

**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-JBA

SETTLEMENT AGREEMENT & RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is entered into by the Parties and their counsel as of January 2, 2024, in the above-captioned matter, pending in the United States District Court for the District of Connecticut. The Settlement Agreement is subject to Court approval pursuant to Rule 23 of the Federal Rules of Civil Procedure.

1. RECITALS

WHEREAS, on December 13, 2021, Lonnie R. Berryman, Jr. (“Plaintiff”) brought his initial complaint against Avantus, LLC.

WHEREAS, 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.”

WHEREAS, Plaintiff alleges that Defendant negligently and willfully violated the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* (“FCRA”) by providing consumer reports to customers that included deceased notations on consumers who were, in fact, alive. Defendant

disputes that it violated any law with respect to Plaintiff's consumer report or the reports pertaining to the purported class.

WHEREAS, Defendant denies each and every one of the allegations of wrongful conduct and damages made in the Complaint, has asserted numerous defenses to Plaintiff's claims, disputes any wrongdoing or liability whatsoever, and denies that this matter satisfies the requirements to be tried as a class action under Rule 23 of the Federal Rules of Civil Procedure.

WHEREAS, the Parties reached this Settlement Agreement after exchanging discovery, documents, testimony, and information relevant to Plaintiff's claims. The Settlement Agreement is the product of sustained, arms' length settlement negotiations, including a formal mediation with the Hon. Barry R. Poretz (Ret.), of The McCammon Group, Ltd.

WHEREAS, Plaintiff and Defendant recognize that the outcome of this matter is uncertain, and that a final resolution through the litigation process would require protracted adversarial litigation, and appeals, substantial risk and expense, the distraction and diversion of Defendant's personnel and resources, and the expense of any possible future litigation raising similar or duplicative claims. As a result, Plaintiff, Defendant, and their counsel have agreed to resolve this matter as a class action settlement according to the terms of this Settlement Agreement.

WHEREAS, the Parties believe that this Settlement Agreement is fair, reasonable, and adequate in resolving the litigation because it: (1) provides for certification of the Settlement Class, even though the Court has not yet determined whether Plaintiff's claims could properly be brought as a class action, and Defendant maintains that certification of any class for trial purposes would not be proper under Fed. R. Civ. P. 23; (2) provides for monetary payments to the Settlement Class Members (defined below); and (3) provides relief to the proposed Settlement Class in exchange for a release tailored to the specific claims in this case.

NOW THEREFORE, without any admission or concession on the part of any Party with respect to the merits of the litigation, the Parties agree that this matter is settled, compromised, and dismissed on the merits and with prejudice, subject to Court approval, on the terms and conditions in this Settlement Agreement.

The recitals above are accurate and are incorporated as terms of this Settlement Agreement.

2. DEFINITIONS

For the purposes of this Settlement Agreement, including the Recitals above, the below terms have the following meanings:

2.1. “CAFA Notice” means notice of this settlement to the appropriate federal and state officials, as provided by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and as further described in Section 4.2.5.

2.2. “Claim” means a claim that a member of the Settlement Class may submit pursuant to the process described in Section 4.3.3.1.

2.3. “Claiming Settlement Class Member” means a Settlement Class Member who submits a valid and timely Claim Form.

2.4. “Claim Form” means the form that a member of the Settlement Class may submit in order to assert a Claim to the Settlement Fund, attached as **Exhibit B**.

2.5. “Claim Submission Deadline” means a postmark deadline of sixty (60) days following the mailing of Notice to the Settlement Class.

2.6. “Class Counsel” means Berger Montague PC.

2.7. “Class List” means the list of Settlement Class Members, including individuals who may ultimately opt-out, that Defendant will generate, as described below. When compiling the

Class List, Defendant can remove records that facially appear to have been pulled as a test report or test account.

2.8. “Named Plaintiff” or “Plaintiff” means Lonnie R. Berryman, Jr.

2.9. “Court” means the United States District for the District of Connecticut, where this Litigation is pending.

2.10. “Cy Pres Recipients” means Public Justice and Community Action Agency of Delaware County, Inc.

2.11. “Defendant” means Xactus, LLC, in its capacity as successor in interest to certain assets of Avantus, LLC, and Avantus, LLC.

2.12. “Effective Date” means the later of the following: (1) 31 days after the entry of the Final Judgment and Order (or the following business day if 31 days is not a business day) if there are no objectors to the settlement and no one has filed an appeal; (2) 61 days after the entry of the Final Judgment and Order (or the following business day if 61 days is not a business day) if there are objectors, but none of the objectors have either filed an appeal or moved for an extension of the appeal deadline; or (3) if there is any appellate activity, the day the appeal has been exhausted in such a manner as to affirm the Final Judgment and Order, and no further appeals are possible, including review by the United States Supreme Court.

2.13. “Escrow Account” means an interest-bearing account at a financial institution that the Settlement Administrator identifies, subject to Defendant’s approval, in which the Settlement Fund shall be deposited.

2.14. “FCRA” means the federal Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681x.

2.15. “Funding Date” means seven (7) days after the Effective Date.

2.16. “Final Approval Hearing” is the hearing the Court schedules to make a final determination as to whether this settlement is fair, reasonable, and adequate. Subject to Court approval, the Parties will request the Court set this hearing date at least seventy five (75) days following the mailing of Notice to the Settlement Class.

2.17. “Settlement Class” or “Settlement Class members” means 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. The Settlement Class does not include Defendant’s officers, directors, and employees; Defendant’s attorneys; Named Plaintiff’s attorneys; and any Judge overseeing or considering the approval of the settlement together with members of their immediate family and any judicial staff.

2.18. “Settlement Class Notice Plan” means the plan for providing notice of this settlement to the Settlement Class under Federal Rules of Civil Procedure, Rule 23(c)(2)(A) and (e)(1), as set forth in Section 4.2.

2.19. “Settlement Class Released Claims” means those claims that the Settlement Class Members are releasing, as set forth in Section 4.4.

2.20. “Settlement Website” means the Internet website the Settlement Administrator will establish, as part of the Settlement Class Notice Plan, as set forth in Section 4.2.4.

2.21. “Settlement Fund” means the amount of \$450,758, which is the monetary relief Defendant has agreed to provide for the benefit of the Settlement Class, as further described in Section 5.1.

2.22. “Final Judgment and Order” means a final judgment and order of dismissal entered by the Court in this Litigation, in the form of **Exhibit E**, granting final approval of this Settlement Agreement (including addressing Class Counsel’s request for attorneys’ fees, costs, and other expenses, notice and administration costs and expenses, and Named Plaintiff’s request for a Service Award), and entering a judgment according to the terms of this Settlement Agreement.

2.23. “Litigation” means the matter styled as *Lonnie R. Berryman, Jr. v. Avantus, LLC*, No. 3:21-cv-01651-JBA, which is currently pending in the United States District Court for the District of Connecticut.

2.24. “Net Settlement Fund” means the Settlement Fund less all amounts awarded as a Service Award, costs, administrative fees, notice expenses (including the advance on notice expenses set forth in Section 4.2.6), and any other expenses the Court authorizes for deductions from the Settlement Fund.

2.25. “Notice” means the notice (in a form substantially similar to that attached as **Exhibits A and B** and approved by the Court) that will be emailed or mailed to the Settlement Class, as further described in Section 4.2.3.

2.26. “Opt-Out-Deadline” and “Objection Deadline” mean the date(s) the Court establishes as the deadline by which Settlement Class Members must postmark a written notice of their intent to opt-out of the settlement and by which objections to the preliminarily approved settlement must be sent to the Settlement Administrator. The Parties shall jointly request that this date be no less than sixty (60) days following the mailing of Notice to Settlement Class Members.

2.27. “Party” and “Parties” mean the Named Plaintiff, the Settlement Class, and the Defendant.

2.28. “Preliminary Approval” and “Preliminary Approval Order” mean the Court’s order in the form attached as **Exhibit D**, preliminarily approving the Settlement Class, preliminarily approving the proposed settlement, approving and directing the Settlement Class Notice Plan, appointing a Settlement Administrator, and appointing Class Counsel.

2.29. “Released Parties” means Xactus, LLC, Avantus, LLC and each of their respective past, present, and future employees, parents, subsidiaries, affiliate corporations, or other business entities, including but not limited to their members, officers, directors, employees, agents, personal representatives, contractors, resellers, suppliers, insurers, attorneys and assigns. “Released Parties” explicitly does not include Experian, Equifax, TransUnion or any consumer reporting agencies who supplied any information about consumers to Defendant.

2.30. “Service Award” means the one-time payment to the Named Plaintiff, for the time and resources he has put into representing the Settlement Class, as set forth in Section 5.3.

2.31. “Settlement Administrator” means, subject to Court approval, Continental DataLogix LLC.

2.32. “Settlement Agreement” means this Settlement Agreement and Release, including all attached Exhibits.

2.33. “Long Form Notice” means the notice (in a form substantially similar to that attached as **Exhibit C** and approved by the Court) that will be posted on the Settlement Website, as further described in Section 4.2.3.

3. PRELIMINARY APPROVAL

3.1. Preliminary Approval Order

Plaintiff shall file with the Court a motion for Preliminary Approval of the proposed settlement; Conditional Certification of the Settlement Class, Appointment of Class Counsel;

Approval and Direction of the Settlement Class Notice Plans; and Appointment of the Settlement Administrator by January 5, 2024. The motion must seek entry of an order that would, for settlement purposes only:

- a) Preliminarily approve this Settlement Agreement;
- b) Preliminarily certify a settlement class under Federal Rule of Civil Procedure 23(b)(3) that is composed of the Settlement Class Members;
- c) Appoint Plaintiff and Class Counsel to represent the Settlement Class;
- d) Approve the proposed Settlement Class Notice Plan, including the form of Notice substantially similar to that attached as **Exhibit A and B**; and
- e) Appoint the Settlement Administrator.

3.2. Class Certification for Settlement Purposes Only

Defendant contends that the Settlement Class could not be certified as a class under Federal Rule of Civil Procedure 23 in a contested motion for trial purposes. Nothing in this Settlement Agreement may be construed as an admission by Defendant that this Litigation or any similar case is amenable to class certification for trial purposes. To the contrary, Defendant believes that certification of the Settlement Class through a contested motion for class certification in the non-settlement context would be improper. Further, nothing in this Settlement Agreement prevents Defendant from opposing class certification or seeking de-certification of the Settlement Class if final approval of this Settlement Agreement does not occur, or is not upheld on appeal, including review by the United States Supreme Court, for any reason, or if any of the conditions exist that permit Defendant to terminate this Settlement Agreement in accordance with Section 7.

4. SETTLEMENT CLASS

4.1. Certification of Settlement Class

4.1.1 Class Definition

For purposes of settlement only, and upon the express terms and conditions set forth in this Settlement Agreement, the Parties agree to seek certification of the Settlement Class as defined in Section 2.17. There are 1,393 Settlement Class Members.

4.2 Settlement Class Notice Plan

4.2.1 Class List of Settlement Class Members

Within ten (10) days after entry of the Preliminary Approval Order, Defendant shall provide the Class List to the Settlement Administrator, which will include the following information for each Settlement Class Member, as reflected in Defendant's records:

- (a) The Settlement Class Member's name; and
- (b) The Settlement Class Member's last known postal address.

When compiling the Class List, Defendant shall include a notation in the list, to the extent possible from Defendant's records or third-party records, as to which Settlement Class Members should be part of the Automatic Payment Category, as discussed in Section 4.3.2.

The Settlement Administrator shall update the addresses in the Class List via the USPS National Change of Address system, or any other appropriate database the Settlement Administrator regularly uses for updating mailing addresses, prior to mailing the Class Notice.

The Named Plaintiff, Class Counsel, and Settlement Class acknowledge and agree that Defendant is providing the information referenced in this Section to the Settlement Administrator solely to effectuate the terms of this Settlement Agreement, and that such information shall not be used, disseminated, or disclosed by or to any other person for any other purpose. Defendant's

inclusion of these individuals' personal information during this process is in no way an admission of liability with respect to these individuals. If the settlement is terminated for any of the reasons identified in Section 7, the Settlement Administrator shall immediately destroy any and all copies of the information referenced in this Section.

4.2.2 Court Appointment and Retention of Settlement Administrator

With the motion for Preliminary Approval, the Parties will propose that the Court appoint the Settlement Administrator. The Settlement Administrator's responsibilities shall include, but are not limited to, giving notice, obtaining new addresses for returned mail, setting up and maintaining a Settlement Website and, in conjunction with Class Counsel, fielding e-mail and other inquiries about the Settlement Agreement from Settlement Class Members, directing the mailing of payments to Settlement Class Members, coordinating with Class Counsel and Defendant's Counsel, and any other tasks reasonable required to effectuate the settlement. The Settlement Administrator will provide monthly updates on the status of disbursements and cashed checks to counsel for the Parties.

4.2.3 Settlement Class Notice

Named Plaintiff, Defendant, and the Settlement Administrator have agreed that they will jointly recommend the Notices and Long Form Notice, substantially in the form attached as **Exhibits A, B, and C**, to the Court for approval.

Within twenty-one (21) days of the Court entering Preliminary Approval, the Settlement Administrator will send a notice of the settlement via electronic mail (where available) and U.S. Mail, postage prepaid, also requesting either forwarding service or change service to the last known address reflected in the Class List as necessary. The Administrator will send the Notice of Settlement, substantially in the form attached as **Exhibit A**, to all members of the Automatic

Payment Category. The Administrator will send the Notice of Settlement and Claim Form, substantially in the form attached as **Exhibit B**, to all other members of the Settlement Class. Collectively, this is the “Notice” to the Settlement Class, as defined in Section 2.25. Prior to the mailing, the Settlement Administrator shall utilize the U.S. Postal Office’s National Change of Address System. By that same deadline, the Settlement Administrator will post the Long Form Notice to the Settlement Website.

For up to thirty (30) days following the mailing of the Notice via U.S. Mail (if applicable), the Settlement Administrator will re-mail the Notice via standard U.S. Mail, postage prepaid, to those Settlement Class Members whose notices were returned as undeliverable to the extent an alternative mailing address can be reasonably located. The Settlement Administrator will first attempt to re-mail the Notice to the extent that it received an address change notification from the U.S. Postal Service. If an address change notification form is not provided by the U.S. Postal Service, the Settlement Administrator may attempt to obtain an updated address using reasonable and appropriate methods to locate an updated address.

Neither the Parties nor the Settlement Administrator will have any further obligation to send notice of the settlement to the Settlement Class Members.

4.2.4 Settlement Website

The Settlement Administrator shall create and maintain the Settlement Website to be activated no later than five (5) days prior to the mailing of the Notice described above. The URL for the website will be as agreed by the parties. The Settlement Website will post important settlement documents, such as the operative Complaint, the Notice, the Long Form Notice, the Settlement Agreement, and the Preliminary Approval Order. In addition, the Settlement Website will include a Claim Form, an ability for Settlement Class Members to update their address and

provide their e-mail and telephone numbers, a section for frequently-asked questions, and procedural information regarding the status of the Court-approval process, such as information about the date and time of the Final Approval Hearing, notification of entry of the Final Judgment and Order, a calculation of when the Effective Date is expected or has been reached, and notification regarding when payment will likely be mailed.

4.2.5 Class Action Fairness Act (“CAFA”) Notice

The Parties agree that the Defendant shall serve notice of the settlement at Defendant’s expense that meets the requirements of CAFA, 28 U.S.C. § 1715, on the appropriate federal and state officials not later than ten (10) days after the filing of this Settlement Agreement with the Court. Defendant may use a third-party to serve the CAFA Notice, in Defendant’s discretion.

4.2.6 Costs and Expenses.

Within seven (7) days of Preliminary Approval, Defendant will advance twenty thousand dollars (\$20,000) to the Settlement Administrator to effectuate the Settlement Class Notice Plan. Defendant shall receive a credit for this payment when it comes time to fund the Settlement Fund, as discussed in Section 5. With the exception of the CAFA Notice, all costs and expenses associated with the Settlement Class Notice Plan shall be paid out of the Settlement Fund. Under no circumstances will Defendant have any payment obligations pursuant to this Settlement Agreement that exceed the Settlement Fund referenced in Section 2.21 and the attorneys’ fees referenced in Section 5.3.

4.3 **Settlement Consideration**

4.3.1 Settlement Class Monetary Relief

The Net Settlement Fund shall be allocated *pro rata* to Settlement Class Members. Payment shall be made automatically to all members of the Automatic Payment Category. All

remaining Settlement Class Members may submit a claim. Any Settlement Class Member who submits a claim that is not disallowed shall receive part of the *pro rata* payment.

4.3.2 Automatic Payment Category

The Automatic Payment Category includes all Settlement Class Members who meet the following criteria: 1) whose report(s) were generated based on an application for credit, 2) whose last date of tradeline activity on the report(s) was within 180 days of the report at issue, 3) where at least two consumer reporting agencies returned a credit score on the report(s) at issue, 4) where, 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) whose 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.

4.3.3 Claims Process

Any Settlement Class Member who is not a member of the Automatic Payment Category and who attests he or she was the subject of a tri-merge or bi-merge report with a deceased notation sold by Defendant, during the class period, when the Settlement Class Member was, in fact, alive is eligible to submit a Claim Form. If a Settlement Class Member was not the subject of a report with a deceased notation sold by Defendant when he or she was alive, he or she is not eligible to submit a Claim Form. All Settlement Class Members who submit a claim are part of the “Claims Made Category.”

4.3.3.1 Claim Forms

To assert a Claim, an eligible Settlement Class Member must submit a completed and signed Claim Form certifying that the Settlement Class Member was the subject of a tri-merge or bi-merge report with a deceased notation sold by Defendant, during the class period, when the

Settlement Class Member was, in fact, alive. The Settlement Class Member must also certify that the information contained in the Claim Form is accurate to the best of his or her knowledge, information, and belief. A Claim Form (or resubmitted Claim Form) shall be deemed to have been submitted timely if the Claim Form is submitted on the Settlement Website or postmarked by the USPS or other expedited mail service on or before the Claim Submission Deadline. Eligible Settlement Class Members who submit a complete and timely Claim Form are considered Claiming Settlement Class Members.

4.3.3.2 Processing of Claim Forms

The Settlement Administrator shall receive and process all Claim Forms. The Settlement Administrator shall disallow any Claim when the Claim Form is not submitted timely (subject to the approval process in Section 4.3.3.4), is not completed in full, or is not signed by the Settlement Class Member.

4.3.3.3 Process for Disallowed Claim Forms

If the Claim is disallowed for any reason, then the Settlement Administrator, within seven (7) days after the decision to disallow, shall notify the person who submitted the Claim by first class mail, with an electronic copy to Class Counsel and Defendant's Counsel: (a) that the Claim has been disallowed in whole or in part; and (b) the reasons for such disallowance. The Settlement Administrator shall include a clean copy of a Claim Form with the mailing.

A person who submitted the form may, within fourteen (14) days after the date of mailing of the notice of disallowance, resubmit a Claim Form, which the Settlement Administrator shall review and either finally allow or finally disallow as above within seven (7) days after receipt of the resubmitted Claim Form.

The Settlement Administrator shall notify the person who submitted the form, Class Counsel, and Defendant's Counsel of any such decision on a resubmitted Claim Form.

4.3.3.4 Untimely Claim Forms

With the written agreement of Class Counsel and Defendant's Counsel, the Settlement Administrator may deem valid a Claim Form that is postmarked after the Claim Submission Deadline, but that the Settlement Administrator received prior to the Final Approval Hearing.

4.4 Settlement Class Release

4.4.1 Release of All Claims

Upon the Effective Date, each member of the Settlement Class who has not validly excluded himself or herself, on behalf of themselves and their respective spouses, heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors, assigns, and all those acting or purporting to act on their behalf, acknowledge full satisfaction of, and shall be conclusively deemed to have fully, finally, and forever settled, released, and discharged all the Released Parties of and from all claims, rights, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys' fees of any nature whatsoever arising before and up through the Effective Date, whether known or unknown, matured or unmatured, foreseen or unforeseen, suspected or unsuspected, accrued or unaccrued, which he or she ever had or now has under the FCRA, state analogs, or common law, resulting from, arising out of, or regarding, the inclusion of any notations or indicators that the consumer is deceased or dead in reports prepared by Defendant (the "Settlement Class Released Claims"). For purposes of clarity, but not limitation, this release includes any form of equitable

relief, actual damages, statutory damages, and/or punitive damages sought from the Released Parties.

Subject to the Court's approval, the Settlement Class Members are bound by this Settlement Agreement. All of the Settlement Class Members' Settlement Class Released Claims will be dismissed with prejudice and released as against the Released Parties.

4.4.2 Waiver of Unknown Claims; General Release

Settlement Class Members acknowledge that they may subsequently discover facts that supplement, or are in addition to, those facts that they or Class Counsel now believe to be true with respect to this Litigation or the Settlement Class Released Claims. Nonetheless, the Settlement Class Members intend to fully, finally, and forever settle and release any and all Settlement Class Released Claims, without regard to the subsequent discovery of additional or different facts, whether known or unknown.

Settlement Class Members and Class Counsel understand and acknowledge the significance of this waiver of California Civil Code § 1542 and/or any other applicable federal or state law relating to limitations on releases with respect to the Settlement Class Released Claims.

4.4.3 Binding Release

Upon the Effective Date, no default by any person in the performance of any covenant or obligation under this Settlement Agreement or any order entered in connection with such shall affect the dismissal of the Litigation, the *res judicata* effect of the Final Judgment and Order, the release, or any other provision of the Final Judgment and Order; provided, however, that all other legal and equitable remedies for violation of a court order or breach of this Settlement Agreement shall remain available to all Parties.

4.4.4 Opt-Out from Settlement Class

4.4.4.1 Requests for Exclusion

All Settlement Class Members have the opportunity to opt out of the Settlement Class by submitting a “Request for Exclusion.” All Requests for Exclusion must be in writing, sent to the Settlement Administrator, and postmarked no later than the Opt-Out Deadline. To be valid, a Request for Exclusion must be signed by the individual on the Class List and must include: (1) the individual’s name, address and telephone number; and (2) a statement substantially to the effect that: “I request to be excluded from the Settlement Class in *Lonnie R. Berryman, Jr. v. Avantus, LLC*.” If a Settlement Class Member submits both a Request for Exclusion and a Claim Form, the Claim Form shall take precedence and the individual will not be excluded from the Settlement Class. No one may submit a Request for Exclusion on behalf of any other person in the Settlement Class.

Class Counsel agree that this Settlement Agreement is fair, reasonable, and in the best interest of the Settlement Class Members. For that reason, Class Counsel has no present intention to represent any individual who submits a Request for Exclusion against the Released Parties with respect to a Settlement Class Released Claim. Based upon unique circumstances here, Class Counsel agrees that Settlement Class Members who seek to opt-out should be represented by counsel who do not agree that the Settlement Agreement is fair, reasonable, and in the best interest of the Settlement Class Members. Accordingly, Class Counsel intends to, if contacted, refer any such opt-outs to the applicable state bar association or other referral organization for appropriate counsel in any subsequent litigation against Defendant related to a Settlement Class Released Claim.

4.4.4.2 Verification of Opt-Outs by Settlement Administrator

The Settlement Administrator shall provide copies of the Requests for Exclusion to the Parties no later than three days after the Settlement Administrator receives them. No later than sixty-five (65) days following the mailing of Notice to the Settlement Class, the Settlement Administrator shall provide to Class Counsel (with a copy to Defendant), who shall file it with the Court, a declaration verifying that the Settlement Administrator has provided notice to the Settlement Class and listing all of the valid opt-outs the Settlement Administrator received.

4.4.4.3 Effect of Opt-Out from Settlement Class

All individuals within the Settlement Class who timely submit a valid Request for Exclusion (and who do not also submit a Claim Form) will, subject to Court approval, exclude themselves from the Settlement Class and preserve their ability to independently pursue, at their own expense, any individual claims he or she claims to have against Defendant. Any such individual within the Settlement Class who appropriately opts out will not be bound by further orders or judgments in the Litigation as they relate to the Settlement Class.

4.4.4.4 Objections from Settlement Class Members

Any Settlement Class Member who has not previously opted-out in accordance with the terms above and who intends to object to this Settlement Agreement must mail the objection to the Settlement Administrator with a postmark date no later than the Objection Deadline. The objection must include the following: (1) the Settlement Class Member's full name, address and current telephone number; (2) if the individual is represented by counsel, the name and telephone number of counsel and, if counsel intends to submit a request for fees, all factual and legal support for that request; (3) all objections and the basis for any such objections stated with specificity, including a statement as to whether the objection applies only to the objector, to a specific subset of the class,

or to the entire class; (4) the identity of any witnesses the objector may call to testify; (5) a listing of all exhibits the objector intends to introduce into evidence at the Final Approval Hearing, as well as true and correct copies of such exhibits; and (6) a statement of whether the objector intends to appear at the Final Approval Hearing, either with or without counsel. Class Counsel shall provide any objections that the Settlement Administrator receives through the process above to the Court when Class Counsel moves the Court for final approval of the settlement.

Any Settlement Class Member who fails to timely object pursuant to this Section shall not be permitted to object to any aspect of the settlement and shall be foreclosed from seeking any review of the settlement or the terms of the Settlement Agreement by appeal or other means.

5. SETTLEMENT FUND

5.1 Settlement Fund

By the Funding Date and subject to Court approval, Defendant agrees to fund the Settlement Fund in the total amount of \$450,758.00, less the amount provided for in Section 4.2.6. Defendant shall deposit this amount in the Escrow Account. This funding constitutes the total monetary consideration for the settlement, inclusive of any and all payment of Service Award, costs, administrative fees, notice expenses, and any other expenses described, except for the payment of attorneys' fees described in Section 5.3. In no event shall Defendant be required to pay any other amount in the Litigation aside from the Settlement Fund, except the funds necessary to effectuate the CAFA Notice described in Section 4.2.5 and the payment of attorneys' fees described in Section 5.3.

5.2 Settlement Fund Tax Status

5.2.1 The Parties agree to treat the Settlement Fund as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1. In addition, the

Settlement Administrator shall timely make such elections as necessary or advisable to carry out the provisions of this Section, including the “relation back election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Settlement Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

5.2.2 For the purpose of Treasury Regulation § 1.468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Settlement Administrator. The Settlement Administrator shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)). Such returns shall be consistent with this Section and in all events shall reflect that all taxes (including any estimated taxes, interest, or penalties) on the income earned by the Settlement Fund shall be paid out of the respective settlement fund as provided herein.

5.2.3 All (a) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes, and (b) expenses and costs incurred in connection with the operation and implementation of this Section (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns), shall be paid out of the Settlement Fund. In no event shall the Released Parties have any responsibility for or liability with respect to the taxes or the tax expenses. The Settlement

Administrator shall indemnify and hold the Released Parties harmless for taxes and tax expenses (including, without limitation, taxes payable by reason of any such indemnification). Further, taxes and tax expenses shall be timely paid by the Settlement Administrator out of the Settlement Fund without prior order from the Court, and the Settlement Administrator shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution any funds necessary to pay such amounts, including the establishment of adequate reserves for any taxes and tax expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)); the Released Parties are not responsible therefore nor shall they have any liability with respect thereto. The Parties agree to cooperate with the Settlement Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out this Section.

5.3 Attorneys' Fees, Service Award, Costs, and Other Expenses

5.3.1 No later than forty-five (45) days following the mailing of Notice to the Settlement Class, Class Counsel shall make an application to the Court for an award of attorneys' fees, costs, and other expenses for their representation of the Settlement Class, not to exceed two-hundred sixty-seven thousand, two hundred forty-two dollars (\$267,242.00). This application will be posted to the Settlement Website within one day of filing with the Court. No later than the time Class Counsel files the application above, Class Counsel shall provide to Defendant properly-completed W-9 Forms pertaining to Class Counsel, Plaintiff, and the Settlement Fund.

Defendant agrees to pay to Class Counsel the attorneys' fees, costs and other expenses the Court awards pursuant to the application referenced above separate and apart from the Settlement Fund. However, in no event shall Defendant be required to pay anything more than two-hundred sixty-seven thousand, two hundred forty-two dollars (\$267,242.00) in attorneys' fees, costs and other expenses, even if the Court awards more in response to Class Counsel's application.

Defendant shall make the payment for attorneys' fees, costs, and other expenses pursuant to the schedule in Section 5.3.4.

5.3.2 No later than forty-five (45) days following the mailing of Notice to the Settlement Class, Named Plaintiff shall make an application to the Court for the Court's approval of a Service Award of up to \$7,500 to be paid from the Settlement Fund. Defendant agrees not to oppose a Service Award of \$7,500 for the Named Plaintiff. Defendant's agreement to this Service Award is in no way an admission of liability for Plaintiff's claims. In exchange for any Service Award the Court awards, upon the Effective Date, Named Plaintiff on behalf of himself and his spouse, heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors, assigns, and all those acting or purporting to act on their behalf, acknowledges full satisfaction of, and shall be conclusively deemed to have fully, finally, and forever settled, released, and discharged all the Released Parties of and from all claims, rights, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys' fees of any nature whatsoever arising before and up through the Effective Date, whether known or unknown, matured or unmatured, foreseen or unforeseen, suspected or unsuspected, accrued or unaccrued. To the extent the Court approves a Service Award in an amount less than the requested amount, the difference shall remain in the Settlement Fund for the benefit of the Settlement Class Members.

5.3.3. The Court shall consider the applications for attorneys' fees and the Service Award, and any and all matters related thereto, separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement Agreement. The Named Plaintiff and Class Counsel agree that this Settlement Agreement is not conditioned on the Court's approval of attorneys' fees or the Service Award in the requested amount or in any amount whatsoever. The

Court's ruling on the application or applications for such fees and award shall not operate to terminate or cancel the Settlement Agreement.

5.3.4 Payment Schedule

Defendant shall pay approved attorneys' fees, costs and expenses, subject to Court approval and subject to the cap in Section 5.3.1, within seven (7) days after the Funding Date.

The Service Award, subject to Court approval, shall be paid from the Settlement Fund in the amount approved by the Court within fourteen (14) days after the Funding Date.

In addition, before commencing distribution to the Settlement Class Members, the Settlement Administrator shall determine the funds necessary to cover the costs of notice and administration that the Settlement Administrator has already incurred, and reasonably expects to incur, in completing the Settlement Class Notice Plan. The Settlement Administrator shall submit that estimate to Class Counsel and Defendant's counsel for approval. Once approved, the Settlement Administrator shall withhold the estimated amount from further distribution from the Settlement Fund in order to cover costs of notice and administration.

Within fourteen (14) days after the Funding Date, the Settlement Administrator shall mail equal payments to each Settlement Class Member in the Automatic Payment Category and each Claiming Settlement Class Member to the last known address reflected in the Class List or the updated address previously used during the Settlement Class Notice Plan. The payment notices accompanying the check shall notify the recipients that the checks must be cashed within sixty (60) days from the date on the enclosed check and the enclosed check shall not be valid after that date.

If any checks issued to Settlement Class Members from the Settlement Fund remain uncashed after the stale date referenced above – and the collective amount of those checks allows

for a second distribution of at least twenty dollars (\$20) to all Settlement Class Members after further reductions in the Settlement Fund for additional expenses incurred by the Settlement Administrator as a result of the need for a second distribution – then the Settlement Administrator shall distribute the funds associated with those uncashed checks, in proportion to each Settlement Class Member’s initial settlement check, to those Settlement Class Members who cashed a check from the previous distributions. The payment notices accompanying the payment check shall notify the recipients that the checks must be cashed within sixty (60) days from the date on the enclosed check and that the enclosed check shall not be valid after that date.

Any checks from the residual distribution in the immediately preceding paragraph that are not cashed by the stale date referenced above, or funds remaining as a result of checks that were undeliverable, or funds remaining because no residual distribution occurred, shall revert to the Settlement Fund. These remaining funds shall be paid to (and split equally between) the Cy Pres Recipients. The funds shall be distributed within fifteen (15) days of the final stale date referenced above and shall not be used for litigation purposes. Class Counsel represents that Public Justice is not a referral source or expected referral source to Class Counsel for FCRA litigation matters or matters otherwise related to consumer reports.

6. ENTRY OF FINAL JUDGMENT AND ORDER

No later than seventy (70) days following the mailing of Notice to the Settlement Class, the Parties shall jointly seek entry by the Court of a Final Judgment and Order in the form of **Exhibit E**, which includes the following provisions (among others):

- a) Granting final approval of this Settlement Agreement, and directing its implementation pursuant to its terms and conditions;
- b) Ruling on Class Counsel’s applications for attorneys’ fees, costs, and other expenses;

- c) Discharging and releasing the Released Parties, and each of them, from the Settlement Class Released Claims, as provided in Section 4.4;
- d) Permanently barring and enjoining all Settlement Class Members from instituting, maintaining, or prosecuting, either directly or indirectly, any lawsuit that asserts Settlement Class Released Claims;
- e) Directing that the Litigation be dismissed with prejudice and without costs;
- f) Stating pursuant to Federal Rule of Civil Procedure Rule 54(b) that there is no just reason for delay and directing that the Final Judgment and Order is a final, appealable order; and
- g) Reserving to the Court continuing and exclusive jurisdiction over the Parties with respect to the Settlement Agreement and the Final Judgment Order as provided in Section 8.3.

7. TERMINATION

Defendant's willingness to settle this Litigation on a class action basis and to agree to the accompanying preliminary certification of the Settlement Class is dependent upon achieving finality in this Litigation and the desire to avoid the expense of this and other litigation. Consequently, Defendant has the right to terminate this Settlement Agreement, declare it null and void, and have no further obligations under this Settlement Agreement to the Named Plaintiff or to members of the Settlement Class if any of the following conditions subsequent occurs:

- a) The Parties fail to obtain and maintain Preliminary Approval consistent with the provisions of this Settlement Agreement;
- b) More than 25 individuals opt out of the proposed Settlement Class;

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- c) The Court fails to enter a Final Judgment and Order consistent with the provisions of this Settlement Agreement;
- d) The settlement, or the Final Judgment and Order, is not upheld on appeal, including review by the United States Supreme Court;
- e) The Named Plaintiff or Class Counsel commit a material breach of the Settlement Agreement before entry of the Final Judgment and Order; or
- f) The Effective Date does not occur for any reason, including but not limited to the entry of an order by any court that would require either material modification or termination of the Settlement Agreement.

The failure of the Court or any appellate court to approve in full the request by Class Counsel for attorneys' fees, costs, and other expenses shall not be grounds for the Named Plaintiff, the Settlement Class, or Class Counsel to cancel or terminate this Settlement Agreement. The failure of the Court or any appellate court to approve in full the request of the Named Plaintiff for his Service Award shall not be grounds for the Named Plaintiff, the Settlement Class, or Class Counsel to cancel or terminate this Settlement Agreement.

If the Settlement Agreement is not finally approved, is not upheld on appeal, or is otherwise terminated for any reason, then the Settlement Class shall be decertified; the Settlement Agreement and all negotiations, proceedings, and documents prepared, and statements made in connection therewith, shall be without prejudice to any Party and shall not be deemed or construed to be an admission or confession by any Party of any fact, matter, or proposition of law; and all Parties shall stand in the same procedural position as if the Settlement Agreement had not been negotiated, made, or filed with the Court.

8. MISCELLANEOUS PROVISIONS

8.1 Best Efforts to Obtain Court Approval

Named Plaintiff and Defendant, and the Parties' counsel, agree to use their best efforts to obtain Court approval of this Settlement Agreement, subject, however, to Defendant's rights to terminate the Settlement Agreement, as provided herein.

8.2 No Admission

Except for purposes of enforcing this Settlement Agreement and the Final Judgment and Order, including, without limitation, asserting as a defense the release and waivers provided herein, this Settlement Agreement, whether or not it becomes final, and any and all negotiations, communications, and discussions associated with it, shall not be:

- a) Offered or received against any Party as evidence of any presumption, concession, or admission with respect to any fact or defense at issue in the Litigation;
- b) Offered or received against any Party as a presumption, concession, admission, or evidence of any violation of the FCRA or any state or common law equivalent of the FCRA, or any state or federal statute, law, rule, or regulation, or of any liability or wrongdoing by Defendant; or
- c) Offered or received against any Party as evidence of a presumption, concession, or admission with respect to a decision by any court regarding the certification of a class.

8.3 Court's Jurisdiction

The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement. The Court also shall retain exclusive jurisdiction over any determination of whether a subsequent suit is released by the Settlement Agreement.

8.4 Settlement Notices

Except for the Settlement Class Notice Plan, as provided for in Section 4.2 above, all other notices or formal communications under this Settlement Agreement shall be in writing and shall be given, with a copy by email: (1) by hand delivery; (2) by registered or certified mail, return receipt requested, postage pre-paid; or (3) by overnight courier to counsel for the Party to whom notice is directed at the following addresses:

For the Named Plaintiff and the Settlement Class:

E. Michelle Drake
Joe Hashmall
BERGER MONTAGUE PC
1229 Tyler Street NE, Suite 205
Minneapolis, MN 55413
Tel. (612) 594-5933
emdrake@bm.net
jhashmall@bm.net

For Defendant:

David Gettings, Esq.
TROUTMAN PEPPER HAMILTON SANDERS, LLP
222 Central Park Ave., Ste. 2000
Virginia Beach, VA 23462
dave.gettings@troutman.com

Counsel may designate a change of the person to receive notice or a change of address, from time to time, by giving notice to all Parties in the manner described in this Section.

8.5 Confidentiality of Discovery Materials and Information

The Parties, their counsel, and any retained or consulting experts in this Litigation, agree that they remain subject to the Court's Stipulated Protective Order, as appropriate.

8.6 Complete Agreement

This Settlement Agreement is the entire, complete agreement of each and every term agreed to by and among Named Plaintiff, the Settlement Class, and their counsel. In entering into

this Settlement Agreement, no Party has made or relied on any warranty or representation not specifically set forth herein. This Settlement Agreement shall not be modified except by a writing executed by all the Parties.

8.7 Headings for Convenience Only

The headings in this Settlement Agreement are for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

8.8 Severability

In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, with the exception of the release in Section 4.4, this Agreement shall continue in full force and effect without said provision to the extent Defendant does not exercise its right to terminate under Section 7.

8.9 No Party Is the Drafter

None of the Parties to this Settlement Agreement shall be considered to be the primary drafter of this Settlement Agreement or any provision hereof for the purpose of any rule of interpretation or construction that might cause any provision to be construed against the drafter.

8.10 Binding Effect

This Settlement Agreement shall be binding according to its terms upon, and inure to the benefit of, the Named Plaintiff, the Settlement Class, the Defendant, the Released Parties, and their respective successors and assigns.

8.11 Authorization to Enter Settlement Agreement

The individual signing this Settlement Agreement on behalf of the Defendant represents that he or she is fully authorized by the Defendant to enter into, and to execute, this Settlement Agreement on its behalf. Class Counsel represent that they are fully authorized to conduct

settlement negotiations with counsel for Defendant on behalf of Named Plaintiff, and to enter into, and to execute, this Settlement Agreement on behalf of the Settlement Class, subject to Court approval pursuant to Federal Rules of Civil Procedure, Rule 23(e). The Named Plaintiff enters into and executes this Settlement Agreement on behalf of himself, and as a representative of and on behalf of the Settlement Class, subject to Court approval pursuant to Federal Rules of Civil Procedure, Rule 23(e).

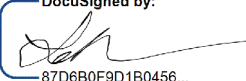
8.12 Representations by Class Counsel

Class Counsel agrees, to the extent permitted by law and applicable ethics rules, to not solicit Settlement Class Members who contact Class Counsel in connection with the Settlement regarding additional potential claims against the Released Parties related to reports prepared through the Avantus line of business. To the extent that such Settlement Class Members reach out to Class Counsel, Class Counsel intends to refer those individuals to legal aid or an appropriate lawyer referral service. Class Counsel also represents that, to counsel's knowledge, they do not have any current clients intending to assert class action claims against the Released Parties.

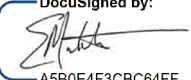
8.13 Execution in Counterparts

Named Plaintiff, Class Counsel, Defendant, and Defendant's counsel may execute this Settlement Agreement in counterparts, and the execution of counterparts shall have the same effect as if all Parties had signed the same instrument. Facsimile, electronic and scanned signatures shall be considered as valid signatures as of the date signed, although the original signature pages shall thereafter be appended to the Settlement Agreement. This Settlement Agreement shall not be deemed executed until signed by the Named Plaintiff, by Class Counsel, and by counsel for and representatives of Defendant.

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Lonnie R. Berryman, Jr.
 1/2/2024
 Date: _____

DocuSigned by:

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 By _____
E. Michelle Drake, *Pro Hac Vice*
Joe Hashmall, *Pro Hac Vice*
 BERGER MONTAGUE PC
 1229 Tyler Street NE, Suite 205
 Minneapolis, MN 55413
 Telephone: (612) 594-5999
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 E-mail: emdrake@bm.net
 E-mail: jhashmall@bm.net
Counsel for Plaintiff

XACTUS, LLC, as the successor in interest to certain assets of AVANTUS, LLC

By: _____

Title: _____

Date: _____

By _____
David M. Gettings, *Pro Hac Vice*
 TROUTMAN PEPPER HAMILTON SANDERS LLP
 222 Central Park Ave, Suite 2000
 Virginia Beach, VA 23462
 Telephone: (757) 687-7747
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 E-mail: dave.gettings@troutman.com
Counsel for Defendant

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XACTUS, LLC, as the successor in interest to certain assets of AVANTUS, LLC

Lonnie R. Berryman, Jr.

Date: _____

By _____
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Counsel for Plaintiff

DocuSigned by:
By: Ross Cloudeman _____
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Title: General Counsel

Date: 1/2/2024

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By: Dave Gettings _____
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