UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Lonnie R. Berryman, Jr., individually and as a representative of the Class, Plaintiff, v. Avantus, LLC, Defendant.	Civil Action No. 3:21-cv-01651-VAB **MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiff Lonnie R. Berryman, Jr. ("Plaintiff"), individually and on behalf of the Settlement Class, respectfully moves the Court for final approval of the class action settlement with Defendant Avantus, LLC ("Defendant"). Defendant does not oppose the relief sought in this Motion.

Dated: April 17, 2024

Respectfully submitted,

/s/ Joseph C. Hashmall
E. Michelle Drake*
Joseph C. Hashmall*
BERGER MONTAGUE PC
1229 Tyler Street NE, Suite 205
Minneapolis, MN 55413
Tel: (612) 594-5999
Fax: (612) 584-4470
emdrake@bm.net
jhashmall@bm.net

Zachary M. Vaughan*
BERGER MONTAGUE PC
1001 G Street, NW
Suite 400 East
Washington, D.C. 20001
T. 202-559-9740
zvaughan@bm.net

**pro hac vice*

Jeffrey Gentes (ct28561)
CONNECTICUT FAIR
HOUSING CENTER
60 Popieluszko Court
Hartford, CT 06106
(860) 263-0741
(860) 247-4236 (fax)
jgentes@ctfairhousing.org

Counsel for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Lonnie R. Berryman, Jr., individually and as a representative of the Class, Plaintiff, v. Avantus, LLC, Defendant.	Civil Action No. 3:21-cv-01651-VAB **MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL SETTLEMENT APPROVAL**

On January 17, 2024, the Court preliminarily approved the parties' proposed settlement of this class action litigation. (ECF No. 67.) The proposed settlement provides meaningful relief for the Settlement Class Members, with per Class Member monetary relief falling at the higher end of the statutory range for Fair Credit Reporting Act ("FCRA") damages. Class Members' reactions to the proposed settlement have been uniformly positive, with many Class Members submitting claims, and none opting out or submitting objections. Accordingly, Plaintiff Lonnie R. Berryman, Jr. ("Plaintiff" or "Class Representative"), individually and on behalf of the Settlement Class, respectfully asks this Court to enter an order granting final approval to the proposed settlement, fully resolving this class action.

I. RELEVANT BACKGROUND

The substance and history of this action and the terms of the Settlement Agreement are recounted in detail in Plaintiff's preliminary approval motion (ECF No. 65) and his motion for attorneys' fees (ECF No. 69), and are summarized briefly here.

A. Summary of Claims and Litigation History

On December 13, 2021, Plaintiff filed his class action Complaint against Defendant

Avantus, LLC[1] ("Defendant"), alleging that Defendant had violated the FCRA, 15 U.S.C. § 1681e(b), by failing to maintain reasonable procedures to assure maximum possible accuracy in the consumer reports it furnished. (ECF No. 1.) Specifically, Plaintiff alleged that Defendant had furnished consumer reports to third parties that included deceased notations on the subjects of the reports, who were in fact alive. (*Id.*) Plaintiff alleged that Defendant engaged in this reporting despite receiving information from at least one other consumer reporting agency indicating that class members were in fact alive. (*Id.*) On March 21, 2022, Defendant answered the Complaint. (ECF No. 16.) The parties then began the discovery process: the parties exchanged written requests and responses and produced and reviewed documents and data; Plaintiff took two depositions of Defendant's employees; Defendant deposed both Plaintiff and his wife; and both sides pursued third-party discovery, including from both Defendant's data vendor and from the third-party lender that had ordered Plaintiff's report. (ECF No. 65-2 ¶ 4.) The parties also engaged in expert discovery, with both sides producing an expert report. (*Id.*)

On January 25, 2023, Plaintiff filed his Motion for Class Certification (ECF No. 38), which was fully briefed, and on May 5, 2023, he filed a Motion to Strike Defendant's Declaration (ECF No. 56), which was also fully briefed. On September 26, 2023, the parties attended a mediation with Hon. Barry R. Poretz (Ret.). Although a settlement was not reached at the mediation, the parties continued their arms-length discussions through counsel and steadily made progress towards a resolution. (ECF No. 65-2 ¶ 5.) The parties were able to ultimately reach a settlement in principle (*see* ECF No. 64) and eventually a final Settlement Agreement, which this Court preliminarily approved. (ECF No. 67.)

[1] Xactus, LLC is the successor in interest to certain assets of Avantus, LLC. Xactus, LLC, in its capacity as successor in interest to certain assets of Avantus, LLC, and Avantus, LLC, are collectively referred to as "Defendant."

B. Key Settlement Terms

The parties' proposed settlement resolves, on a class-wide basis, Plaintiff's claim that Defendant failed to maintain reasonable procedures to ensure maximum possible accuracy related to its reporting that consumers were deceased, when they were alive.

The Settlement Class, which this Court has preliminarily certified for settlement purposes, is defined as:

> All persons residing in the United States of America (including its territories and Puerto Rico) who: (1) were the subject of a bi-merge or tri-merge report using the legacy Avantus system and branding from December 13, 2019 through November 3, 2023; (2) that included at least one notation related to a deceased status in the score section of the report; and (3) where at least one of the underlying consumer reporting agencies returned a credit score.

(Settlement Agreement ("SA"), ¶ 2.17; Preliminary Approval Order ¶ 2, ECF No. 67.)

The Class has 1,377 members. (Declaration of Settlement Administrator ("Admin. Decl."), ECF No. 70, ¶ 3.) Of these, 719 Class Members met the criteria for being eligible to receive settlement payments automatically ("Automatic Payment Category") and 658 Class Members were categorized as falling in the "Claim Filing Category."[2] (*Id.*) Should this Court grant final approval, Defendant will pay $450,758 into a non-reversionary settlement fund. (SA ¶ 2.21.)

[2] Those Class Members who meet the following criteria will receive their payments automatically: (1) their report(s) were generated based on an application for credit; (2) the last date of tradeline activity on their report(s) was within 180 days of the report at issue; (3) at least two consumer reporting agencies returned a credit score on the report(s) at issue; (4) based on third-party records, the Social Security Number associated with the death record matches the individual listed on the report(s) at issue; and (5) the report(s) at issue were run using a Social Security Number that a third-party data provider did not match to a documented date of death. (SA ¶ 4.3.2.) These combined criteria provide a very strong indication that the Class Member was alive at the time the report was issued because they show that the consumer had recently been engaged in reportable credit activity (*i.e.*, an application for credit and recent tradeline activity such as a payment), had not been reported as deceased to at least two of the national credit reporting agencies, was applying for credit using their own Social Security number, and, to date, still has not been associated with a documented date of death by third-party data providers.

Every participating Class Member will receive an equal payment from the fund. The deadline for Claim Filing Category Class Members to return claim forms passed on April 8, 2024. There were 53 valid claim forms received, for a claims rate of 8% of the Claim Filing Category. Of the Class more broadly, 56% will receive compensation. Should this Court grant the requested service award for the Class Representative, and after payment of the Settlement Administrator's expenses, Class Counsel estimates that per Class Member net payments will be approximately $523 – slightly higher than the amount estimated at preliminary approval.

If any settlement payments remain uncashed by the negotiation deadline, the balance of the Settlement Fund will be donated to in equal amounts to the parties' agreed-upon *cy pres* recipients: Public Justice ("PJ") and Community Action Agency of Delaware County, Inc. ("CAADC"), two non-profits dedicated to advancing consumers' rights through various assistance and education programs. *See generally* https://www.publicjustice.net/who-we-are/mission/; https://caadc.org/about-us/who-we-are/. PJ works to advance the interests of consumers in legal actions including in credit and credit reporting related matters, and CAADC works to advance the interests of individuals and families, including those with housing instability. In those ways, these recipients are tied to the subject matter of this litigation.

In exchange for this monetary relief, Class Members are releasing all claims related to any notations or indicators that the consumer is deceased in reports prepared by Defendant. (SA ¶ 4.4.1.)

C. Class Notice and Reaction

On February 7, 2024, Continental DataLogix, the Settlement Administrator, mailed and emailed Notice to the Settlement Class Members. (Admin. Decl. ¶¶ 6, 7.) Prior to distribution, the Administrator had reviewed the Class List from Defendant and updated mailing addresses and

email address information through use of standard databases and also de-duplicated the List. (*Id.* ¶¶ 3, 5.) Also on February 2, the Administrator caused the Settlement Website to go live, to which it posted the Long Form Notice; important dates; FAQs; links to the Complaint, Settlement Agreement, Motion for Preliminary Approval, Preliminary Approval Order; and, within twenty-four hours of its filing, the Motion for Attorneys' Fees and Named Plaintiff Service Award. (*Id.* ¶ 13.) The Administrator also maintained a toll-free telephone line where callers could speak with a live agent and obtain information about the settlement. (*Id.* ¶ 14.)

For thirty days following the initial distribution of Notice, if Notices were returned undeliverable via mail, the Administrator researched new addresses and re-mailed when found. As of April 11, 2024, the Administrator was able to re-mail all but 65 returned mail Notices, thus mail Notice had a 95.3% delivery rate. (*Id.* ¶¶ 11-12.)

The deadline for Claim Filing Category Class Members to return a claim form passed on April 8, 2024, with 53 valid Claim Forms received, for a claims rate of 8% for the Claim Filing Category. (*Id.* ¶ 15.) Additionally, the deadline for opt-outs and objections also passed on April 8, and zero opt-outs and zero objections were received. (*Id.* ¶¶ 17, 18.)

II. ARGUMENT

A. The Settlement Warrants Final Approval.

The Second Circuit has identified nine factors that courts should consider in deciding whether to approve a proposed settlement of a class action:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974) (citations omitted). A court performing this analysis should examine the totality of these factors in light of the specific circumstances involved. *In re Synchrony Fin. Sec. Litig.*, No. 3:18-CV-1818-VAB, 2023 WL 4992933, at *6 (D. Conn. Aug. 4, 2023).[3]

As demonstrated below, the parties' proposed settlement satisfies each of the relevant criteria set forth above, and it represents a strong result for the Settlement Class. As such, the settlement warrants this Court's final approval.

1. The Complexity, Expense and Duration of the Litigation Supports Approval.

"The first *Grinnell* factor requires the Court to consider the complexity, expense, and likely duration of the litigation." *In re Synchrony Fin. Sec. Litig*., 2023 WL 4992933, at *7. "'Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them' and courts therefore favor class action settlements." *Id.* (quoting *In re Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000)). "Absent a settlement, [litigation] costs will only escalate as a result of discovery proceedings, motion practice, trials, and likely appeals." *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 126 (S.D.N.Y.), *aff'd* 117 F.3d 721 (2d Cir. 1997) (*per curiam*).

If the parties had not reached their proposed settlement, this case would have proceeded through a ruling on Plaintiff's motion for class certification, dispositive motions, and trial. Additionally, for both the class certification ruling and the dispositive motions, appellate practice

[3] The 2018 Amendments to Rule 23(e) does not change the application of these existing factors – indeed, they overlap almost entirely. Fed. R. Civ. P. 23(e)(2) and Advisory Committee Note on 2018 Amendment to Subdivision (e)(2). *See also Kennedy v. Whitley*, 539 F. Supp. 3d 261, 266 (D. Conn. 2021) (noting overlap between *Grinnell* factors and Rule 23(e) as amended).

would have been likely. Although Plaintiff believes he would have prevailed on all issues, there is real risk inherent in each of these litigation steps.

Further, even if Plaintiff was able to prevail regarding class certification, and successfully defeat an expected motion for summary judgment, an expensive trial would still need to take place. Such a trial would likely present challenges for Plaintiff. To recover on the claim for statutory damages, Plaintiff would have to prove a willful violation of the FCRA at trial, a high hurdle. *See, e.g.*, *Connecticut Fair Housing Ctr. v. CoreLogic Rental Property Sols., LLC*, 2023 WL 4669482, at *24 (D. Conn. July 20, 2023) (citing *Safeco Ins. Co. v. Burr*, 551 U.S. 47, 56–57 (2007)); *Shimon v. Equifax Info. Services, LLC*, 994 F.3d 88, 94 (2d Cir. 2021) (finding a lack of recklessness where defendant's understanding was reasonable, even if ultimately wrong); *see also Sapp v. Experian Information Solutions, Inc.*, No. 10-cv-4312, 2013 WL 2130956, at *2 (E.D. Pa. May 15, 2013) (noting potential of successful willfulness defense). Further, it would be unrealistic not to expect appeals from any result reached. Avoidance of this unnecessary expenditure of time and resources clearly benefits all parties and the interests of justice more broadly.

2. The Reaction of the Class to the Settlement was Favorable

The positive reaction of the Class to the settlement is a significant factor weighing in favor of its fairness and adequacy. Indeed, "'the absence of objectants may itself be taken as evidencing the fairness of a settlement.'" *PaineWebber*, 171 F.R.D. at 126 (citation omitted); *see also In re Luxottica Grp. S.p.A. Secs. Litig.*, 233 F.R.D. 306, 311-12 (E.D.N.Y. 2006). As one court has noted, the reaction of the class to a settlement "is considered perhaps 'the most significant factor to be weighed in considering its adequacy.'" *In re Veeco Instruments Inc. Sec. Litig.*, No. 05-MDL-1695, 2007 WL 4115809, at *7 (S.D.N.Y. Nov. 7, 2007).

Here, the response was very favorable. To date, not a single Class Member has objected to the settlement or to any of its terms, and none have requested exclusion. Additionally, for the Claim Filing Category, 8% returned timely claim forms—a rate at the high end of the range that is typical in consumer settlements.[4] Thus, the very positive reaction of the Class here underscores the value of the settlement and provides strong support for final approval.

3. The Stage of the Proceedings and Discovery Completed

Courts look to the extent of discovery conducted for two reasons: (1) after extensive discovery, the court may assume that the parties have complete information about the strengths and weaknesses of their respective cases, and (2) "full discovery demonstrates that the parties have litigated the case in an adversarial manner and is, therefore, an indirect indicator that a settlement is not collusive but arms-length." 5 *Newberg on Class Actions* § 13:50 (5th ed. 2015). *See also In re Synchrony Fin. Sec. Litig.*, 2023 WL 4992933, at *7 (citing *PaineWebber*, 176 F.R.D. at 126)).

Here, the parties did in fact engage in robust discovery, and they had the benefit of substantial productions, data analysis, depositions and expert reports when negotiating their settlement. In addition, the parties informally exchanged substantial information in connection with their mediation, which further informed their positions. Moreover, the parties had fully briefed class certification—a pivotal stage in this litigation.

Thus, when it came time for the parties to engage in settlement discussions, they had more than sufficient information to negotiate effectively, and a final settlement was reached only after

[4] *See, e.g., Acevedo v. Workfit Med. LLC*, 187 F. Supp. 3d 370 (W.D.N.Y. 2016) ("claims made settlement[s] . . . regularly yield response rates of 10 percent or less"); *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 329 n.60 (3d Cir. 2011) (*en banc*) (class settlement claims rates "rarely" exceed 7%, "even with the most extensive notice campaigns"); *Sylvester v. CIGNA Corp.*, 369 F. Supp. 2d 34, 52 (D. Me. 2005) ("claims made settlements regularly yield response rates of 10 percent or less").

the parties were able to assess its fairness. This discovery was therefore "sufficient to provide a clear view of the strengths and weaknesses of their cases and of the adequacy of the settlement." *In re Sturm, Ruger, & Co., Inc. Secs. Litig*., 2012 WL 3589610, at *5 (D. Conn. Aug. 20, 2012) (internal quotations omitted). As a result of the parties' efforts, the litigation had reached the stage where they could intelligently appraise the case. Therefore, this factor also supports final approval of the settlement.

4. The Risk of Establishing Liability Weighs In Favor of Approval.

In assessing the settlement, the Court should balance the benefits afforded to the Class, including the immediacy and certainty of a recovery, against the continuing risks of litigation. *See Grinnell*, 495 F.2d at 463; *In re Holocaust Litig.*, 80 F. Supp. 2d at 177. Although Class Counsel believes that Plaintiff would eventually prevail, ultimate success is far from assured. Indeed, Defendant has consistently denied that it committed any wrongful acts or violations of the law, or that it has any liability to the Plaintiff or the Settlement Class.

Although Plaintiff strongly believes that the Defendant's conduct violated the FCRA, as alleged in his Complaint, he also recognizes the risk that the Court or a jury might not agree. Specifically, Defendant would likely argue, as it did in its opposition to class certification, ECF No. 47, that its reporting practices did not violate the FCRA, and certainly not willfully, and that the putative Class did not meet the requirements of Rule 23.

To be sure, Plaintiff was prepared to take on the burdens of further litigation and present substantial arguments opposing Defendant's positions, but the risks he faced were significant. The proposed settlement avoids this litigation risk to the Settlement Class, and it secures tangible and useful relief that may not be obtainable after trial. The risk of no damages, or a lower, delayed, damages award at trial supports final approval of the Settlement Agreement.

5. The Risks of Maintaining the Class Action Through Trial Weighs in Favor of Approval.

The settlement here was reached prior to a ruling on Plaintiff's motion for class certification. Absent the settlement, there was a real risk that no class would be certified, or if it was, that the Court of Appeals might reverse on a Rule 23(f) petition. There was no assurance that class status would be reached or maintained, especially since a court may exercise its discretion to re-evaluate the appropriateness of class certification at any time. *See Chatelain v. Prudential-Bache Sec.*, 805 F. Supp. 209, 214 (S.D.N.Y. 1992) ("Even if certified, the class would face the risk of decertification."); *see also Berger v. Compaq Computer Corp.*, 257 F.3d 475 (5th Cir. 2001) (decertifying class, finding proposed class representatives did not sufficiently remain apprised of status and claims of litigation). Although the success of such attempts is uncertain, the proposed settlement allows class members to avoid the risk, delay and expense that would be associated with such proceedings.

6. The Reasonableness of the Settlement in Light of the Best Possible Recovery and the Attendant Risks of Litigation Support Approval.

The adequacy of the amount offered in settlement must be judged "not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case." *In re "Agent Orange" Prod. Liab. Litig.*, 597 F. Supp. 740, 762 (E.D.N.Y. 1984), *aff'd*, 818 F.2d 145 (2d Cir. 1987). "[T]he Court is not to compare the terms of the Settlement with a hypothetical or speculative measure of a recovery that might be achieved by prosecution of the litigation to a successful conclusion." *Veeco*, 2007 WL 4115809, at *11. Instead, the Court need only determine whether the settlement falls within a "range of reasonableness." *PaineWebber*, 171 F.R.D. at 130 (citation omitted); *see also Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972) ("[I]n any case there is a range of reasonableness with respect to a settlement.").

In light of the questions of fact and law present in this litigation, the substantial value of the settlement and monetary recovery for the Class Members substantially outweighs the mere possibility of future relief. The expense of a trial and the use of judicial resources and the resources of the parties would have been substantial.

Moreover, in light of the contested liability, any judgment entered would have been the subject of post-trial motions and appeals, prolonging the litigation and reducing the value of any recovery. Thus, a settlement is advantageous to all concerned. An appeal might seriously and adversely affect the scope of an ultimate recovery, if not the recovery itself. *See Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263 (2d Cir. 1979) (reversal of multimillion dollar judgment obtained after protracted trial); *Trans World Airlines, Inc. v. Hughes*, 312 F. Supp. 478, 485 (S.D.N.Y. 1970), *modified*, 449 F.2d 51 (2d Cir. 1971), *rev'd* 409 U.S. 363, 366 (1973) ($145 million judgment overturned after years of litigation and appeals).

Here, Plaintiff has recovered roughly $523 per participating Class Member, with well over half of the Class receiving payments – over 50% receiving a payment automatically, and a number of others receiving payments because they submitted a claim form. Including both participating and non-participating Class Members, the gross recovery is roughly $290 per class member. This is an impressive amount considering the risks of litigation and the number of hurdles remaining between Plaintiff and a litigated judgment. Indeed, the gross per person amount exceeds the amount recovered in numerous similar FCRA settlements. *See, e.g.*, *Pang v. Credit Plus*, No. 1:21-cv-00122, ECF No. 61 (D. Md. 2021) (final approval of settlement regarding deceased reporting where class members needed to file claim to recover; recovering class members received roughly $430, settlement was roughly $125 gross per class member); *Steinberg v. CoreLogic Credco, LLC*, No. 3:22-cv-498, ECF No. 46 at 15, ECF No. 66 (S.D. Cal 2024) (final approval of

settlement regarding deceased reporting where settlement was roughly $212 gross per class member; claiming class members are expected to receive roughly $600); *McAfee v. CIC Mortgage Credit, Inc.*, No. 3:22-cv-772, ECF No. 40 at 3, ECF No. 54 (E.D. Va. 2023) (final approval of settlement regarding deceased reporting where settlement was roughly $104 gross per class member; claiming class members are expected to receive roughly $525); *Roe v. IntelliCorp Records, Inc.*, No. 12-2288, ECF No. 139 (N.D. Ohio June 5, 2014) (final approval of settlement of alleged inaccurate reporting, and other FCRA claims, providing for $50-$270 net per class member); *Ryals v. HireRight Sols. Inc.*, No. 09-625, ECF No. 127 (E.D. Va. Dec. 22, 2011) (final approval of settlement involving §1681e(b) claims, providing $15-$200 *gross* per class member recovery); *Ori v. Fifth Third Bank, Fiserv, Inc.*, No. 08-432, ECF No. 217 (E.D. Wis. Jan. 10, 2012) (final approval of settlement of alleged inaccurate mortgage loan reporting, claims-made, each claimant receiving approximately $55); *Speers v. Pre-Employ.com, Inc.*, No. 13-1849, ECF No. 83 (D. Or. Feb. 10, 2016) (final approval of settlement of failure to maintain strict procedures when reporting adverse public record information, resulting in approximately $153 net per class member); *Villaflor v. Equifax Info. Servc. LLC*, No. 09-329, ECF No. 177 (N.D. Cal. May 3, 2011) (final approval of settlement of §1681e(b) claims, providing credit monitoring for class members with a retail value of $155).

The proposed settlement is well within the range of reasonableness and should be approved.

7. The Ability of the Defendant to Withstand a Greater Judgment

Defendant is not a large corporation, but is a sizeable company. There are no concerns that it can fund the settlement, nor are there concerns that it could withstand a judgment.

8. The Plan of Distribution of the Settlement Fund Is Fair and Reasonable, Treats Class Members Equitably and Should Be Approved by the Court

Rule 23(e)(2)(C)(ii) requires courts to examine "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." "A claims processing method should deter or defeat unjustified claims, but the court should be alert to whether the claims process is unduly demanding." *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 694 (S.D.N.Y. 2019). The standard for approval of a plan of distribution is the same as the standard for approving the settlement as a whole: "namely, it must be fair and adequate." *In re Synchrony Fin. Sec. Litig.*, 2023 WL 4992933, at *10*; accord Maley v. Del Global Technologies Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002) (citation omitted); *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 343 (S.D.N.Y. 2005). "'As a general rule, the adequacy of an allocation plan turns on . . . whether the proposed apportionment is fair and reasonable' under the particular circumstances of the case." *In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 518 (E.D.N.Y. 2003) (citation omitted), *aff'd sub nom. Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96 (2d Cir. 2005).

In determining whether a plan of allocation is reasonable, courts give great weight to the opinion of experienced counsel. *Id.* (citing *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 163 (S.D.N.Y. 2011)).

Here, although some Class Members were required to return a simple claim form, ultimately all participating Class Members will receive an equal payment. This plan for distribution of the Settlement Fund to Class Members was fully described in the Notice, and it has a rational basis rooted in the possibility that some Class Members were in fact deceased, and thus a claim form process was appropriate. *See infra* at n.2; *see also See In re WorldCom, Inc. Sec. Litig.*, No. 02-3288, 2004 WL 2591402, *12 (S.D.N.Y. Nov. 12, 2004) (requiring claim form was

"important in helping to insure that the settlement fund is distributed to class members who deserve to recover from the fund").

Notably, no objections to the plan have been filed, which also supports approval. *See Maley*, 186 F. Supp. 2d at 367.

B. Notice to Settlement Class Members Was Sufficient.

For class action settlement notice to meet the requirements of due process and Rule 23, notice need only be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *see also Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811–12 (1985). Here, Notice was provided by mail and email, Settlement Class Members could get more information about the settlement online, and Settlement Class Members had the opportunity to call a toll-free line for more information about the settlement. Notices returned as undeliverable were re-mailed to a forwarding address, and if no forwarding address was available, research for alternate addresses was performed, a new address located, and the Notice re-mailed, with a 95% delivery rate, and with a similar delivery rate for email Notice. Such a comprehensive notice program should be approved. *See Phillips Petroleum*, 472 U.S. at 812.

III. CONCLUSION

The proposed settlement represents a substantial achievement for the Settlement Class, particularly when considered in light of the risks of continued litigation. For all of the above reasons, the proposed settlement is fair, reasonable, and adequate and should be finally approved in all respects.

Dated: April 17, 2024

Respectfully submitted,

/s/ Joseph C. Hashmall

E. Michelle Drake*
Joseph C. Hashmall*
BERGER MONTAGUE PC
1229 Tyler Street NE, Suite 205
Minneapolis, MN 55413
Tel: (612) 594-5999
Fax: (612) 584-4470
emdrake@bm.net
jhashmall@bm.net

Zachary M. Vaughan*
BERGER MONTAGUE PC
1001 G Street NW, Suite 400 East
Washington, DC 20001
Tel: 202-559-9740
zvaughan@bm.net

* *pro hac vice*

Jeffrey Gentes (ct28561)
CONNECTICUT FAIR HOUSING CENTER
60 Popieluszko Court
Hartford, CT 06106
Tel: (860) 263-0741
Fax: (860) 247-4236
jgentes@ctfairhousing.org

Counsel for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

LONNIE R. BERRYMAN, JR., Plaintiff, v. AVANTUS, LLC, Defendant.	Civil Action No. 3:21-cv-01651-VAB

ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFYING
SETTLEMENT CLASS, AND TERMINATING ACTION

Plaintiff Lonnie R. Berryman, Jr. ("Class Representative" or "Plaintiff"), on behalf of himself and all others similarly situated, has submitted to the Court a Motion for Final Approval of the Settlement Agreement ("Final Approval Motion") with Xactus, LLC, as successor in interest to certain assets of Avantus, LLC, and Avantus, LLC (collectively, "Defendant").

This Court has reviewed the papers filed in support of the Final Approval Motion, including the Settlement Agreement filed with Plaintiff's Preliminary Approval Motion, the memoranda and arguments submitted on behalf of the Settlement Class, and all supporting exhibits and declarations thereto, as well as the Court's Preliminary Approval Order. The Court held a Final Fairness Hearing on May 8, 2024, at which time the parties and other interested persons were given an opportunity to be heard in support of and in opposition to the proposed settlement. The Court received zero objections regarding the proposed settlement.

Based on the papers filed with the Court and the presentations made at the Final Fairness Hearing, the Court finds that the Settlement Agreement is fair, adequate, and reasonable.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. This Final Approval Order incorporates herein and makes a part hereof the Settlement Agreement and the Preliminary Approval Order. Unless otherwise provided herein, the capitalized terms used herein shall have the same meanings and/or definitions given to them in the Preliminary Approval Order and Settlement Agreement, as submitted to the Court with the Motion for Preliminary Approval.

2. This Court has jurisdiction over the subject matter of this action, the Class Representative, the Settlement Class, and Defendant.

SETTLEMENT CLASS

3. In the Preliminary Approval Order, this Court previously certified, for settlement purposes only, the Settlement Class defined as follows:

> All persons residing in the United States of America (including its territories and Puerto Rico) who: (1) were the subject of a bi-merge or tri-merge report using the legacy Avantus system and branding from December 13, 2019 through November 3, 2023; (2) that included at least one notation related to a deceased status in the score section of the report; and (3) where at least one of the underlying consumer reporting agencies returned a credit score.

4. Certification of the Class for settlement purposes is hereby reaffirmed as a final Settlement Class pursuant to Fed. R. Civ. P. 23(b)(3). For the reasons set forth in the Preliminary Approval Order, this Court finds, on the record before it, that this action may be maintained as a class action on behalf of the Class for settlement purposes.

5. In the Preliminary Approval Order, this Court previously appointed Plaintiff as Class Representative for the Settlement Class and hereby reaffirms that appointment, finding on the record before it, that Plaintiff has and continues to adequately represent the Settlement Class Members.

6. **CLASS COUNSEL APPOINTMENT —** In the Preliminary Approval Order, this Court previously appointed E. Michelle Drake and Joseph C. Hashmall of Berger Montague PC as Counsel for the Settlement Class and hereby reaffirms that appointment, finding, on the record before it, that Class Counsel have and continue to adequately and fairly represent Settlement Class Members.

7. **CLASS NOTICE** — The record shows, and the Court finds, that notice to the Settlement Class has been given in the manner approved by the Court in the Preliminary Approval Order. The Court finds that such notice (i) constituted the best notice practicable to the Settlement Class under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of this Action, the terms of the Settlement Agreement, their rights under the Settlement Agreement and deadlines by which to exercise them, and the binding effect of the Final Approval Order on the Settlement Class Members; (iii) provided due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfy the requirements of the U.S. Constitution (including the Due Process Clause), Federal Rule of Civil Procedure 23, and any other applicable law.

8. Full opportunity has been afforded to members of the Settlement Class to participate in the Final Fairness Hearing. Accordingly, the Court determines that all Settlement Class Membersare bound by this Final Approval Order in accordance with the terms provided herein.

FINAL APPROVAL OF THE SETTLEMENT AGREEMENT

9. Pursuant to Fed. R. Civ. P. 23(e), the Court hereby finally approves in all respects the settlement as set forth in the Settlement Agreement, and finds the benefits to the Settlement Class, and all other parts of the settlement are, in all respects, fair, reasonable, and adequate, and

in the best interest of the Settlement Class, within a range that responsible and experienced attorneys could accept considering all relevant risks and factors and the relative merits of the Plaintiff's claims and any defenses of Defendant, and are in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause, and the Class Action Fairness Act. Accordingly, the settlement shall be consummated in accordance with the terms and provisions of the Settlement Agreement, with each Settlement Class Member being bound by the Settlement Agreement, including all releases set forth in the Settlement Agreement.

10. Specifically, the Court finds that the terms of the Settlement Agreement are fair, reasonable, and adequate given the following factors, among other things:

A. All claims within the above-captioned proceeding are complex and time-consuming, and would have continued to be so through summary judgment and/or trial if it had not settled;

B. Class Counsel had a well-informed appreciation of the strengths and weaknesses of the Action while negotiating the Settlement Agreement;

C. The relief provided for by the Settlement Agreement is well within the range of reasonableness in light of the best possible recovery and the risks the parties would have faced if the case had continued to trial;

D. The Settlement Agreement was the result of arms' length, good faith negotiations and exchange of information by experienced counsel; and

E. The reaction of the Settlement Class has been positive.

11. The Court overrules the objections to the settlement. After carefully considering each objection, the Court concludes that none of the objections create questions as to whether the settlement is fair, reasonable, and adequate.

12. All claims in the above-captioned proceeding are hereby dismissed with prejudice and terminated. Except as otherwise provided herein or in the Settlement Agreement, such dismissal and termination shall occur without costs to Plaintiff or Defendant. Plaintiff and all Settlement Class Members hereby fully release all Released Parties for all Released Claims, and are hereby enjoined from instituting, maintaining, or prosecuting, either directly or indirectly, any lawsuit or claim that asserts any Released Claims.

13. Pursuant to the Settlement Agreement, as of the Effective Date, Plaintiff and the Settlement Class Members shall have fully, finally, and forever released and discharged the Released Parties from any and all Released Claims, as those terms are defined in the Settlement Agreement.

ATTORNEYS' FEES, COSTS, AND SERVICE AWARD

14. Pursuant to Fed. R. Civ. P. 23(h), Class Counsel applied to the Court for awards of attorneys' fees and costs as related to the Settlement Class.

15. The Court notes that the requested amounts were included in the notice materials disseminated to the Settlement Class and there have been no objections to the requested amounts.

16. The Court, having reviewed the declarations, exhibits, and memoranda submitted in support of the requests for attorneys' fees and costs, approves an award of attorneys' fee and costs to Class Counsel in the amount of $267,242. The Court finds this amount to be reasonable and appropriate under all circumstances presented.

17. The Court also approves a service award to the Class Representative of $7,500.

18. The Settlement Administrator is further approved to reimburse its reasonable costs in connection with the Settlement Class from the Settlement Fund prior to the distribution to the Settlement Class Members.

19. The Settlement Administrator is directed to distribute the balance of the Settlement Fund to participating Class Members as expressly set forth in the Settlement Agreement. Should funds remain for *cy pres* distribution, the parties' selected organizations, Public Justice and Community Action Agency of Delaware County, Inc., are approved to receive such residual funds.

20. The Court expressly retains exclusive and continuing jurisdiction, without affecting the finality of this Order, over the Settlement Agreement, including all matters relating to the implementation and enforcement of the terms of the Settlement Agreement. It is in the best interests of the Parties and the Settlement Class Members, and consistent with principles of judicial economy, that any dispute between any Settlement Class Member (including any dispute as to whether any person is a Settlement Class Member) and any Released Party which, in any way, relates to the applicability or scope of the Settlement Agreement or the Final Judgment and Order, should be presented exclusively to this Court for resolution.

21. Nothing herein, including the Court's retention of jurisdiction over the Settlement Agreement, shall be a basis for any party, including any class member, to assert a court has personal jurisdiction over any other party in any matter other than a matter seeking to enforce the terms of the Settlement Agreement.

22. Neither this Final Judgment and Order, nor the Settlement Agreement, shall be construed or used as an admission or concession by or against the Defendant or any of the Released Parties of any fault, omission, liability, or wrongdoing, or the validity of any of the Settlement Released Claims. This Final Judgment and Order is not a finding of the validity or invalidity of any claims in this lawsuit or a determination of any wrongdoing by Defendant or any of the Released Parties. The final approval of the Settlement Agreement does not constitute any opinion,

position, or determination of this Court, one way or the other, as to the merits of the claims and defenses of the Named Plaintiff, the Settlement Class Members, or Defendant.

23. If the Effective Date, as defined in the Settlement Agreement does not occur for any reason whatsoever, this Final Approval Order shall be deemed vacated and shall have no force or effect whatsoever.

24. The parties are hereby directed to carry out their obligations under the Settlement Agreement.

25. There being no just reason for delay, the Court directs this Final Order be, and hereby is, entered as a final and appealable order.

It is SO ORDERED.

Dated: _____

_____
Hon. Victor A. Bolden
U.S. District Judge