to assess whether the claims are typical of the claims of the putative class and whether the claims lack commonality. Therefore, Experian reserves the right to supplement otherwise.

Id. Experian of course cannot now argue otherwise. Yet, even if it does, this class clearly possesses nothing other than common questions of law ***and*** fact. *Jeffreys v. Comm'n Workers of Am., AFL-CIO,* 212 F.R.D. 320, 322 (E.D. Va. 2003). ("Commonality is satisfied where there is one question of law ***or*** fact common to the class, and a class action will not be defeated solely because of some factual variances in individual grievances.") (emphasis added).

3. The Claims of the Named Plaintiff are Typical of Those of All Other Class Members.

[7] (Ex. 1, Experian's Responses to Plaintiff's First Set of Interrogatories, No. 9).

As the Court and the Fourth Circuit have explained, "the appropriate analysis of typicality 'involve[s] a comparison of the plaintiffs' claims or defenses with those of the absent class members. To conduct that analysis, [the District Court] begin[s] with a review of the elements of [the plaintiff's] *prima facie* case and the facts on which the plaintiff would necessarily rely to prove it." *Soutter v. Equifax Info. Services, LLC*, 3:10CV107, 2011 WL 1226025 (E.D. Va. Mar. 30, 2011) (quoting *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466 (4th Cir. 2006)). Commonality and typicality tend to merge because both of them "serve as guideposts for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." *Wal-Mart*, 131 S. Ct. at 2551 n.5. As the Fourth Circuit panel explained in *Soutter*:

> The essence of the typicality requirement is captured by the notion that 'as goes the claim of the named plaintiff, so go the claims of the class.'" While Soutter's claim need not be "perfectly identical" to the claims of the class she seeks to represent, typicality is lacking where "the variation in claims strikes at the heart of the respective causes of action." '
>
> To determine if Soutter has shown typicality, we compare her claims and Equifax's defenses to her claims with those of purported class members by reviewing the elements of Soutter's prima facie case and the fact supporting those elements and examining "the extent" to which those facts "would also prove the claims of the absent class members."

498 F. App'x 260, 264 (4th Cir. 2012) (internal citations omitted). Typicality is not Defendant's issue in this case. The claims of Mr. Dreher and each member of the two proposed classes are fully typical.

Once again, Defendant was left with little choice but to concede the temporal uniformity of its conduct, acknowledging in response to Plaintiff's contention Interrogatory.[8] Plaintiffs asked:

> If you contend that the Defendants' procedures have varied in any material manner over time or by any other classification such that the Plaintiffs' facts would not be typical of the facts as to a group of other class members, state in detail the time period(s) during which such procedure(s) varied or other classification, how they varied and why this variance was material, and identify all documents that describe same.[9]

In relevant part, and without later supplementation, Experian answered:

> Experian does not contend that its procedures have varied in any material manner over time or by any other classification. Experian admits that it did not list Cardworks, Inc. or Cardworks Servicing, LLC on any tradeline reported as 'Advanta Bank' or 'Advanta Credit Cards.

Id. Experian did not later supplement this response to suggest any material differences or variance in its procedures. In fact, when asked in a separate interrogatory about any changes during the pendency of the lawsuit to the way Experian identified the source of the information, Experian answered in relevant part:

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[8] This was the single issue that caused reversal of the Court in *Soutter v. Equifax*, 498 F. App'x 260 (4th Cir. 2012). In *Soutter*, Equifax contended that its procedures for gathering public recrds had changed in multiple ways over time. The Court of Appeals found that this variance rendered the class definition to broad and the claims of *Soutter* atypical of those of class members in other time periods. *Id*. at 265 ("That is, Soutter is an Equifax customer whose report was inaccurate because Equifax incorrectly reported a judgment that had later been dismissed. On 'a more directly relevant level,' her claim has 'meaningful differences' from the class she seeks to represent. LexisNexis used in-person review for the circuit court records while employing at least three different means of collecting general district court records during the class period. Proof that Equifax's behavior was unreasonable because of the manner in which LexisNexis collected data from the Richmond General District Court in Soutter's case does not 'advance' the claim of a class member whose judgment was from a circuit court in 2010. Soutter's claim simply varies from any potential class plaintiff with a circuit court judgment, and from many potential plaintiffs with general district court judgments, depending on the date of the judgment.") (internal citations omitted). Experian has conceded precisely the opposite in this case – there has been no variance at all in its procedures.

[9] (Ex. 1, Experian's Responses to Plaintiff's First Set of Interrogatories, No. 9).

> Experian states that it has made no changes during the pendency of this lawsuit to the way it identifies the source of information in tradelines reported by Cardworks. Experian further states that, although there have not been any such changes during the pendency of this lawsuit, Experian has been in communications with Cardworks about potential changes to the way it identifies the source of information in tradelines. ***Experian states that none of these communications resulted in changes to the reporting of the Advanta tradeline***.[10] (emphasis added)

Notably, this unsupplemented response was provided on August 29, 2013, three months after the Court's Memorandum Opinion on May 30, 2013, finding that Cardworks was a source of information within the meaning of the FCRA. *Dreher v. Experian Info. Solutions,* 2013 WL 2389878, 5, 8 (E.D. Va. 2013) (stating "[a]lthough Experian posits that the word 'sources' could have many meanings, in the context of this case and the FCRA, the term clearly embraces CardWorks…. Quite simply, Experian decided to omit CardWorks, the most logical 'sourc[e] of the information' at issue in Dreher's credit report—bar none.").

As reflected above, Experian's failure to list Cardworks as a source of information on the Advanta tradeline has not materially changed during the class period. In fact, it has not changed whatsoever. Experian never listed Cardworks from the moment it first started providing the information within the Advanta tradelines. This practice continued after the Complaint was filed in September 2011, throughout the entire pendency of the lawsuit and remains today.

Here, Plaintiff's claims are not merely coextensive with the claims of Class Members, they are identical to them. Plaintiff's claims arise out of Experian's conduct of violating the FCRA through its uniform policy of omitting Cardworks as a source of information on its numerous Advanta trade lines. Experian uniformly omitted Cardworks; it uniformly listed Advanta, and no plaintiff-specific fact is material. This conduct, if found to violate the FCRA provisions as alleged, was the same as to all Class Members as it was to Plaintiff. Under such

[10] Ex. 1, Experian's Responses to Plaintiff's First Set of Interrogatories, No. 2.

facts, typicality is satisfied. *Wal-Mart*, 131 S. Ct. at 2551 n.5. (concluding typicality met, explaining that plaintiffs' and class members' "claims arise out of the same conduct and essentially the same factual and legal bases"); *In re Checking Account*, 3265093, at *7 (finding typicality met where plaintiffs challenged banks' uniform policy of rearranging debit transactions to cause class members to incur more overdraft fees).

4. The Plaintiff Will Fairly and Adequately Protect the Interest of the Class, as He Has No Conflict With the Class Members and Has Retained Counsel Willing and Able to Prosecute This Case.

The final component of Rule 23(a) requires that the "representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). This prerequisite is met when: "(1) the named plaintiff has interests common with, and not antagonistic to, the Class' interests; and (2) the plaintiff's attorney is qualified, experienced and generally able to conduct the litigation." *In re Southeast Hotel Properties Ltd. Pushup Investor Legit.*, 151 F.R.D. 597, 607 (W.D.N.C.1993); *Wiseman v. First Citizens Bank & Trust Co.*, 212 F.R.D. 482, 489 (W.D.N.C. 2003).

"The burden is on the defendant[] to demonstrate that the representation will be inadequate." *Johns v. Rozet*, 141 F.R.D. 211, 217 (D.D.C. 1992); *see also In re Southeast Hotel Properties Ltd. P'ship Investor Litig.*, *supra* at 607; *Lewis v. Curtis*, 671 F.2d 779, 788 (3rd Cir. 1982); *Trautz v. Weisman*, 846 F. Supp. 1160, 1167 (S.D.N.Y. 1994). Experian cannot possibly satisfy that burden since both components of the "adequacy'" test are plainly met here. Moreover, Experian did not provide a single reason regarding the inadequacy of Mr. Dreher when directly asked through an interrogatory in discovery.[11]

[11] (Ex. 1, Experian's Responses to Plaintiff's First Set of Interrogatories, No. 8) (stating "Experian further states that an investigation to assess whether Plaintiff can adequately represent the putative class is ongoing. Therefore, Experian reserves the right to supplement this response.").

Here, there exist no conflicts between Plaintiff and the absent Class Members. It certainly cannot be said that Plaintiff suffered a different injury than did Class Members—all injuries are identical under the FCRA's statutory scheme and Experian's conduct was uniform and automatic. No apparent or even imagined antagonism exists between the named Plaintiff and the members of the putative class. By his declaration submitted in support of this Motion, Plaintiff has set out his commitment to being involved in and zealously pursuing this lawsuit, for the benefit of absent Class Members and to the detriment of himself if necessary. (*See* Exhibit 5, Dreher Decl. ¶¶ 8-10). This commitment is consistent with the considerable time already expended by Plaintiff in prosecuting this lawsuit, such as responding to several rounds of discovery, sitting for his deposition, enduring Experian's disruption of his professional and personal life via numerous subpoenas directed to his employer, the NSA and other third parties, communicating actively with his counsel and providing multiple declarations. Indeed, counsel represents to this Court that the Plaintiff is among the most engaged and active class representatives that they have ever represented. He is intelligent, informed and understands his responsibility in his role as a putative class representative.

Plaintiff has also retained Counsel that are qualified to prosecute this case in favor of the Classes. Plaintiff's lead Counsel have effectively handled numerous consumer-protection and complex class actions, typically as lead or co-lead counsel. As Judge Payne recently stated, "the Court finds that Soutter's counsel [Bennett] is qualified, experienced, and able to conduct this litigation. Counsel is experienced in class action work, as well as consumer protection issues, and has been approved by this Court and others as class counsel in numerous cases." *Soutter v. Equifax Info. Services*, LLC, 3:10CV107, 2011 WL 1226025 (E.D. Va. Mar. 30, 2011). Further, the present team proposed as class counsel has recently been commended by this Court in several

cases[12] and "Experian does not contend that the Plaintiff's counsel of record is inadequate to represent the putative class members."[13]

V. PLAINTIFF'S CLAIMS SATISFY THE REQUIREMENTS FOR CLASS CERTIFICATION UNDER RULE 23(b)(3).

Under Fed. R. Civ. P. 23(b)(3), an action that satisfies the threshold prerequisites for certification may be maintained as a class action if the court finds that: (1) "the questions of law or fact common to the members of the class predominate over any questions affecting only individual members"; and (2) "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Plaintiff's claims satisfy those requirements.

A. Common questions predominate because the Classes' claims arise from a common nucleus of fact and involve overriding common questions.

Rule 23(b)(3)'s predominance inquiry does not require Plaintiff to "show that the legal and factual issues raised by the claims of each class member are identical." *In re Napster*, 2005 U.S. Dist. LEXIS 11498, at *28. Rather, the focus of that inquiry is on whether the proposed classes are "sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623. Thus, "[w]hen common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for

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[12] *See Tsvetovat, v. Segan, Mason, & Mason, PC,* Civ. Action No. 1:12-cv-510, Settlement Hr'g Tr. 26:8-16, April 12, 2013 (stating "And again, I want to compliment counsel on making the effort to settle this matter, and to have succeeded. I think it's a sensible, reasonable settlement."); *Conley v. First Tennessee Bank,* Case No. 1:10-cv-1247 (E.D. Va. 2010) for its handling of another consumer class action. Specifically, Judge Ellis stated "I think you're to be commended. Most class counsel are a little greedy sometimes. But this fee is anything but that. … Again, I wish that more would settle as quickly and as sensibly and as economically as you-all have settled this. Thank you…. And that thank you comes not from me personally, but from the system, from the judiciary. We're tied up with lots of class actions, lots of squabbling, and it's refreshing to see one resolved so promptly. …." *See* Settlement Hr'g Tr. 8:20-22; 10:14-22, August 11, 2011.

[13] (Ex. 1, Experian's Responses to Plaintiff's First Set of Interrogatories, No. 8).

handling the dispute on a representative rather than on an individual basis." *Hanlon*, 150 F.3d at 1022. "This standard is met . . . where there exists generalized evidence that proves or disproves an element of the class member's claim on a simultaneous, class-wide basis." *White*, 2002 U.S. Dist. LEXIS 26610, at *58.

Rule 23(b)(3) requires that the questions of law or fact common to all members of the class predominate over questions pertaining to individual members. *Lienhart v. Dryvit Systems, Inc.*, 255 F.3d 138, 142 (4th Cir.2001); *Simmons v. Poe*, 47 F.3d 1370, 1380 (4th Cir. 1995). The predominance requirement tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation. *Gariety v. Grant Thornton, LLP*, 368 F.3d 356, 362(4th Cir. 2004)(citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623_24, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997)); *Lienhart v. Dryvit Systems, Inc.*, 255 F.3d 138, 142 (4th Cir.2001). This criterion is normally satisfied when there is an essential common factual link between all class members and the defendants for which the law provides a remedy. *Talbott v. GC Servs., Ltd. Pshp.*, 191 F.R.D. at 105 citing *Halverson v. Convenient FoodMart, Inc.*, 69 F.R.D. 331 (N.D. Ill. 1974).

Questions of law and fact predominate over the questions affecting the potential individual class members because the class claims arise from a common nucleus of fact and there are simply no individualized issues in play in this case. Since Experian's policy was uniform, what occurred as to one class member undoubtedly occurred as to all. Since there is no individualized proof needed to establish Plaintiff's claims for violation of § 1681g(a)(2), questions of law and fact predominate over any questions (or the lack thereof) affecting the individual members. Those common questions include:

(1) Was Cardworks a source of information as governed by §1681g(a)(2)?

(2) Did Experian violate the FCRA by its failure to identify Cardworks as a source of the reported tradeline information?

(3) Was Experian's violation of the FCRA willful?

In this case, the above questions are subject to common, generalized proof because Experian's standardized policy did not vary by case. The § 1681g(a)(2) claim does not require proof of either reliance or scienter as an element of this cause of action. Because Experian's conduct was uniform, the three common questions are issues of law and will not be different for Mr. Dreher or the class. On the first point, Cardworks was either a source of information pursuant to § 1681g(a)(2) or it was not. The remaining two questions boil down to whether Experian willfully violated the FCRA. *Dreher v. Experian Info. Solutions,* 2013 WL 2389878, 5, 8 (E.D. Va. 2013) (stating "[w]illfullness, as interpreted by the Supreme Court, encompasses both knowing and reckless violations, but the evidence in this case requires the Court to consider only the possibility of the latter. To establish a willful FCRA violation, the plaintiff must show that Experian's actions were not simply erroneous but also 'objectively unreasonable.'"). Here, the factual evidence necessary to prove willfulness is by definition objective and thus cannot vary between the class members.

Damages questions also will not predominate the overwhelming common issues. Class members would not be required to prove causation or actual damages in order to obtain statutory damages. As the Fourth Circuit explained in reversing denial of certification in a FCRA case:

> Where, as here, the qualitatively overarching issue by far is the liability issue of the defendant's willfulness, and the purported class members were exposed to the same risk of harm every time the defendant violated the statute in the identical manner, the individual statutory damages issues are insufficient to defeat class certification under Rule 23(b)(3).

Stillmock v. Weis Markets, Inc., 09-1632, 2010 WL 2621041 (4th Cir. 2010).

Even the amount of recovered statutory damages between $100 and $1,000 and the amount of awarded punitive damages will simply depend on the number of violations suffered by each respective consumer. *Id*. at *6. This is a simple determination for both the §1681g(a)(2) and §1681e(b) claims – the number of each consumer *disclosure* provided to the consumer, or consumer *report* provided to potential creditors, respectively, that the Defendant furnished during the period in which Experian failed to clearly and accurately disclose Cardworks as a source of the information. Thus, since no individualized proof whatsoever is needed to establish Plaintiff's claims regarding the classes and since Experian has already compiled the class lists and identified the individual consumers who would fall into each respective class, the predominance requirement is readily met.

B. The Class Action Device Is Superior To Other Available Methods For Adjudicating These Controversies.

Finally, the Court must determine whether a class action be superior to other methods for the fair and efficient adjudication of the controversy under Fed. R. Civ. P. 23(b)(3). *Lienhart v. Dryvit Systems, Inc*., 255 F.3d 138, 142 (4th Cir.2001); *In re A.H. Robins Co., Inc.*, 880 F.2d 709, 713 (4th Cir. 1989). The factors to be considered in determining the superiority for the class mechanism are: (1) the interest in controlling individual prosecutions; (2) the existence of other related litigation; (3) the desirability of concentrating the litigation in the forum; and (4) manageability. *Hewlett v. Premier Salons Int'l, Inc.*, 185 F.R.D. 211, 220 (D.Md.1997); *Newsome v. Up_To_Date Laundry, Inc.,* 219 F.R.D. 356, 365 (D.Md. 2004).

The Rule 23(b)(3) "superiority" factors consider a comparison between litigation of the claim at issue on a class action basis versus as a series of individual lawsuits brought one by one by class members. Ordinarily, this factor is argued primarily as an efficiency or impracticality question. "It would waste judicial resources to force hundreds of individual trials." Or,

"Individual consumers are unlikely to risk, fund and litigate an individual case for $1,000 in statutory damages." These arguments are correct. But in this case, they are secondary. In this case, the claim at issue is that Experian withheld information by which the class member would have identified the actual source of the account information. It is unlikely that any class member would bring such a case as the class did not even know of Defendant's falsehood. Even Plaintiff's own counsel - experienced FCRA attorneys - were not aware of Cardworks' role when the Complaint was originally filed in September 2011. (*See generally*, Compl.) (Docket # 1).

This case started as an individual FCRA dispute case in which a consumer could not persuade the credit reporting agency to remove inaccurate information from his credit file. However, Plaintiff's counsel could not figure out which entity to add as a co-defendant furnisher as "Advanta" no longer existed. Once this information was revealed in the litigation, Plaintiff then amended his complaint to add the class claims now before the Court. (Second Amended Compl.) (Docket # 19). Like Mr. Dreher and his counsel prior to this lawsuit, all of the class members are similarly ignorant of Cardwork's role in the Advanta trade lines; therefore, it is likely that only Mr. Dreher will recover if a class is not certified. *Indeed, the absence of the filing of any competing classes or other individual claims brought before this case was filed, or two years after its filing, confirms that without the certification of this case as a class action, it is unlikely that the class members will ever obtain any form of relief.* Class members would never think to bring individual claims because they are unaware their rights have been violated—having little lay knowledge of the complex blanket of FCRA protections. *See, e.g., Bonner*, 2006 U.S. Dist. LEXIS 54418, at *22 ("[M]any of the persons in these classes may be unaware that the form letter sent by Defendants may violate the FCRA, and a class action suit may help to safeguard their rights."); *White*, 2002 U.S. Dist. LEXIS 26610, at *58 ("Because . . . individual

putative class members may not be aware of the violation of their [FCRA] rights, it appears improbable that the putative class members would possess the initiative to litigate their claims individually.").

Efficiency is a primary focus in determining whether the class action is the superior method for resolving the controversy presented. *Talbott*, 191 F.R.D. at 106 citing *Eovaldi v. First Nat'l Bank*, 57 F.R.D. 545 (N.D. Ill. 1972). In examining such factor, it is proper for a court to consider the "...inability of the poor or uninformed to enforce their rights, and the improbability that large numbers of class members would possess the initiative to litigate individually." *Citifinancial v. Logan Furniture Mart, Inc.*, 503 F.2d 1161, 1164 (7th Cir. 1974). As the Court explained in finding class treatment superior in *Williams*, "The proposed classes involve at least hundreds, perhaps thousands, of proposed class members pursuing identical, fairly small claims for relief, who, if required to proceed individually, probably would not assert their claims. The class action device therefore appears to be a superior means of resolving their disputes." *Williams v. LexisNexis Risk Mgmt. Inc.*, 2007 WL 2439463 (E.D. Va. Aug. 23, 2007) (citation omitted).

FCRA statutory and punitive damage cases, like this one, are ideally suited for class certification, because of the uniform, but limited, recoveries sought under a complex statute. *See Bush v. Calloway Consol. Group River City, Inc.*, No. 3:10-cv-841-J-37MCR, 2012 WL 1016871, at *11 (M.D. Fla. March 26, 2012) ("Courts routinely find class resolution superior in consumer protection actions..."). "The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights." *Id.* (quoting *Amchem*, 521 U.S. at 617). Federal courts have long regarded "consumer claims" as "particularly appropriate for class

resolution." *Id.*; *see Amchem*, 521 U.S. at 625; *In re Mexican Money Transfer Litig.*, 267 F.3d 743, 747 (7th Cir. 2001); *Perry v. FleetBoston Fin. Corp.*, 229 F.R.D. 105, 113 (E.D. Pa. 2005).

Rule 23(b)(3) was designed for situations such as this, where the amount in controversy for any individual claimant is small, but injury is substantial in the aggregate. Here, Plaintiff seeks statutory damages of no more than $1,000 for violation, as well as punitive damages.

The reality is that class litigation is not only the most efficient means of adjudicating these disputes; it is effectively the *only* means. Separately litigating the common issues that bind the two classes, whether in hundreds or thousands of individual lawsuits would be a practical impossibility—even assuming it were economically feasible for consumers to pursue these claims on their own. Although Experian has not stipulated to this element, it is hard to imagine that even Experian would contest superiority and its response to Plaintiff's contention interrogatory does not suggest that it intends to. In particular, Experian was asked and responded that it would investigate whether it could identify a superior mechanism and supplement its response. (*See* Ex. 1, Experian's Responses to Plaintiff's First Set of Interrogatories, No. 11). However, no such supplementation occurred, as even Experian must agree that even if just a small fraction of the class members were to bring individual suits, the adjudication of common issues in a single proceeding would be infinitely more efficient than would be the separate adjudication of thousands of individual claims.[14]

The reality, however, is that the alternative to class treatment in these cases is not thousands, or even hundreds, of individual actions. "As courts have repeatedly recognized, the

[14] *See, e.g.*, *White v. E-Loan*, 2006 U.S. Dist. LEXIS 62654, at *28 (N.D. Cal. Aug. 18, 2006) ("given that thousands of consumers may have suffered identical injury, a class action is certainly the most efficient way to adjudicate disputes over those consumers' rights"); *Cavin*, 236 F.R.D. at 396; *Bonner*, 2006 U.S. Dist. LEXIS 54418, at *21; *White*, 2002 U.S. Dist. LEXIS 26610, at *53 ("the piecemeal approach is rife with shortcomings, not the least of which is the possibility of inconsistent adjudications with regard to an identical course of conduct").

statutory damages available under the FCRA are 'too slight to support individual suits.'" *E-Loan*, 2006 U.S. Dist. LEXIS 62654, at *28; *see also In re Farmers*, 2006 U.S. Dist. LEXIS 27290, at *44; *White*, 2002 U.S. Dist. LEXIS 26610, at *52; *Braxton*, 209 F.R.D. at 662.

As Judge Easterbrook noted in *Murray v. GMAC Mortgage*, "Rule 23(b)(3) was designed for situations such as [those involving FCRA statutory damage claims], in which the potential recovery is too slight to support individual suits, but injury is substantial in the aggregate." 434 F.3d at 953; see also *Bonner*, 2006 U.S. Dist. LEXIS 54418, at *21-22. In short, absent class action treatment, "there is unlikely to be any meaningful enforcement of the FCRA by consumers whose rights have been violated[.]" *E-Loan*, 2006 U.S. Dist. LEXIS 62654, at *28. There simply is no other practical means for the members of these proposed classes to challenge a practice that stands in clear violation of federal law. "The desirability of providing recourse for the injured consumer who would otherwise be financially incapable of bringing suit and the deterrent value of class litigation clearly render the class action a viable and important mechanism in challenging fraud on the public." 6 H. Newberg and A. Conte, Newberg on Class Actions § 21:30 (4th ed. 2003).

VI. CONCLUSION

The proposed classes meet the requirements of Rule 23(a) as well as Rule 23(b)(3). On this basis, the Plaintiff respectfully moves that the Court grant his Motion for Class Certification.

Respectfully submitted,
MICHAEL T. DREHER
on behalf of himself and others similarly situated

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CERTIFICATE OF SERVICE

I certify that this 19th day of February, 2014, I filed the foregoing pleading using the ECF system which will then send a notice of electronic filing (NEF) to the following:

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

MICHAEL T. DREHER, *Individually and on behalf of a class of similarly situated persons,* Plaintiff, v. EXPERIAN INFORMATION SOLUTIONS, INC., CARDWORKS, INC., and CARDWORKS SERVICING, LLC, Defendants.	)	Civil Action No. 3:11-CV-00624-JAG

EXPERIAN INFORMATION SOLUTIONS, INC.'S RESPONSES
TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

Pursuant to Rules 26 and 33 of the Federal Rules Civil Procedure and Local Civil Rule 26(C) of the United States District Court for the Eastern District of Virginia, Defendant Experian Information Solutions, Inc. ("Experian") provides the following responses to Plaintiff's First Set of Interrogatories.

PRELIMINARY STATEMENT

Although Experian has made a diligent and good faith effort to obtain the information with which to respond to Plaintiff's Interrogatories, discovery in this matter is ongoing and as such, additional information may be obtained which might affect the responses herein. Moreover, Experian has not yet completed its own investigation of this matter. Accordingly, all of the following responses are given without prejudice to and with the express reservation of Experian's right to supplement or modify responses to the extent required by applicable law to

incorporate later discovered information, and to rely upon any and all such information and documents at trial or otherwise. Likewise, Experian shall not be prejudiced if any of its present responses are based on incomplete knowledge or comprehension of the facts, events or occurrences involved in this matter.

Experian also has responded to Plaintiff's Interrogatories based upon Experian's best, good faith understanding and interpretation of each item therein. Accordingly, if Plaintiff subsequently asserts a different interpretation than presently understood by Experian, Experian reserves the right to supplement or amend these responses.

RESPONSES TO INTERROGATORIES

Experian hereby incorporates its general and specific objections, served on August 9, 2013.

INTERROGATORY NO. 1: Identify all consumers who have requested, and which you mailed or furnished electronically, a copy of their credit report, consumer disclosure or file at a time when the credit file contained a tradeline reported as "Advanta Bank" or "Advanta Credit Card(s)" with a date of last activity on or after March 1, 2010.

RESPONSE: Subject to and without waiving its general and specific objections, Experian responds that it produced documents responsive to this request on August 15, 2013, using the date specified in the class complaint.

INTERROGATORY NO. 2: State and describe all changes you have made during the pendency of this lawsuit to the way you identify the source of information in trade lines reported by CardWorks.

RESPONSE: Subject to and without waiving its general and specific objections, Experian states that it has made no changes during the pendency of this lawsuit to the way it

identifies the source of information in tradelines reported by CardWorks. Experian further states that, although there have not been any such changes during the pendency of this lawsuit, Experian has been in communications with CardWorks about potential changes to the way it identifies the source of the information in tradelines. Experian states that none of these communications resulted in changes to the reporting of the Advanta tradeline.

INTERROGATORY NO. 3: Describe and state in full detail all procedures, process and resources you used to determine whether or not your procedures and/or policies complied with the FCRA provisions that Plaintiff has alleged to have been violated.

RESPONSE: Subject to and without waiving its general and specific objections, Experian states that it does not have a written policy or procedure regarding compliance with the FCRA provisions that Plaintiff has alleged to have been violated. Experian states that its practice is to enter the client's name unless the client has reason to alter the name or have a different name posted. Where a subscriber requests a different name, the request is elevated to compliance or membership to determine whether the change is permissible. Experian further provides that its unwritten policy is to report a tradeline's associated subscriber name in a manner that is accurate and recognizable to the consumer so that the consumer can correct any inaccuracies or lodge disputes if necessary.

Experian further directs Plaintiff to the depositions of Peter Henke and James Kilka, taken on November 8, 2012 and August 24, 2012, respectively.

INTERROGATORY NO. 4: Identify each employee or non-employee fact witness or expert witness who has any knowledge or who you believe may have formed any opinion, or who has consulted with you about the facts or basis of this lawsuit or any defense or allegation you have raised in this lawsuit, with any information regarding any reports sold about any of the named

Plaintiffs or any communications between you and any person regarding the Plaintiffs any involvement in handling, responding to or investigating any disputes made by Plaintiffs regarding any information that you had reported by you. For each such person identified, please list each and every lawsuit in which that person has testified by affidavit, deposition, trial testimony, or by report furnished to the court or opposing counsel. Please explain and describe the nature of each such statement by the person so identified. Please identify the lawsuit by complete caption, court name, cause number, and date the affidavit, deposition, trial testimony, or report was made, taken or occurred.

RESPONSE: Subject to and without waiving its general and specific objections, Experian states that the information responsive to this Interrogatory may be derived or ascertained from documents already produced by Experian and directs Plaintiff to its Supplemental Rule 26(a)(1) disclosures, served on July 17, 2013. Experian further states that its legal analysis and discovery are ongoing in this case. Therefore, Experian reserves the right to supplement this response.

INTERROGATORY NO. 5: Please state in full detail your policies and/or procedures for determining the identity or name of the entity reported by you as the "source of the information" within a tradeline in a consumer report pursuant to 15 U.S.C. §168lg(a)(2), including the names and titles of the employees involved in the process.

RESPONSE: Subject to and without waiving its general and specific objections, Experian directs Plaintiff to its response to Interrogatory No. 3.

INTERROGATORY NO. 6: Please state in full detail your procedures for conducting an investigation or reinvestigation pursuant to 15 U.S.C. §168li(a)(l) and reviewing all relevant

information related to a dispute pursuant to 15 U.S.C. §1681i(a)(4), including the names and titles of the employees, persons and/or identities of any third parties involved in the process.

RESPONSE: Subject to and without waiving its general and specific objections, Experian will produce the following Bates Ranges of documents subject to a protective order:

- EXPDREH 000561-000750 A/CDVs: Evaluating and Processing
- EXPDREH 000751-000871 Consumer Fraud Procedures Manual
- EXPDREH 000872-001249 Consumer Investigation Procedures Manual
- EXPDREH 001250-001260 Fraud Backend Dispute Manual

INTERROGATORY NO. 7: Please state in full detail your procedures for providing furnishers such as CardWorks all information you received from consumers relating to a dispute pursuant to 15 U.S.C. §1681i(a)(2), including the names and titles of the employees, persons and/or identities of any third parties involved in the process.

RESPONSE: Subject to and without waiving its general and specific objections, Experian directs Plaintiff to its response to Interrogatory No. 6. In further response, Experian states that the following individual has substantial knowledge of these procedures:

- Pat Henderson is an Experian employee who works as a Customer Service and Operations Manager in Experian's National Consumer Assistance Center. Ms. Henderson can be contacted via Experian's defense counsel c/o Hilary Perkins, JONES DAY, 51 Louisiana Avenue NW, Washington, D.C. 20001-2113. (202) 879-3939.

INTERROGATORY NO. 8: If you deny that the named Plaintiff or any of his counsel of record would adequately represent the putative classes, state all reasons why you contend this is true and describe all documents that you believe may support or regard your denial.

RESPONSE: Subject to and without waiving its general and specific objections, Experian does not contend that Plaintiff's counsel of record is inadequate to represent the putative class members. Experian further states that an investigation to assess whether Plaintiff

can adequately represent the putative class members is ongoing. Therefore, Experian reserves the right to supplement this response.

INTERROGATORY NO. 9: If you deny that any of the Plaintiffs claims as alleged in the Complaint are typical of the claims of the putative classes or that the claims lack commonality as alleged in the Complaint, state all reasons why you contend this is true and describe all documents that you believe may support or regard same.

RESPONSE: Subject to and without waiving its general and specific objections, Experian states that an investigation is ongoing to assess whether the claims are typical of the claims of the putative class and whether the claims lack commonality. Therefore, Experian reserves the right to supplement this response.

INTERROGATORY NO. 10: Identify and Describe in detail any computer, database, or other software system used by Defendant during the relevant time period:

a. to store information received by Card Works or any of its affiliate companies;
b. to store or archive reseller or end-user inquiries and your results returned for such inquiries;
c. for the provision of information obtained by you that goes to your costumers [sic];
d. in the handling of disputes by consumers that the information reported by you is inaccurate;
e. in the process of correcting incorrect consumer reports provided by you to your customer;
f. your billing records;
g. your e-mail or other electronic communications with CardWorks or any of its affiliate companies.

RESPONSE: Subject to and without waiving its general and specific objections, Experian responds as follows:

a. File One, a database which stores credit data sent out to consumers;
b. File One, a database which stores credit data sent out to consumers;
c. File One, a database which stores credit data sent out to consumers;
d. CAPS, a database which stores dispute information;
e. CAPS, a database which stores dispute information;

f. Experian uses its own highly customized proprietary software for its billing records which receives information regarding each inquiry made by a customer and generates invoices;
g. Microsoft Outlook.

INTERROGATORY NO. 11: Identify and describe all facts and evidence to support your contention that there are alternatives for the prosecution of the class claims alleged in this case that are superior to class treatment, identify these alternatives to class and list and describe all evidence that supports this contention.

RESPONSE: Subject to and without waiving its general and specific objections, Experian states that an investigation is ongoing to assess whether there are alternatives for the prosecution of the class claims that are superior to class treatment. Therefore, Experian reserves the right to supplement this response.

INTERROGATORY NO. 12: If you contend that the Defendant's procedures have varied in any material manner over time or by any other classification such that the Plaintiffs' facts would not be typical of the facts as to a group of other class members, state in detail the time period(s) during which such procedure(s) varied or other classification, how they varied and why this variance was material, and identify all documents that describe how Defendant's procedures have varied by time or any other classification.

RESPONSE: Subject to and without waiving its general and specific objections, Experian does not contend that its procedures have varied in any material manner over time or by any other classification. Experian admits that it did not list CardWorks, Inc. or CardWorks Servicing, LLC on any tradeline reported as "Advanta Bank" or "Advanta Credit Cards."

INTERROGATORY NO. 13: To the extent you or any entity affiliated with you have ever maintained, received and/or sold information regarding the named Plaintiff, please state in full detail every item of such information, where you obtained it, who maintains it, the date of each

sale, the person or entity that maintains, or received it, the purpose for the information and/or sale (whether a search, report, or other form of information), whether or not you admit that the sale was governed by the FCRA, and identify all documents that relate to the information and sale.

RESPONSE: Subject to and without waiving its general and specific objections, Experian provides the following inquiries on Plaintiff's credit report.

ENTITY	DATES
WEBBANK/DELL COMPUTER	11/6/2010
EMS/QUICKEN LOANS	6/8/2010
LENDERS CREDIT SVCS INC	6/8/2010
CBC/DEPARTMENT OF DEFENSE	11/15/2010
FAC/ID PROTECTION	11/15/2010; 11/7/2010; 11/6/2010; 9/16/2010; 8/13/2010; 7/15/2010; 6/9/2010; 6/8/2010; 5/24/2010; 3/29/2010; 2/24/2010; 7/22/2009; 4/30/2009
AMEX ACCOUNT REVIEW	11/7/2010
CHASE CARD SERVICES	8/21/2011; 1/4/2011; 11/6/2010
AMERICAN EXPRESS 2	10/21/2010
FIRST USA	10/21/2010; 11/5/2008
AMERICAN EXPRESS CO	9/30/2010
CITI CARDS	9/13/2010; 8/18/2010; 6/11/2010; 5/18/2010; 4/13/2010; 3/12/2010; 2/22/2010; 1/13/2010; 12/14/2009; 11/12/2009; 10/14/2009; 8/20/2009; 5/28/2009
FNB OMAHA	8/5/2010; 6/4/2010
ALLSTATE INSURANCE	7/13/2011; 7/20/2010
LENDERS CREDIT SVCS INC	6/11/2010

ADVANTA BANK CORP	3/23/2010
WESTERN SIERRA ACCEPTANC	1/29/2010
BANK OF AMERICA	9/1/2011; 1/11/2011; 9/13/2010; 1/13/2010; 8/3/2009
FAC/JP MORGAN CHASE CHIP	6/6/2009; 4/30/2009
CAP ONE	12/18/2010; 4/7/2009
FEDERAL GOVERNMENT	12/8/2008
DISCOVER FINANCIAL SVCS	12/3/2008; 11/21/2008
CREDIT COMMUNICATIONS SV	7/5/2011
INTRSCTNS/CHASE	9/12/2011; 7/25/2011; 6/21/2011
CREDCO/ID PROTECTION	5/1/2011; 4/26/2011; 3/10/2011; 3/9/2011; 2/4/2011; 1/19/2011; 1/6/2011; 12/20/2010; 12/3/2010
GRANITE BAY ACCEPTANCE I	3/1/2011
WESTERN SIERRA ACCEPTANC	1/21/2011; 12/24/2010

INTERROGATORY NO. 14: Please identify all lawsuits filed against you since January 2008, whether brought under the FCRA, in which an individual asserted claims based on a violation of any of the FCRA provisions alleged in this case.

RESPONSE: Subject to and without waiving its general and specific objections, Experian will produce the following Bates Range of documents subject to a protective order:

- EXPDREH 001269-001303

Experian states that this list is comprehensive and includes lawsuits involving provisions of the FCRA not alleged in this case.

Dated: August 29, 2013

Respectfully submitted,

/s/ Joseph W. Clark

Joseph W. Clark (VSB No. 42664)
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Washington, DC 20001
Tel: 202.879.3697
Fax: 202.626.1700
jwclark@jonesday.com

Attorney for Defendant
Experian Information Solutions, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of August, 2013, I sent a copy of the foregoing to the following counsel of record, in the manner listed below:

Via E-mail:

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Counsel for Plaintiff

Dated: August 29, 2013

/s/ Joseph W. Clark
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jwclark@jonesday.com

Counsel for Defendant Experian Information Solutions, Inc.

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF VIRGINIA RICHMOND DIVISION

MICHAEL T. DREHER,
Individually and on behalf of a class of similarly situated persons,

Plaintiff,

v. **CIVIL NO. 3:11-cv-00624-JAG**

EXPERIAN INFORMATION SOLUTIONS, INC., et al.,

Defendants

PLAINTIFFS' FIRST REQUEST FOR ADMISSIONS
DIRECTED TO DEFENDANT EXPERIAN INFORMATION SOLUTIONS, INC

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure, Plaintiff hereby serve upon Defendant EXPERIAN INFORMATION SOLUTIONS, INC the following First Request for Admissions.

I. DEFINITIONS AND INSTRUCTIONS

The following definitions and instructions shall apply to Plaintiffs Request for Admissions:

A. "Complaint" means Plaintiffs Second Amended Complaint, Docket No. 19.

B. "You," "Your," or "Defendants" means Experian Information Solutions, Inc. Your company, entity, institution, agency, subsidiary(ies), parent corporation(s) and/or any of its branches, departments, employees, agents, contractual affiliates, or otherwise connected by legal relationship, in the broadest sense. "You" refers to You, Your agents, servants and/or employees, and in the instance of defendant corporations or other business entities, "You" refers to the person or entity designated to these Interrogatories as well as any person, agent, servant and/or

employee who acted on behalf of the Defendant at any time and in connection with answering these Interrogatories.

C. "Plaintiff' refers to the Plaintiff named in the caption of the Original Complaint, Docket No. 1.

D. The "FCRA" refers to the federal Fair Credit Reporting Act, codified at 15 U.S.C. §§ 1681-168lx.

E. "And" or "or" shall be construed conjunctively or disjunctively as necessary to make the requests inclusive rather than exclusive. The use of the word "including" shall be construed to mean "without limitation."

F. "Data" means the physical symbols in the broadest sense that represent information, regardless of whether the information is oral, written or otherwise recorded.

G. "Data field" means any single or group of character(s), number(s), symbol(s) or other identifiable mark(s) maintained in a permanent or temporary recording which represent, in any way, an item or collection of information. "Data field" includes all types of data whether maintained in integer, real, character or Boolean format.

H. "Database" or "databank" means any grouping or collection of data fields maintained, in any format or order, in any permanent or temporary recorded form.

I. "Computer" means any and all programmable electronic devices or apparatuses, including hardware, software, and other databanks, that can store, retrieve, access, update, combine, rearrange, print, read, process or otherwise alter data whether such data maintained in that device or at some other location. The term "computer" includes any and all magnetic recordings or systems, systems operating on or maintaining data in digital, analog, or hybrid format, or other mechanical devices, or other devices capable of maintaining writings or

recordings, of any kind, in condensed format, and includes any disk, tape, recording, or other informational source, regardless of its physical dimension or size.

J. "Consumer Report" means the product You sell to Your customers as governed by the FCRA.

K. The terms "CardWorks" means CardWorks, Inc. and/or CardWorks Servicing, LLC.

II. PLAINTIFF'S REQUESTS TO ADMIT

1. Admit that from June 1, 2010 to the present, you did not have a written policy or procedure in place describing or materially concerning your compliance with the FCRA, 15 U.S.C. § 1681g(a)(2).

ANSWER: DENY.

2. Admit that during the class period, in communicating with consumers in response to their disputes made pursuant to 15 U.S.C. § 1681i, Experian used the phrase "source of the information" on a consumer report to mean the entity to which it would actually forward the consumer's dispute pursuant to 15 U.S.C. § 1681i.

ANSWER: DENY.

3. Admit that Experian considers the "source of the information" on a consumer report as the furnisher to whom you forward a credit reporting dispute.

ANSWER: DENY.

4. Admit that during the class period, in multiple affidavits or declarations given by Experian employee and witness Kim Hughes, Ms. Hughes used the phrase "source of the information" on a consumer report to mean the entity to which it would actually forward the consumer's dispute pursuant to 15 U.S.C. § 1681i.

ANSWER: CANNOT ADMIT or DENY without a review of the "multiple affidavits or declarations" to which plaintiff is referring.

5. Admit that Advanta Bank Corp. was closed by the Utah Department of Financial Institutions on March 19,2010.

ANSWER: ADMIT.

6. Admit that "Advanta Bank" tradeline was not reporting on Plaintiff's consumer report prior to March 19, 2010.

ANSWER: ADMIT.

7. Admit that "Advanta Credit Cards" tradeline was not reporting on Plaintiff's consumer report prior to March 19, 2010.

ANSWER: ADMIT.

8. Admit that Advanta Bank was not the source of the "Advanta Bank" tradeline reporting on Plaintiff's consumer reports.

ANSWER: DENY.

9. Admit that Advanta Credit Cards was not the source of the "Advanta Credit Cards" tradeline reporting on Plaintiff's consumer reports.

ANSWER: DENY.

10. Admit that Vion Holdings II, LLC was not the source of the "Advanta Bank" tradeline reporting on Plaintiff's consumer reports.

ANSWER: ADMIT.

11. Admit that Vion Holdings II, LLC was not the source of the "Advanta Credit Cards" tradeline reporting on Plaintiff's consumer reports.

ANSWER: ADMIT.

12. Admit that Deutsche Bank Trust Company Americas was not the source of the "Advanta Bank" tradeline reporting on Plaintiff's consumer reports.

ANSWER: ADMIT.

13. Admit that Deutsche Bank Trust Company Americas was not the source of the "Advanta Credit Cards" tradeline reporting on Plaintiff's consumer reports.

ANSWER ADMIT.

14. Admit that Resurgent Capital Services was not the source of the "Advanta Bank" tradeline reporting on Plaintiff's consumer reports.

ANSWER: ADMIT.

15. Admit that Resurgent Capital Services was not the source of the "Advanta Credit Cards" tradeline reporting on Plaintiff's consumer reports.

ANSWER: ADMIT.

16. Admit that First Data Resources was not the source of the "Advanta Bank" tradeline reporting on Plaintiff's consumer reports.

ANSWER: ADMIT.

17. Admit that First Data Resources was not the source of the "Advanta Credit Cards" tradeline reporting on Plaintiff's consumer reports.

ANSWER: ADMIT.

18. Admit that Advanta Bank Corp. was terminated as the Servicer of Advanta Business Card Master Trust no later than July 31, 2010.

ANSWER: ADMIT.

19. Admit that CardWorks was appointed to act as the servicer of the Advanta Business Card Master Trust effective August 1, 2010.

ANSWER: ADMIT.

20. Admit that CardWorks was the source of the "Advanta Credit Cards" tradeline reporting on Plaintiffs consumer reports.

ANSWER: DENY.

21. Admit that CardWorks was the source of the "Advanta Bank" tradeline reporting on Plaintiffs consumer reports.

ANSWER: DENY.

22. Admit that CardWorks was a source of the "Advanta Credit Cards" tradeline reporting on Plaintiffs consumer reports.

ANSWER: DENY.

23. Admit that CardWorks was a source of the "Advanta Bank" tradeline reporting on Plaintiffs consumer reports.

ANSWER: DENY.

24. Admit that the phone number (516) 576-8706 is a phone number that is answered by CardWorks employees.

ANSWER: ADMIT.

25. Admit that the address of P.O. Box 844, Spring House, PA 19477 is a post office box where CardWorks receives mail.

ANSWER: DENY.

26. Admit that the address of P.O. Box 9217, Old Bethpage, NY 11804 is a post office box where CardWorks receives mail.

ANSWER: DENY.

27. Admit that CardWorks was listed as the subscriber for subcode 1435480 in June, 2011.

ANSWER: DENY.

28. Admit that CardWorks was listed as the subscriber for subcode 1729490 in June, 2011.

ANSWER: DENY.

29. Admit that you sent CardWorks invoices for your services relating to the subscriber subcode 1729490.

ANSWER: DENY.

30. Admit that you sent CardWorks invoices for your services relating to the subscriber subcode 1435480.

ANSWER: DENY.

31. Admit that you sent ACDVs for Plaintiffs dispute dated June 21, 2011 to your Subscriber, CardWorks.

ANSWER: ADMIT.

32. Admit that CardWorks is the name of the subscriber on the ACDVs for Plaintiffs dispute dated June 21, 2011.

ANSWER: ADMIT.

33. Admit that Janelle Fraser is listed as the "Authorized Verifier" on the ACDVs for Plaintiffs dispute dated June 21, 2011.

ANSWER: ADMIT.

34. Admit that Janelle Fraser is an employee of Cardworks.

ANSWER: Cannot ADMIT or DENY the employment status of Janelle Fraser.

35. Admit that you did not respond to Plaintiffs dispute dated June 21, 2011 within 30 days.

ANSWER: DENY.

36. Admit that you did not mail a response to Plaintiffs dispute dated June 21, 2011 by July 21, 2011.

ANSWER: DENY.

37. Admit that you did not provide CardWorks a copy of Plaintiffs June 21, 2011 dispute letter and the enclosures.

ANSWER: ADMIT.

38. Admit that you did not read Plaintiffs entire June 21, 2011 dispute letter when you completed the ACDV.

ANSWER: DENY.

39. Admit that you did not read the enclosures to Plaintiffs June 20, 2011 dispute letter when you completed the ACDV.

ANSWER: DENY.

40. Admit that you never attempted to contact the Plaintiff as part of your "investigation" of his June 21, 2011 dispute.

ANSWER: ADMIT.

41. Admit that you relied solely on CardWorks's decision whether or not to delete the "Advanta Bank" account as the result of his June 21, 2011 dispute.

ANSWER: DENY.

42. Admit that Plaintiff did not have any other derogatory tradelines on his credit report aside from the "Advanta Bank" and "Advanta Credit Card" tradelines.

ANSWER: ADMIT.

43. Admit that the derogatory "Advanta Bank" and "Advanta Credit Card" tradeline lowered Plaintiffs credit score.

ANSWER: Cannot ADMIT or DENY without more information relating to plaintiff's credit score at any given time and other additional information.

44. Admit that there was at least one "hard inquiry" noted on Plaintiffs credit report that identified the "Advanta Bank" or "Advanta Credit Card" tradeline after June 1, 2010.

ANSWER: ADMIT.

45. Admit that Plaintiff requested a copy of his consumer report from you after June 1, 2010 which identified an "Advanta Bank" or "Advanta Credit Card" tradeline.

ANSWER: ADMIT.

46. Admit that Plaintiff disputed an "Advanta Bank" tradeline on June 21, 2011.

ANSWER: ADMIT.

47. Admit that you identified "Advanta Bank" as the source of the tradeline in your response to Plaintiffs June 21, 2011 dispute.

ANSWER: ADMIT.

48. Admit that Plaintiff disputed an "Advanta Credit Cards" tradeline on June 21, 2011.

ANSWER: ADMIT.

49. Admit that you identified "Advanta Credit Cards" as the source of the tradeline in your response to Plaintiffs June 21, 2011 dispute.

ANSWER: ADMIT.

50. Admit that in 2010, you knew that Advanta Bank Corp. and CardWorks were not the same entity.

ANSWER: ADMIT.

51. In 2011, you knew that Advanta Bank Corp. and CardWorks were not the same

entity.

ANSWER: ADMIT.

52. Admit that you have not changed the reporting of "Advanta Bank" tradelines.

ANSWER: DENY.

53. Admit that you have not changed the reporting of "Advanta Credit Card" tradelines.

ANSWER: DENY.

54. Admit that CardWorks services other credit card accounts (non-Advanta) where they are identified by "CWS" as a source of information in tradelines.

ANSWER: DENY.

55. Admit that you can identify more than one entity as a source of information in a tradeline.

ANSWER: ADMIT.

56. Admit that you have a policy or procedure that would have allowed you to identify CardWorks as a source of the "Advanta Bank" tradeline.

ANSWER: ADMIT.

57. Admit that you have a policy or procedure that would have allowed you to identify CardWorks as a source of the "Advanta Credit Cards" tradeline.

ANSWER: ADMIT.

58. Admit you do not believe Todd Apfel to be truthful.

ANSWER: DENY.

59. Admit you do not believe Todd Apfel to be honest.

ANSWER: DENY.

60. Admit that other CardWorks subcodes show multiple sources of information (ie:

"Spiegel/CWS").

ANSWER: DENY.

61. Admit you asked CardWorks whether the "Advanta Credit Cards" tradeline be reported as "Advanta Credit Cards/CWS".

ANSWER: ADMIT.

62. Admit that you did not report the "Advanta Credit Cards" tradeline as "Advanta Credit Cards/CWS" because CardWorks did not want you to.

ANSWER: DENY.

63. Admit that you can identify potential class members as defined in paragraph 2l(a) of the Complaint through your records.

ANSWER: ADMIT.

64. Admit that you can identify potential class members as defined in paragraph 21(b) of the Complaint through your records.

ANSWER: ADMIT.

65. Admit that you can identify potential class members as defined in paragraph 21(c) of the Complaint through your records.

ANSWER: ADMIT.

66. Admit that there are more than 100 potential class members as defined m paragraph 21(a) of the Complaint.

ANSWER: ADMIT.

67. Admit that there are more than 1000 potential class members as defined in paragraph 21(a) of the Complaint.

ANSWER: ADMIT.

68. Admit that there are more than 100 potential class members as defined m paragraph 21(b) of the Complaint.

ANSWER: ADMIT.

69. Admit that there are more than 1000 potential class members as defined in paragraph 21(b) of the Complaint.

ANSWER: ADMIT.

70. Admit that there are more than 100 potential class members as defined m paragraph 21(c) of the Complaint.

ANSWER: ADMIT.

71. Admit that there are more than 1000 potential class members as defined in paragraph 21(c) of the Complaint.

ANSWER: ADMIT.

72. Admit that the Plaintiff did not apply for the Advanta credit card account that you reported in his credit reports.

ANSWER: Cannot ADMIT or DENY. There is information probative of whether plaintiff authorized a third party to apply for credit in his name.

73. Admit that the Plaintiff did not use the Advanta credit card account that you reported in his credit reports.

ANSWER: Cannot ADMIT or DENY. There is information probative of whether plaintiff authorized a third party to apply for credit in his name.

74. Admit that prior to the filing of this lawsuit, you had no proof, details or other basis to believe that Plaintiff was responsible for the Advanta account that is the subject of this

case other than that (a.) CardWorks had reported the account to you through its monthly METR02 reporting and (b.) CardWorks did not instruct you to delete the account when you sent it a ACDV.

ANSWER: DENY.

75. Admit that you contend that no putative class member suffered and could prove actual damages greater than $1,000 as a result of the alleged violation of 15 U.S.C. § 1681g(a)(2).

ANSWER: Cannot ADMIT or DENY because Experian denies that it is liable for any damages whatsoever.

76. Admit that you do not possess any evidence that a putative class member suffered and could prove actual damages greater than $1,000 as a result of the alleged violation of 15 U.S.C. § 1681g(a)(2).

ANSWER: Cannot ADMIT or DENY because Experian denies that it is liable for any damages whatsoever.

77. Admit that you do not remove the disputed Advanta tradeline from the Plaintiffs credit file until after you were sued in this action.

ANSWER: ADMIT.

78. Admit that you do not remove the disputed Advanta tradeline from the Plaintiffs credit file until at least one month after you filed your Answer in this action.

ANSWER: ADMIT.

79. Admit that you do not change your procedure and policy to report Advanta tradelines that were communicated to you by CardWorks in the name of CardWorks or Vion Holdings until after March 2013.

ANSWER: ADMIT.

80. Admit that you have not changed your procedure and policy to report Advanta tradelines that were communicated to you by CardWorks in the name of CardWorks or Vion Holdings.

ANSWER: ADMIT.

81. Admit that the procedures your agents or employees followed to process or "investigate" the Plaintiffs credit reporting disputes of the Advanta accounts were as you instructed, required and/or intended.

ANSWER: ADMIT.

82. Admit that your agents or employees followed your established procedures to process or "investigate" the Plaintiffs credit reporting disputes of the Advanta accounts.

ANSWER: ADMIT.

83. Admit that since this action was filed, you have not materially changed the procedures your employees are to follow in investigating" or "reinvestigating" disputes like the ones made by the Plaintiff in this case.

ANSWER: DENY.

84. Admit that since this action was filed, you have not materially changed the procedures your employees are to follow in investigating" or "reinvestigating" disputes like the ones made by the Plaintiff in this case in a way that would have changed the outcome of Plaintiffs disputes of the Advanta accounts.

ANSWER: Cannot ADMIT or DENY without speculating on a host of variables involved in the investigation or reinvestigation process including but not limited to, the response to any ACDV.

85. Admit that since this action was filed, you have not materially changed the procedures your employees are to follow in investigating" or "reinvestigating" disputes like the

ones made by the Plaintiff in this case, other than the addition of the means to convey documents through the ACDV process.

ANSWER: ADMIT.

Dated: October 23, 2013

Respectfully submitted,

/s/ Joseph W. Clark

Joseph W. Clark
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51 Louisiana Ave NW
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Telephone: (202) 879- 3939

Attorneys for Defendant Experian Information Solutions, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of October, 2013, a copy of the foregoing was sent to the following counsel of record, in the manner listed below:

Via E-mail and Overnight Delivery:

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Counsel for Plaintiff

Dated: October 23, 2013

/s/ Joseph W. Clark
Joseph W. Clark (VSB No. 42664)
JONES DAY
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Counsel for Defendant Experian Information Solutions, Inc.

Kristi Cahoon Kelly

From: Hilary K Perkins <hperkins@jonesday.com>
Sent: Wednesday, October 09, 2013 6:01 PM
To: Kristi Cahoon Kelly
Cc: Andrew Guzzo; Benjamin J Katz; Joseph W Clark; Leonard Bennett; Susan M. Rotkis; Vicki Ward
Subject: Re: Dreher- Few Things

Kristi,

[redacted]

[redacted]

For stipulations, we can stipulate to numerosity and will review what you send us. As for ascertainability, we think we can stipulate but Plaintiff thinks we have over 3mm Advanta accounts when our system has nothing close to that many Advanta tradelines reporting.

Thanks,

Hilary K. Perkins
Jones Day
51 Louisiana Ave., N.W.
Washington, D.C. 20001-2113
(202) 879-7647 (direct)
HPerkins@jonesday.com

From: Kristi Cahoon Kelly <kkelly@slplfirm.com>
To: Joseph W Clark <jwclark@JonesDay.com>, Benjamin J Katz <bjkatz@jonesday.com>, Hilary K Perkins <hperkins@jonesday.com>,
Cc: Leonard Bennett <lenbennett@clalegal.com>, "Susan M. Rotkis" <srotkis@clalegal.com>, Vicki Ward <vickiward@clalegal.com>, Andrew Guzzo <aguzzo@slplfirm.com>
Date: 10/08/2013 02:52 PM
Subject: Dreher- Few Things

Joe/Ben/Hilary,

[redacted]

[redacted]

[redacted]

Lastly, we will work to get some stipulations over to your this week. I understand you indicated you would stipulate to numerosity and ascertainability of the classes. Are there any other factors you wish to stipulate to at this time?

Thanks,

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August 30, 2013

VIA EMAIL

Leonard Bennett
Consumer Litigation Associates
763 J. Clyde Morris Blvd
Newport News, VA 23601

Re: Dreher v. Experian Information Solutions, Inc.

Dear Len:

This letter addresses your questions about the potential class member information that was produced to Plaintiff on August 15, 2013.

The list we produced was a combined list of NCAC inquiries and hard inquiries responsive to Interrogatory No. 1. It was a consolidated list of the names and contact information of each consumer identified after conducting the following searches:

- Consumers for whom a hard inquiry report included an "Advanta Bank" tradeline
- Consumers for whom an NCAC report included an "Advanta Bank" tradeline
- Consumers for whom a hard inquiry report included an "Advanta Credit Cards" tradeline
- Consumers for whom an NCAC report included an "Advanta Credit Cards" tradeline

These searches resulted in the identification of consumers who fell within the class definitions for Plaintiff's proposed 1681e(b) and 1681g(a)(2) classes.

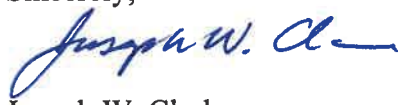
In an effort to segregate this information by each proposed class, please find enclosed the raw data divided by proposed class including: (1) consumers for whom a hard inquiry report included an "Advanta Bank" tradeline, evidencing members of the 1681e(b) class; and (2) consumers for whom an NCAC inquiry report included an "Advanta Bank" tradeline, evidencing members of the 1681g(a)(2) class.

We are not able to provide a list of names for the proposed 1681i(a)(6) class at this time. We are in the process of obtaining this information from our client. However, as defined, the proposed 1681i(a)(6) class is a subset of consumers listed as members of the 1681g(a)(2) class.

Simply stated, any consumer in the 1681i(a)(6) class has already been provided to Plaintiff in the data compiled for the 1681g(a)(2) class. Nevertheless, we are in the process of compiling this subset of information and will produce promptly.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Joseph W. Clark

Enclosures

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

MICHAEL T. DREHER,

Plaintiff,

v. **Civil Action No. 3:11cv624 (JAG)**

EXPERIAN INFORMATION SOLUTIONS, INC.,
et al.
Defendants.

DECLARATION OF MICHAEL T. DREHER

Pursuant to 28 U.S.C. § 1746, I, Michael T. Dreher declare the following:

1. I am an adult and competent to make this declaration.

2. I have personal knowledge of the facts alleged herein.

3. I am forty-four years and reside in Fairfax County, Virginia.

4. I have a Bachelor's degree in cartography and geographic information systems from University of Wisconsin which I obtained in 1993. I also have a Master's degree in civil engineering from Virginia Tech which I obtained in 2005.

5. I have never been convicted of a crime and do not have a criminal record.

6. Despite having derogatory Advanta accounts on my credit report, in late 2010, my objective background and reputation was sufficient to overcome the derogatory reporting such that I was still approved by the NSA for a Top Secret Level III security clearance.

7. I still have this security clearance today.

8. I am committed to representing the interests of the proposed class members in this case in order to obtain the best outcome possible.

9. I have worked closely with my attorneys throughout the course of this litigation by sitting for a full day deposition; allowing subpoenas to be issued to my employer, the NSA and my creditors; participating in multiple rounds of discovery; and actively conferring with my attorneys regarding documents and factual assertions made by Experian.

10. I have refused overtures and an offer of individual settlement that would have resulted in no benefit to the unnamed class members.

I declare under penalty of perjury that the foregoing is true and correct.
EXECUTED this 19 day of February 2014.

Michael T. Dreher