

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JENEEN BROWN, as an individual and as
a representative of the classes,

Plaintiff,

v.

DELHAIZE AMERICA, LLC, and FOOD
LION, LLC,,

Defendants.

Case No. 1:14-CV-00195

**PLAINTIFF'S MEMORANDUM
IN SUPPORT OF UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS
ACTION SETTLEMENT**

In this putative class action alleging violations of the Fair Credit Reporting Act (“FCRA”), the parties have reached a settlement of all claims. This settlement was reached following two days of mediation with a respected mediator, and provides for payments to approximately 59,351 class members. The payments will be made to two separate classes: 1) a class that allegedly failed to receive the required “stand-alone disclosure” that the Defendants were going to conduct an employment related background check; and 2) a class that allegedly failed to receive the required notice before adverse employment action was taken based on the background check. Members of these classes will receive a gross amount of \$48 and \$96 respectively, which is consistent with FCRA class action settlements that have been approved by other federal courts. The settlement is fair and reasonable, and should be granted preliminary approval.

BACKGROUND

I. SUMMARY OF CLAIMS AND PROCEDURAL HISTORY.

Plaintiff Jeneen Brown (“Plaintiff”) is a resident of Beaufort, South Carolina. Defendant Delhaize America, LLC is the parent company to Defendant Food Lion, Bottom Dollar Food, Hannaford, Harvey’s Supermarket, and Sweetbay, which are supermarket chains that do business throughout the United States. On March 7, 2014, Plaintiff filed a Class Action Complaint against Food Lion, Delhaize and SingleSource Services Corporation (“SingleSource”), which asserted class-wide claims under the FCRA. All three Defendants moved to dismiss the Complaint, and Plaintiff then filed a First Amended Complaint (“FAC”) that removed SingleSource as a defendant. The FAC asserted that when Plaintiff applied for a position at Food Lion, it failed to disclose to her, in a document that consisted solely of the disclosure, that it would obtain a background check on her. Plaintiff alleged that this failure violated the FCRA’s requirement that employers provide a “clear and conspicuous disclosure” that “a consumer report may be obtained for employment purposes.” *See* 15 U.S.C. § 1681b(b)(2). This is commonly known as the “stand-alone disclosure” requirement. *See* FAC, ¶¶ 18-19.

The FAC also asserted that Food Lion failed to provide Plaintiff with the required “pre-adverse action notice” before it terminated her employment based on the erroneous background report it obtained. The FCRA requires that “before taking any adverse action based” on a consumer report, an employer must provide a copy of the report and a

summary of the consumer's rights under the FCRA. 15 U.S.C. § 1681b(b)(3). This is commonly known as the "pre-adverse action notice" or "PAAN" requirement. The FAC alleged that Defendants took adverse employment action against employees based on background checks without providing the required PAAN. *See* FAC, ¶¶ 67-76.

Defendants moved to dismiss the FAC, arguing that Brown's report is not subject to the FCRA because it falls into one of the limited categories of communications that are excluded from the definition of a consumer report. *See* 15 U.S.C. § 1681a(y). The parties fully briefed the motion, and a hearing for the motion to dismiss was set for December 17, 2014, but then was continued to give the parties time to mediate. Before the mediation, Plaintiff served document requests and interrogatories. Declaration of E. Michelle Drake ("Drake Dec."), ¶ 3. In response, Defendants produced documents showing the job application forms at each of Delhaize's subsidiaries as well as the policies and procedures regarding pre-adverse action notice. *Id.* ¶ 4.

The forms produced by Defendants demonstrated that the subsidiaries generally used the same forms throughout the class period. *Id.* at 5. While not every form was identical, each form included some information or terms and conditions that were extraneous to the disclosure and authorization.¹ In addition, Defendants provided substantive answers to the interrogatories, which set forth Defendants' policies regarding background checks and adverse employment action based on the checks. *Id.* These

¹ The one exception is the form used by Delhaize subsidiary Hannaford. Accordingly, the Improper Disclosure Class does not include Hannaford job applicants or employees.

interrogatory answers also indicated that, as Delhaize generally set policy and procedure relating to taking adverse employment action based on the background checks, the subsidiaries generally followed uniform policies. *Id.*

The parties mediated on February 4 and 5 with Nancy F. Lesser, a respected mediator and arbitrator who is a member of the National Academy of Distinguished Neutrals. *Id.* ¶ 6. The parties negotiated the case on a common fund basis, meaning that the settlement amounts the parties were exchanging were inclusive of all attorneys' fees, incentive awards, and administrative expenses. *Id.*, ¶ 7. The parties did not, however, negotiate any terms relating to attorneys' fees or the amount of any incentive award for the Named Plaintiff until after all terms related to the size of the common settlement fund, and the class definitions, were agreed upon. *Id.* At all times, Plaintiff's Counsel communicated their willingness to petition the Court for their fees, even over an objection from Defendant. *Id.* The material terms of the settlement were reduced to a terms sheet signed on February 5, 2015 and the Settlement Agreement was finally executed on February 18, 2015 and filed with the Court. ECF No. 62.

II. SUMMARY OF SETTLEMENT TERMS.

The proposed Settlement Classes are Delhaize subsidiary employees and job applicants (1) on whom Delhaize subsidiaries have procured a background check ("Improper Disclosure Class"), or (2) had adverse action taken against them on the basis of a background check ("Pre-Adverse Action Notice Class"). Drake Decl., Ex. 1 ¶ 26.

Defendants will create a common fund for Class Members consisting of \$2,990,000. *Id.* ¶ 29. The Class Members will not be required to take any action, such as filing a claim form, to receive a portion of the funds. *Id.* ¶ 32(c). The parties believe that there are approximately 56,842 class members in the Inadequate Disclosure Class and 2,509 class members in the Pre-Adverse Action Notice Class. *Id.* ¶ 26.

The settlement provides that the payment to members of the Pre-Adverse Action Notice Class shall be twice the payment to members of the Improper Disclosure Class. Accordingly, the settlement provides for a gross recovery of approximately \$48 for each member of the Improper Disclosure Class and approximately \$96 for each member of the Pre-Adverse Action Notice Class. If the requested amounts are granted for attorneys' fees, administrative expenses, and a Class Representative service award, the parties anticipate that each Improper Disclosure Class Member will receive a payment of approximately \$31 and each Pre-Adverse Action Notice Class Member will receive \$61. In addition, Defendants acknowledge in the Settlement Agreement that shortly after the initiation of this litigation, they engaged in a review of their background check forms and procedures, which review is ongoing. *Id.*, ¶ 30. Defendants agreed to provide Plaintiff's Counsel with any revised forms that it drafts as a result of this ongoing review.

If the Court grants preliminary approval to the settlement, the Settlement Administrator will send Settlement Class Members notice via first class mail. Drake Decl., Ex. 1 ¶ 22 & Ex. B. The postcard notice will be mailed to each individual

Settlement Class Member at the last known available address, as updated by the U.S. Postal Service's database of verifiable mailing addresses and the National Change of Address Database. Drake Decl., Ex. 1 ¶ 44. The notice will inform Class Members about the nature of the action and settlement, and will give Class Members the option to "opt out" of the settlement. *Id.* ¶ 48. The notice will direct Settlement Class Members to the Settlement Website, which will contain the operative pleadings and will allow Class Members to submit questions to Class Counsel and will provide a toll-free telephone number staffed by Plaintiff's Counsel. *Id.* ¶ 45.

The Settlement Agreement provides that Class Members who choose to opt out or object to the settlement may do so within seventy-five days of the notice mailing date. *Id.* ¶ 48. Settlement Class Members may send opt-out requests to Class Counsel. *Id.* Class Members who wish to object to the Settlement Agreement may file a written statement of objection with the Clerk of Court, and mail the same to Counsel.

The Settlement Agreement also provides that Plaintiff's Counsel's fees and service award for the Named Plaintiff are to come out of the fund, subject to the Court's approval. *Id.* ¶ 32. Counsel is authorized to petition for up to one-third of the fund as attorneys' fees, for costs, and for an award for Plaintiff Brown for up to \$2,000. *Id.* Neither settlement approval nor the size of the settlement fund are contingent upon the full amount of any requested fees or class representative service award being approved.

Should the Court ultimately grant final approval, all Class Members who did not opt out of the settlement will be sent their *pro rata* distribution of the settlement funds in the form of a check. *Id.* ¶ 32(c). If any money remains in the fund after these distributions and after Class Members have had 120 days to cash their settlement checks, such monies shall either be redistributed to Class Members who cashed their initial checks, or if such a redistribution is impractical, shall be paid as a *cy pres* donation to Public Justice, a non-profit that advocates for consumer rights, subject to Court approval. *Id.* ¶ 32(e). Under no circumstance will any amount revert to Defendants.

ARGUMENT

There is a strong policy within this Circuit favoring resolution of litigation prior to trial. *See Crandell v. U.S.*, 703 F.2d 74, 75 (4th Cir. 1983) (“Public policy, of course, favors private settlement of disputes.”); *S.C. Nat’l Bank v. Stone*, 749 F. Supp. 1419, 1423 (D.S.C. 1990) (“The voluntary resolution of litigation through settlement is strongly favored by the courts.”). This is particularly true in class actions, which typically involve complex disputes, and where settlement “minimizes the litigation expenses of both parties and also reduces the strains such litigation imposes upon already scarce judicial resources.” *S.C. Nat’l Bank*, 749 F. Supp. at 1423 (quoting *Armstrong v. Bd. of School Directors*, 616 F.2d 305, 313 (7th Cir. 1980) (internal quotation marks omitted)).

I. CERTIFICATION OF THE SETTLEMENT CLASSES IS APPROPRIATE.

Fed. R. Civ. P. 23 allows courts to certify a class or classes conditionally or provisionally to effectuate a settlement. *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liability Litig.*, 55 F.3d 768, 793-94 (3d Cir. 1995). To certify a class, the court must find that the prerequisites of Rule 23(a) are met, and that the case falls within at least one of the categories listed in Rule 23(b). The same standards generally apply where certification is sought for settlement purposes only, although issues of manageability at trial are not relevant. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). If a court determines that a settlement class should be provisionally certified, the court first determines whether to preliminarily approve the proposed settlement and find that notification to the settlement classes is appropriate, and then, at a later date, conducts a final fairness hearing at which all interested parties may be heard, after which the court decides whether the proposed settlement is fair, adequate, and reasonable. *See Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 855 F. Supp. 825, 828 (E.D.N.C. 1994). Ultimately, approval of a class settlement is committed to the discretion of the district court. *See In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991).

Because FCRA claims involving proper disclosures and pre-adverse action notices generally involve standardized forms and processes, courts have found that the Rule 23 requirements are easily met, even where class certification is contested. *Reardon v. ClosetMaid Corp.*, No. CIV.A. 08-1730, 2011 WL 1628041 (W.D. Penn. Apr. 27, 2011) (granting contested motion to certify class on stand-alone disclosure claim where

disclosure contained a liability release); *Milbourne v. JRK Residential Am., LLC*, No. 3:12CV861, 2014 WL 5529731 (E.D. Va. Oct. 31, 2014) (same). This action is no different.

A. The Rule 23(a) Requirements Are Met.

Under Rule 23(a), one or more persons may sue as representative parties on behalf of a class if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Numerosity is easily satisfied here as Defendants' records indicate that there are more than 50,000 persons in the Improper Disclosure Class, and more than 2,000 individuals in the Pre-Adverse Action Class, which are far too many individuals for joinder to be practicable.

Commonality is also satisfied. "Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury," and that their common complaint "is capable of classwide resolution...." *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011). "[T]he fact that there are some factual variances in individual grievances among class members does not defeat commonality." *Morris v. Wachovia Secs., Inc.*, 223 F.R.D. 284, 292 (E.D. Va. 2004) (citations omitted).

Here, there are several questions that tie Class Members together. For the Improper Disclosure Class, all Class Members share the question of whether Defendants willfully violated the FCRA by not providing the required stand-alone disclosure before procuring a background check. For the Pre-Adverse Action Notice Class, all Class Members share the question of whether Defendants willfully violated the FCRA by failing to give Class Members a copy of their report and a summary of their rights before taking adverse action. These are common questions of law and fact that may be resolved on a classwide basis.

Similarly, a class meets the typicality requirement where the claims of the class members are “fairly encompassed by the class representative’s claims.” *Stanley v. Cent. Garden & Pet Corp.*, 891 F. Supp. 2d 757, 770 (D. Md. 2012). Typicality is satisfied as long as the plaintiff’s claim is not “so different from the claims of absent class members that their claims will not be advanced by plaintiff’s proof of his own individual claim.” *Id.* at 466-67. In this case, Plaintiff’s claims are factually and legally typical of the claims of every other Class Member, and are based upon the same legal theories. Class Members will either have not received a stand-alone disclosure or will have not received a copy of their report and summary of rights before adverse action was taken against them. Thus, Plaintiff’s claims are typical of the Classes’ claims.

The Named Plaintiff and Class Counsel are also adequate representatives. “Adequate representation requires a finding that the purported class representative and its

attorney are capable of pursuing the litigation and that neither has a conflict of interest with other class members.” *Johnson v. Pozen Inc.*, No. 1:07CV599, 2008 WL 474334, at *2 (M.D.N.C. Feb. 15, 2008). In other words, “a plaintiff’s interests must not be opposed to those of other class members and the plaintiffs’ attorneys must be qualified, experienced, and able to conduct the litigation.” *Stanley*, 891 F. Supp. 2d at 770.

First, Plaintiff Brown has been actively engaged in this case. She understands what it means to be a class representative and will and has put the interests of the Classes first in making all decisions related to this case. Drake Decl. ¶ 8. Plaintiff Brown provided documents to Counsel to aid in the investigation and drafting of the Complaint, reviewed the Complaint before filing, and has been in consistent contact with counsel throughout the case, including participating in phone calls with Counsel during the mediation process. *Id.* ¶ 9.

Second, proposed Class Counsel is highly experienced in complex class action litigation and consumer litigation in general. *See* Drake Decl., Ex. 2, Firm Resume. Nichols Kaster was founded in 1974, and has deep roots in representing employees, including in employment related cases, which this Court has recognized. *Id.*; *see also Latham v. Branch Banking & Trust Co.*, No. 1:12-CV-00007, 2014 WL 464236, at *2 (M.D.N.C. Jan. 14, 2014) (Schroeder, J.) (noting “skill and experience” of Nichols Kaster in wage-and-hour cases). Nichols Kaster is currently lead or co-counsel in many class or collective actions in state and federal courts across the country. *Id.* In a recent opinion

certifying a FCRA class for settlement purposes, and approving Nichols Kaster as class counsel, Chief Judge Chasanow of the United States District Court for the District of Maryland found that the “attorneys at Nichols Kaster, PLLP are qualified, experienced, and competent, as evidenced by their background in litigating class-action cases involving FCRA violations.” *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 677 (D. Md. 2013); *see also Regalado v. Ryder Integrated Logistics, Inc.*, 2:12-cv-05737 (C.D. Cal. Nov. 7, 2013) (ECF No. 76) (approving class settlement in FCRA case with Nichols Kaster, PLLP as class counsel); *Knights v. Publix Super Markets, Inc.*, No. 14-cv-720 (M.D. Tenn. Apr. 17, 2014) (ECF No. 72) (same); *Avila v. NOW Health Group, Inc.* No. 14-cv-1551 (N.D. Ill. Sept. 22, 2014) (ECF No. 99) (same); *Haley v. Talentwise, Inc.*, No. 12-cv-1915 (W.D. Wash. Jan. 20, 2015) (ECF No. 78) (appointing Nichols Kaster class counsel and preliminarily approving class settlement in FCRA case); *Ernst v. Dish Network, LLC*, 1:12-cv-08794, (S.D.N.Y. July 23, 2013) (ECF No. 39) (appointing Nichols Kaster interim class counsel).

B. The Rule 23(b)(3) Requirements Are Met.

The Settlement contemplates provisional class certification under Rule 23(b)(3). If the elements of Rule 23(a) are satisfied, then a class action may be certified so long as the court finds that certain other requirements under Rule 23(b)(3) are met: (1) questions of law or fact common to class members predominate over any questions affecting only

individual members, and (2) a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Fed. R. Civ. P. 23(b)(3).

First, the “predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. at 623. If the Settlement Classes are to be certified under Rule 23(b)(3), the common issues of law and/or fact shared by the Settlement Class Members must “predominate” over individual issues. This criterion is normally satisfied when there is an “essential, common factual link” between all class members and the defendants for which the law provides a remedy. *Talbott v. GC Services P’ship*, 191 F.R.D. 99, 105 (W.D. Va. 2000).

The predominance requirement is satisfied here because the essential factual and legal issues regarding the Settlement Class Members’ claims are common, and relate to standardized forms and procedures. *See Talbott*, 191 F.R.D. at 105 (“Here, common questions predominate because of the standardized nature of [defendant’s] conduct.”).

To be certified, a class action must also be “superior to other available method for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). Again, in the settlement context, the court need not address the manageability requirements of Rule 23(b)(3)(D). *Amchem*, 521 U.S. at 620. In a matter such as this, where the claims of all Class Members are identical and are based on the same common core of facts, it is clear that adjudicating this matter as a class action will achieve economies of time, effort, and expense, and promote uniformity of results. *Milbourne* 2014 WL 5529731, at *13-14

(holding class action is superior in FCRA case alleging disclosure and pre-adverse action notice violations); *Reardon*, 2011 WL 1628041, at *8 (W.D. Pa. Apr. 27, 2011) (same).

II. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED.

The primary concern for the court in reviewing a proposed class settlement is to ensure that class members have received sufficient consideration in settlement negotiations. *Jiffy Lube*, 927 F.2d at 158. At the preliminary approval stage, the court must render a determination as to the fairness, adequacy, and reasonableness of the settlement terms. *Id.*; Fed. R. Civ. P. 23(e)(2). As explained in detail below, the Fourth Circuit has set forth a multi-factor analysis for determining whether a settlement is “fair” and “adequate.” *Jiffy Lube*, 927 F.2d at 158-59. Ultimately, to approve a settlement as “fair” and “adequate,” the court must be satisfied that the proposed settlement is “within the range of possible approval.” *Horton*, 855 F. Supp. at 827 (citing *In Re Mid-Atlantic Toyota Antitrust Litig.*, 564 F. Supp. 1379, 1384 (D. Md. 1983) (internal quotation marks omitted)).

A class settlement is fair if it “was reached as a result of good faith bargaining at arm’s length, without collusion.” *Jiffy Lube*, 927 F.2d at 159. In the Fourth Circuit, courts should consider the following factors when analyzing a proposed class settlement for fairness: (1) the posture of the case when the proposed settlement was reached; (2) the extent of discovery that had been conducted; (3) the circumstances surrounding the negotiations; and (4) the experience of counsel in the type of case at issue. *Id.* at 158-59.

In this case, the proposed settlement was reached only after contentious motion practice by the parties, discovery, and arm's-length settlement negotiations between experienced counsel. *See Whitaker v. Navy Fed. Credit Union*, Civ No. RDB 09-cv-2288, 2010 WL 3928616, at *3 (D. Md. Oct. 4, 2010) (settlement was fair where parties had briefed motions to dismiss and conducted investigations in the context of settlement negotiations). Defendants also provided confirmatory discovery in the form of sworn interrogatory answers and responses to discovery requests after mediation and prior to the signing of the Settlement Agreement, the purpose of which was to confirm, in binding and sworn documents, the representations on which Plaintiff relied during mediation. Drake Decl. ¶ 10. The parties' settlement negotiations were adversarial, and took place over a day and a half with the aid of an experienced third-party mediator. Finally, Plaintiff's Counsel are experienced in class action litigation, including matters concerning employment disputes, consumer protection, and the FCRA.

In assessing the adequacy of a proposed settlement, the court should also consider: (1) the relative strength of plaintiffs' case on the merits, (2) the existence of any difficulties of proof or strong defenses plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement. *Jiffy Lube*, 927 F.2d at 159.

The first and second factors “compel the Court to examine how much the class sacrifices in settling a potentially strong case in light of how much the class gains in avoiding the uncertainty of a potentially difficult case.” *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 256 (E.D. Va. 2009). In the present case, Defendants vigorously contest whether their background screening process is even subject to the FCRA, there is no controlling case law on the issue, and the parties have invoked competing authority supporting their respective positions. *See, e.g., Martin v. First Advantage Background Serv. Corp.*, 877 F. Supp. 2d 754, 758–60 (D. Minn. 2012) (reasoning that background check may not be a consumer report because employer required applicants to meet employer’s written screening requirements); *Freckleton v. Target Corp.*, No. CIV. WDQ-14-0807, 2015 WL 165293, at *6 (D. Md. Jan. 12, 2015) (finding that routine background report was not a “communication *in connection with* an investigation” under 15 U.S.C. § 1681a(y)). Plaintiff therefore faces uncertainty as to her ultimate likelihood of success in proving that Class Members’ background checks were covered by the FCRA.

Even if Defendants’ motion to dismiss were denied, there was no guarantee that Plaintiff would be victorious on the underlying liability issues. For example, the issue of whether a disclosure form containing a liability release violates the FCRA has divided courts within this Circuit. *Compare Singleton v. Domino’s Pizza, LLC*, No. 11-cv-1823, 2012 WL 245965, at *9 (D. Md. Jan. 25, 2012) (“[B]oth the statutory text and FTC advisory opinions indicate that an employer violates the FCRA by including a liability

release in a disclosure document.”), with *Smith v. Waverly Partners*, No. 3:10–CV–00028, 2012 WL 3645324, at *5–6 (W.D.N.C. Aug. 23, 2012) (finding liability waiver to not be “not so great a distraction as to discount the effectiveness of the disclosure”).

Furthermore, a FCRA plaintiff can recover only where the defendant has acted negligently or willfully, and where the defendant’s violation was at most negligent, recovery is limited to actual damages. See 15 U.S.C. §§ 1681n(a)(1), 1681o(a)(1). Because she does not allege any actual damages, Plaintiff must show not only that Defendants violated the FCRA, but that they did so willfully. Plaintiff expects that if this matter were litigated, Defendants would hotly contest the question of willfulness by arguing, *inter alia*, that Defendants’ interpretation of its statutory obligations was objectively reasonable. See *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 69 (2007). Given the inherently factual nature of a willfulness determination, the outcome of Plaintiff’s claims cannot be certain. See *Domonoske v. Bank of Am.*, 790 F. Supp. 2d 466, 474 (W.D. Va. 2011) (approving final settlement in the FCRA context and observing that “proof of willfulness seems an onerous task with a highly uncertain outcome”); *Smith v. HireRight Solutions, Inc.*, 711 F. Supp. 2d 426, 434 (E.D. Pa. 2010) (“whether an act was done with knowing or reckless disregard for another’s rights remains a fact-intensive question”).

Plaintiff also faced serious risks that the legal landscape would shift dramatically during the pendency of this litigation. In cases of this type, where Plaintiff seeks only

statutory damages, defendants have often argued that Article III standing is lacking. This argument has been rejected by a number of courts, including the Sixth Circuit. *Beaudry v. TeleCheck Servs., Inc.*, 579 F.3d 702 (6th Cir. 2009); *Robins v. Spokeo, Inc.*, 742 F.3d 409 (9th Cir. 2014). The defendants in the Ninth Circuit *Spokeo* case, however, have petitioned for certiorari to the Supreme Court, and the Supreme Court has shown interest in the case, asking the Solicitor General to file a brief – an action which is often a precursor to the granting of certiorari.² Given the Supreme Court’s apparent interest in this issue, and the potentially devastating effect an adverse ruling would have on this litigation, resolving this matter quickly and efficiently was in the Plaintiff’s best interest. The third factor, which weighs the proposed settlement in light of the time and expense of further litigation, is “based on a sound policy of conserving the resources of the Court and the certainty that unnecessary and unwarranted expenditure of resources and time benefits all parties.” *Mills Corp.*, 265 F.R.D. at 256 (internal quotation marks and alterations omitted). Absent settlement in this case, multiple stages of litigation remain that would be time-consuming and costly. To date, the parties have litigated a motion to dismiss and, at the very least, will need to engage in further fact, and possibly expert, discovery, as well as brief class certification and summary judgment before getting to

² See U.S. Supreme Court Invites Solicitor General’s Views On Whether Certiorari Should Be Granted In Case Involving Standing To Recover Statutory Damages Absent Any Actual Damages, available at <http://www.cfpbmonitor.com/2014/10/07/u-s-supreme-court-invites-solicitor-generals-views-on-whether-certiorari-should-be-granted-in-case-involving-standing-to-recover-statutory-damages-absent-any-actual-damages/>, last accessed February 23, 2015.

trial. Moreover, the fourth and fifth factors are neutral, as Defendants are solvent and there has been no objection to the proposed settlement at this date.

Finally, the settlement is reasonable. There is a “strong initial presumption that the compromise is fair and reasonable.” *Mills Corp.*, 265 F.R.D. at 258 (internal quotation marks omitted). The settlement provides recovery which is well in line with settlements that have received preliminary approval in similar circumstances. On a gross basis, the settlement provides for \$48 per Inadequate Disclosure Class Member and \$96 per Pre-Adverse Action Notice Class Member. If requested attorneys’ fees, costs, and the service award are granted, this amount will be approximately \$61 per Pre-Adverse Action Notice Class Member and \$31 per Inadequate Disclosure Class Member. Given that the settlement provides immediate relief and avoids the risks attendant in litigation, this represents a reasonable settlement discount where statutory damages are capped at between \$100 and \$1,000 per violation, and the per class member recoveries in this settlement are well in line with per class member settlement amounts in similar cases under the FCRA. *See, e.g. Townsend v. Sterling Jewelers Inc.*, No. 1:13-cv-3903, Plaintiff’s Motion for Final Approval of Class Action Settlement (N.D. Ill. August 15, 2014) (ECF No. 54) (requesting approval of pre-adverse action class claim where class members who submitted a claim form would receive \$50) and *Townsend*, Minute Entry Approving Settlement (N.D. Ill. Sept. 15, 2014) (ECF No. 58); *Marcum v. Dolgencorp, Inc.*, No. 12-cv-108, Memorandum in Support of Joint Motion For Preliminary Approval

of Settlement, (E.D. Va. Oct. 15, 2014) (seeking approval for settlement of inadequate disclosure claim with payments to class members of \$53) and *Marcum*, Order of Preliminary Approval of Class Action Settlement (E.D. Va. Oct. 16, 2014) (ECF No. 78) (approving settlement); *Beverly v. Wal-Mart Stores, Inc.*, No. 3:07cv469, Order Granting Final Approval (E.D. Va. May 1, 2009) (ECF No. 39) (approving PAAN settlement providing for \$54 gross amount per class member); *Simons v. Aegis Communications Group*, No. 2:14-cv-04012, Order Granting Preliminary Approval (W.D. Mo. Oct. 15, 2014) (ECF No. 29) (preliminarily approving improper disclosure settlement with payment of \$35 per class member); *Knights v. Publix Super Markets, Inc.*, Civil Action No. 3:14-cv-00720, Memorandum in Support of Motion for Final Settlement Approval (M.D. Tenn. Oct. 27, 2014) (ECF No. 64) (moving for final approval, which was granted, of FCRA settlement with \$75 gross recovery to improper disclosure class).

Viewed in the context of the litigation risks faced, as well as the substantial delay, fees, and costs that Class Members would incur to litigate this matter through trial, this settlement provides substantial monetary and prospective relief and is in the best interests of the Named Plaintiff and the Settlement Class Members.

CONCLUSION

For the reasons set forth above, the parties respectfully request that the Court: (1) certify the Settlement Classes for settlement purposes; (2) appoint Plaintiff's Counsel as Class Counsel; (3) appoint Named Plaintiff as Representative for the Classes; (4)

preliminarily approve the parties' settlement; (5) approve the class notice for distribution; and (6) schedule a Final Fairness Hearing for a date as soon as possible, but no sooner than 100 days after the date of the Preliminary Approval Order so that the CAFA notice period may first run.

Date: March 2, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2015, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system and have verified that such filing will be sent electronically using the CM/ECF system to all counsel of record for Defendants.

Dated: March 2, 2015

s/ Daniel Bryden
Daniel Bryden

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Case No. 1:14-CV-00195**

JENEEN BROWN, as an individual and as
a representative of the classes,

Plaintiff,

v.

DELHAIZE AMERICA, LLC, and FOOD
LION, LLC,

Defendants.

**DECLARATION OF E.
MICHELLE DRAKE**

I, E. Michelle Drake, hereby declare the following:

1. I am one of Plaintiff's Counsel in the above-captioned matter.
2. I submit this Declaration in support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement.
3. Prior to mediation in this matter, Plaintiff served document requests and interrogatories on Defendants relating to Defendants' background check practices and policies.
4. In response, Defendants produced documents showing the job application forms at each of Delhaize's subsidiaries along with policies and procedures regarding the procurement of background checks and the processes for giving pre-adverse action notice.
5. The forms produced by Defendants demonstrated that the subsidiaries generally used the same forms throughout the class period. In addition to producing

these documents, Defendants provided lengthy substantive answers to the interrogatories, which set forth Defendants' policies regarding background checks and adverse employment action based on the checks. These interrogatory answers also indicated that, as Delhaize generally set policy and procedure relating to taking adverse employment action based on the background checks, the subsidiaries generally followed uniform policies.

6. The parties mediated on February 4 and 5 in Jacksonville, Florida with Nancy F. Lesser, a respected mediator and arbitrator who is a member of the National Academy of Distinguished Neutrals.

7. At all times, the parties negotiated the case on a common fund basis, meaning that the settlement amounts the parties were exchanging were inclusive of all attorneys' fees, incentive awards, and administrative expenses. The parties did not, however, negotiate any terms relating to the amount of attorneys' fees for Plaintiff's Counsel or of any incentive award for the Named Plaintiff until after all terms related to the size of the common settlement fund, and the class definitions, were agreed upon. At all times, Plaintiff's Counsel communicated their willingness to petition the Court for their fees, even over an objection from Defendant.

8. Plaintiff Brown has been actively engaged in this case. She understands what it means to be a class representative and will, and has, put the interests of the class first in making all decisions related to this case.

9. Plaintiff Brown provided documents to Counsel to aid in the investigation and drafting of the Complaint, reviewed the Complaint before filing, and has been in consistent contact with counsel throughout the case, including participating in phone calls with Class Counsel during the mediation process. Plaintiff Brown has no conflict of interest that would compromise her representation of the Classes.

10. Defendants provided confirmatory discovery in the form of sworn interrogatory answers and responses to discovery requests after mediation and prior to the signing of the Settlement Agreement, the purpose of which was to confirm, in binding and sworn documents, the representations on which Plaintiff relied during mediation.

11. Attached hereto as Exhibits are true and correct copies of the following:

EXHIBIT 1: Settlement Agreement; and

EXHIBIT 2: Firm Resume.

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

Date: March 2, 2015

/s/E. Michelle Drake
E. Michelle Drake

Exhibit 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JENEEN BROWN, individually and as a
representative of the Classes,

Case No. 1:14-CV-00195-TDS-JLW

Plaintiff,

SETTLEMENT AGREEMENT

v.

DELHAIZE AMERICA, LLC,
and FOOD LION, LLC,

Defendants.

SETTLEMENT AGREEMENT

Plaintiff Jeneen Brown, individually and on behalf of the putative Rule 23 classes, and Defendants Delhaize America, LLC and Food Lion, LLC and their U.S. affiliates and subsidiaries (collectively “Defendants”), hereby enter into this Settlement Agreement and Release. Except to the extent governed by federal law, this Agreement shall be governed by the statutes and common law of North Carolina, excluding any that mandate the use of another jurisdiction’s laws.

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Table of Contents

RECITALS	4
DEFINITIONS	6
12. Action or Litigation.....	6
13. Agreement.....	6
14. Class Counsel.....	6
15. Class List.....	6
16. Class Representative or Named Plaintiff.....	7
17. Court.	7
18. Confirmatory Discovery Responses.	7
19. Defendants, or Released Persons.....	7
20. Final Approval Order and Judgment.....	7
21. Net Settlement Fund	7
22. Notice of Settlement and Release of Claims.....	8
23. Opt-Out or Objections Deadline	8
24. Parties.....	8
25. Settlement Administrator.....	8
26. Settlement Classes	8
27. Settlement Classes Member.....	9
28. Settlement Effective Date	9
29. Settlement Fund.....	10
RELIEF AND BENEFITS	11
30. Non-Monetary Relief for the Settlement Classes	11
31. Monetary Benefits to Settlement Classes	11
32. Distribution of Settlement Fund.....	11

33. Taxes	14
34. Payments to Class Counsel	14
35. Payment of Net Settlement Fund	14
36. Service Payment to Named Plaintiff and Payments to Settlement Classes Members	15
ATTORNEYS' FEES, COSTS, AND SETTLEMENT ADMINISTRATION COSTS	16
37. Named Plaintiff's Motion for Attorneys' Fees and Costs	16
38. Defendants' Settlement Administration Costs.....	16
RELEASE OF CLAIMS	17
39. Settlement Classes Members' Releases and Waivers of Claims.	17
40. Named Plaintiff's Releases and Waivers of Claims.	18
41. Prior Releases and Waivers of Claims.....	18
42. Known and Unknown Claims Released	19
NO ADMISSION OF LIABILITY	19
43. No Admission	19
NOTICE, OPT OUT, OBJECTIONS, AND SETTLEMENT APPROVAL	20
44. Notice to Settlement Classes.....	20
45. Settlement Website.	20
46. Notices Returned as Undeliverable.....	21
47. Toll-Free Telephone Line.	21
48. Right to Opt Out.....	21
49. Objections.	22
50. Preliminary Settlement Approval	23
51. Compliance with CAFA.	23
52. Final Fairness Hearing & Final Approval Order and Judgment.	23
53. Settlement Not Approved.	24

54. Settlement Modification.....	24
55. Class Certification for Settlement Purposes Only	24
TOTAL RELIEF	25
56. Total Relief	25
CONFIDENTIALITY AND COMMUNICATIONS	25
57. No Public Comment.....	26
58. Communications with Settlement Classes Members.....	26
59. No Waiver.....	26
OTHER PROMISES	26
60. Agreement Not Evidence.....	27
61. No Waiver.....	27
62. Authority.....	27
63. Best Reasonable Efforts and Mutual Full Cooperation.	27
64. Entire Agreement.....	28
65. Binding.....	28
66. No Prior Assignments	28
67. Construction.....	28
68. Construction of Captions and Interpretations.	28
69. Notices	29
70. Class Signatories.....	29
71. Choice of Law.....	30
72. Counterparts	30
Exhibits	31

RECITALS

1. On March 7, 2014, Named Plaintiff Jeneen Brown (“Plaintiff” or “Named Plaintiff”) filed a putative class-action lawsuit styled *Jeneen Brown, individually and as a representative of the Classes v. Delhaize America, LLC, Food Lion, LLC and SingleSource Services Corporation*, No. 1:14-CV-00195-TDS-JLW (M.D.N.C.). Plaintiff filed a First Amended Class Action Complaint (“FAC”) on or about June 6, 2014, which removed SingleSource Services Corporation as a defendant, among other amendments. Delhaize America, LLC and Food Lion, LLC (“Defendants”) were named as the defendants in the FAC.

2. The FAC asserted causes of action against Defendants for alleged violations of the Fair Credit Reporting Act (“FCRA”), relating to Defendants’ Background Check Authorization forms allegedly containing extraneous information that the Named Plaintiff contends violates the FCRA. In addition, Plaintiff alleged that Defendants terminated her employment without providing her pre-adverse action notice as required by the FCRA.

3. On July 3, 2014, Defendants moved to dismiss the FAC, arguing that the background checks they conducted on job applicants and employees were not “consumer reports” as defined by the FCRA and that the FCRA accordingly did not apply to their background checks. Plaintiff filed briefing in opposition to the motion to dismiss, and Amici Curiae also filed a brief in opposition to the motion to dismiss.

4. The Parties agreed to mediate this dispute, with Defendants agreeing to answer certain discovery requests before the mediation which related to the background checks and termination policies at issue in the litigation. The Parties also filed mediation briefs setting forth the facts and law, based in part on the pre-mediation discovery produced by Defendants. On

February 4 and 5, 2015, Plaintiff and Defendants mediated this dispute with mediator Nancy Lesser in Jacksonville, Florida.

5. On February 5, 2015, the Parties reached a compromise in principle on a class basis, contingent upon the negotiation and execution by the Parties of a final agreement approved by the Court, the essential terms of which were subsequently memorialized in a term sheet signed by counsel for the Plaintiff and Defendants.

6. Defendants deny they have engaged in any wrongdoing; do not admit or concede any actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been or could have been alleged against them; deny that the claims asserted by the Plaintiff are suitable for class treatment other than for settlement purposes; and deny that they have any liability whatsoever, but have agreed to this Settlement Agreement because of the substantial expense of litigation, the length of time necessary to resolve the issues presented, the inconvenience involved, and the disruption to their business operations.

7. All counsel who have represented the Named Plaintiff and the Settlement Classes defined below are aware that Defendants have defenses to the allegations and causes of action, upon which Defendants might prevail and that as a result the Named Plaintiff and the Settlement Classes might not receive any benefit or consideration for the claims that are asserted in the FAC.

8. Based upon their analysis and evaluation of several factors, Class Counsel recognize the substantial risks of continued litigation and delay, including the likelihood that the claims, if not settled now, might not result in any recovery for the Settlement Classes.

9. Class Counsel have conducted a thorough study and investigation of the law and facts relating to the claims that were asserted and that could have been asserted, as well as a thorough study and investigation of the scope and identity of the Settlement Classes (which are

based in part on the Defendants' Confirmatory Discovery Responses), and have concluded, taking into account the benefits of this settlement and the risks and delay of further litigation, that this settlement is fair and reasonable and in the best interests of the Settlement Classes.

10. Subject to the approval of the Court, the Parties wish to settle this Action, effect a compromise, and terminate the Action.

11. In light of the above recitals, the Parties understand and agree that the claims asserted here shall be settled, compromised, released, and dismissed with prejudice, subject to the approval of the Court, upon and subject to the following terms and conditions:

DEFINITIONS

12. Action or Litigation means this lawsuit, styled as *Jeneen Brown, individually and as a representative of the Classes v. Delhaize America, LLC, and Food Lion, LLC*, No. 1:14-CV-00195-UA-JLW (M.D.N.C.).

13. Agreement means this Settlement Agreement and Release.

14. Class Counsel means the law firm of Nichols Kaster, PLLP. 15. Class List means a list of all members of the Settlement Classes, to be generated by Defendants and provided to Class Counsel and the Settlement Administrator not more than three business days after the Court enters a Preliminary Approval Order. The Class List shall identify which of the Settlement Classes the class member belongs to and shall be subject to the Protective Order in this Action. The Class List shall be provided in Excel format, and include the following information in a separate field for each class member, as available in Defendants' records: First Name, Middle Name, Last Name, Street Address 1, Street Address 2, City, State, and Zip Code. Defendants shall provide the last known address for each class member. Upon request of the Settlement Administrator, Defendants shall provide Dates of Birth if required to identify or locate members

of the Settlement Classes, and full Social Security Numbers for any member of the Settlement Classes for whom the Settlement Administrator requires same for the purpose of tax reporting.

16. Class Representative or Named Plaintiff means Plaintiff Jeneen Brown.

17. Court means the United States District Court for the Middle District of North Carolina.

18. Confirmatory Discovery Responses means the sworn interrogatory answers and responses to document requests provided by Defendants to Class Counsel after the execution of the Parties' term sheet and prior to the execution of this Agreement. By signing this document, the Parties warrant that the substantive information contained in the Confirmatory Discovery Responses is the same as that which was provided to Class Counsel prior to mediation and that the purpose of Confirmatory Discovery was to confirm, in a binding document, representations made prior to negotiations.

19. Defendants, or Released Persons means Defendants Delhaize America, LLC and Food Lion, LLC, and their respective present, former, and future affiliates, parents, subsidiaries, corporate family members, officers, directors, partners, employees, agents, attorneys (except for the law firm of Hunton & Williams LLP), heirs, administrators, executors, members, member entities, shareholders, predecessors, successors, representatives, trustees, principals, assigns, and insurers individually, jointly, and severally.

20. Final Approval Order and Judgment means the Court's order granting final approval of this settlement and dismissing with prejudice Plaintiff's claims and entering a judgment according to the terms set forth in this Agreement.

21. Net Settlement Fund means the amount of money remaining after the Settlement Fund is reduced by the following amounts:

- a. the service payment to the Named Plaintiff that the Court approves;
- b. the reasonable attorneys' fees and costs to Class Counsel that the Court approves;
- c. the fees of the Settlement Administrator that the Court approves; and
- d. the out-of-pocket administration expenses that Defendants incur and the Court approves.

22. Notice of Settlement and Release of Claims means the form, attached hereto as Exhibit B, subject to Court approval, which the Settlement Administrator will mail, via first-class U.S. mail, to each member of the Settlement Classes to explain the terms of the settlement and the claims process.

23. Opt-Out or Objections Deadline means the date the Court establishes as the deadline by which members of the Settlement Classes 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 filed with the Court. The Parties shall jointly request that this date shall be no less than seventy-five (75) days after the date on which the Notice of Settlement and Release of Claims is to be mailed pursuant to this Agreement.

24. Parties means the Plaintiff and Defendants.

25. Settlement Administrator means the administrator that is chosen by Class Counsel, subject to Defendants' approval (which shall not be unreasonably withheld), following a competitive bidding process.

26. Settlement Classes means the following two classes:

Improper Disclosure Class: All Delhaize subsidiary employees and job applicants in the United States, except for employees and job applicants of Hannaford, who were the subject of a consumer report that was procured by

Delhaize from March 7, 2012 through the date on which the Class List is generated.

Pre-Adverse Action Notice Class: All Delhaize subsidiary employees and job applicants in the United States against whom adverse employment action was taken based, in whole or in part, on information contained in a consumer report from March 7, 2012 through the date on which the Class List is generated.

The Improper Disclosure Class is made up of approximately 56,842 individuals, and the Pre-Adverse Action Notice Class is made up of approximately 2,509 individuals. If the Class List contains a total number of members of the Settlement Classes which is greater than the above approximations by 5% or more, the Parties shall negotiate in good faith to attempt a *pro rata* adjustment of the Settlement Fund or such other modifications to the settlement as may be appropriate. If the Parties cannot agree on a new amount for the Settlement Fund, Class Counsel shall have the option of rescinding this Settlement Agreement. The Settlement Classes do not include any individuals who timely opt out of the settlement.

27. Settlement Classes Member means any individual who is a member of one or both of the Settlement Classes who does not file a timely and valid written notice of intent to opt-out by the Opt-Out Deadline.

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

- a. all Parties, Class Counsel, and Defendants' counsel have executed this Agreement;
- b. the Court has preliminarily approved this settlement;
- c. reasonable notice has been given to members of the Settlement Classes, including providing them an opportunity to opt out of or object to the settlement;

- d. the Court has held a final approval hearing, entered a Final Approval Order and Judgment approving the settlement, awarded the Named Plaintiff any service award, and awarded Class Counsel its reasonable attorneys' fees and costs; and
- e. only if there are written objections filed before the final approval hearing and those objections are not later withdrawn, the last of the following events to occur:
 - i. if no appeal is filed, then the date on which the objector's time to appeal the Final Approval Order and Judgment has expired with no appeal or any other judicial review having been taken or sought; or
 - ii. if an appeal of the Final Approval Order and Judgment has been timely filed or other judicial review was taken or sought, the date that Order is finally affirmed by an appellate court with no possibility of subsequent appeal or other judicial review or the date the appeals or any other judicial review are finally dismissed with no possibility of subsequent appeal or other judicial review.
- f. It is the intention of the Parties that the settlement shall not become effective until the Court's Final Approval Order and Judgment has become completely final and until there is no timely recourse by an appellant or objector who seeks to contest the settlement.

29. Settlement Fund means \$2,990,000, which Defendants will pay into a common fund. The Settlement Fund shall be established and maintained by the Settlement Administrator as a Qualified Settlement Fund as defined by 26 U.S. Code § 468B and the corresponding IRS

regulations. The Settlement Fund includes all attorneys' fees, costs, and expenses related to this Action, any service payments to the Class Representative, and all costs of settlement co-administration, whether incurred by Settlement Administrator, Class Counsel or Defendants. With the exception of Defendants' right to recover out of pocket costs incurred in the preparation of the Class List, there shall be no reversion of the Settlement Fund to Defendants under any circumstance. The Settlement Fund shall represent the full extent of Defendants' financial obligations under this Settlement Agreement.

RELIEF AND BENEFITS

30. Non-Monetary Relief for the Settlement Classes. Following the service of the Complaint, Defendants promptly undertook a review of their processes relating to background checks. Such review is ongoing. Defendants have agreed to provide Class Counsel with any revised FCRA Disclosure and Authorization Notices within six months of approval of this Agreement by the Court.

31. Monetary Benefits to Settlement Classes. In exchange for the releases and waivers of claims described below, members of the Settlement Classes shall each be entitled to receive from the Net Settlement Fund a payment. Payments shall be calculated on a *pro rata* per person basis such that members of the Pre-Adverse Action Notice Class shall be entitled to receive a payment which is twice that of members of the Improper Disclosure Class. Individuals who are members of both Settlement Classes shall receive additional payments for each Class of which they are a member, but the payment shall be made on a single check.

32. Distribution of Settlement Fund. The proceeds of the Settlement Fund will be distributed as follows:

- a. Service Payment to Named Plaintiff. Plaintiff's Counsel may petition the Court for a \$2,000 service award for the Named Plaintiff, in consideration for her service as Named Plaintiff and as consideration for the general release she is giving Defendants under Paragraph 40 of this Agreement. Defendants agree not to oppose the motion for such service award. The Named Plaintiff shall not receive more than \$2,000.00 in total and shall not receive any recovery to which she would otherwise be entitled pursuant to Paragraph 31. If approved by the Court, this service award will be paid to the Named Plaintiff by the Settlement Administrator at the same time as the Settlement Payments are issued to the Settlement Classes Members. Defendants shall have no other payment obligations owed to the Named Plaintiff for any amount, individually or collectively, directly or indirectly, however denominated or for whatever purpose allegedly incurred. By signing this Agreement, the Parties warrant the Named Plaintiff's service payment was negotiated only after the amount of the Settlement Fund had been agreed upon.
- b. Attorneys' Fees and Costs. Plaintiff's Counsel may apply to the Court for an award of fees and costs to be paid from the common fund. The application for attorneys' fees shall be in an aggregate sum not to exceed one-third of the Settlement Fund. Costs shall be paid in addition to attorneys' fees in the amount in which they were or are incurred by Class Counsel and are approved for reimbursement by the Court. Costs associated with the administration of the settlement by Class Counsel shall

also be eligible for reimbursement by the Court. Defendants agree not to oppose an application for fees and expenses consistent with these limitations. Defendants' out-of-pocket costs for settlement administration are included in costs paid from the Settlement Fund. By signing this Agreement, the Parties warrant that Class Counsel's attorneys' fees and costs were negotiated only after the amount of the Settlement Fund had been agreed upon.

- c. Settlement Classes Members' Pro Rata Distribution. The Net Settlement Fund will be distributed *pro rata* in the form of a check to each member of the Settlement Classes who did not validly and timely opt-out of the Settlement Classes. Settlement Classes Members shall have 120 days from the date on which checks are mailed to negotiate their checks.
- d. Re-distribution if Checks Not Cashed. In the event that some Settlement Classes Members do not negotiate their checks within 120 days of the date they were mailed, the funds remaining in the Settlement Fund shall be re-distributed *pro rata* to those Members of the Settlement Classes who did negotiate their checks, with any additional administrative expenses deducted from the remaining funds prior to the distribution. If the re-distribution would result in redistribution payments of less than \$15 per class member, however, then no re-distribution shall occur.
- e. Cy Pres. Any unclaimed portion of the Settlement Fund after distributing the Net Settlement Fund proceeds, and after the 120-day period for negotiating checks, and 120 days after any redistribution as set forth in the

preceding paragraph, will constitute a *cy pres* fund and, subject to the Court's approval, will be donated to Public Justice, a 501c(3) non-profit corporation. Such award shall be designated as solely for Public Justice's use advocating for consumer rights.

33. Taxes. The Parties agree the payments to each Settlement Classes Member are not wages, each Settlement Classes Member will be solely responsible for correctly characterizing this payment for tax purposes and for paying any taxes owed on this payment, and the Settlement Administrator on Defendants' behalf will issue to each Settlement Classes Member an IRS Form 1099 for this payment. The Parties also agree that the approved service award to the Named Plaintiff is not wages, the Named Plaintiff will be solely responsible for correctly characterizing this payment for tax purposes and for paying any taxes owed on this payment, and the Settlement Administrator on Defendants' behalf will issue to Named Plaintiff an IRS Form 1099 for this payment.

34. Payments to Class Counsel. As soon as practicable after the Settlement Effective Date, but in no event later than five (5) business days after that Date, Defendants will pay, or cause to be paid, by wire transfer, any approved attorneys' fees and costs to Class Counsel.

35. Payment of Net Settlement Fund. As soon as practicable after the Settlement Effective Date, but in no event later than five (5) business days after that Date, Defendants will pay, or cause to be paid, by wire transfer, to the Settlement Administrator, the Net Settlement Fund, less any separately paid approved attorneys' fees and costs to Class Counsel and less any amounts in the Settlement Fund associated with its own out-of-pocket expenses of settlement administration that are approved by the Court. The Net Settlement Fund will be distributed as

described in Paragraph 32. Defendants shall have no further obligations to any Named Plaintiff or Settlement Classes Member upon payment of the Net Settlement Fund.

36. Service Payment to Named Plaintiff and Payments to Settlement Classes Members. All payments to Settlement Classes Members will be mailed by the Settlement Administrator by check and delivered by first-class U.S. mail, postmarked within fifteen (15) business days of the Settlement Effective Date. The Settlement Administrator will include with each check an Internal Revenue Service (IRS) Form 1099 for any Named Plaintiff or Settlement Classes Member for whom a form is required. All checks will expire 120 days after they are issued and will state this on their face. If any such payment is returned by the U.S. Postal Service as undeliverable, or is uncashed or not negotiated before it expires, neither Defendants nor the Settlement Administrator nor Class Counsel shall have any further obligations to any Named Plaintiff or Settlement Classes Member, except that:

- a. for any check returned by the U.S. Postal Service with a forwarding address before the check's expiration date, the Settlement Administrator will mail the check to the forwarding address;
- b. if a Named Plaintiff or Settlement Classes Member contacts the Settlement Administrator or Class Counsel to request a replacement check, the Settlement Administrator will comply with that request by cancelling the initial check and issuing a replacement check, but the replacement check shall expire on the same date as the original check; and
- c. the Parties agree that all Settlement Classes Members waive and abandon any ownership interest in any undeliverable, returned, uncashed, or non-negotiated checks and further agree that no obligation has been generated

or proven with respect to such undeliverable, returned, uncashed, or non-negotiated checks.

ATTORNEYS' FEES, COSTS, AND SETTLEMENT ADMINISTRATION COSTS

37. Named Plaintiff's Motion for Attorneys' Fees and Costs. The Named Plaintiff will seek an order from the Court awarding Class Counsel their reasonable attorneys' fees and customary, reasonable, and documented out-of-pocket costs incurred in this Action, which, upon approval, will be paid from the Settlement Fund. The Named Plaintiff will seek Class Counsel's customary, reasonable, and documented out-of-pocket costs, including any expenses associated with settlement administration (including all amounts paid to the Settlement Administrator) in addition to the one-third amount allowed for attorneys' fees. The Named Plaintiff agrees to provide the Court and Defendants with documentation for all claimed costs for review and verification. Defendants agree not to oppose the Named Plaintiff's motion for approval of an award of attorneys' fees and costs as described above. Upon payment of any approved attorneys' fees and costs to Class Counsel, Defendants shall have no other payment obligations to Class Counsel relating to this Action for any amount, individually or collectively, directly or indirectly, however denominated or for whatever purpose incurred. The Named Plaintiff will file their Motion for Attorneys' Fees and Costs, Class Representative Service Payment, and Payment of the Settlement Administrator's Expenses no later than fourteen (14) days before the Opt-Out Deadline.

38. Defendants' Settlement Administration Costs. Defendants shall be responsible for preparing a list of members of the Settlement Classes using commercially reasonable methods and for reviewing settlement documents and notices but shall not otherwise have administrative responsibilities with respect to the Settlement. Defendants may petition the Court for reasonable

out-of-pocket expenses associated with the preparation of the list of members of the Settlement Classes, but shall not be compensated for any time involved in its preparation or in review or negotiation of settlement documents and notices. Defendants agree to provide Class Counsel and the Court with documentation for all claimed costs for review and verification. Plaintiff agrees not to oppose Defendants' motion to the Court for approval of an award of reasonable out-of-pocket expenses as described herein. Defendants shall file any Motion for Expense Deduction no later than seven (7) days before the Opt-Out Deadline.

RELEASE OF CLAIMS

39. Settlement Classes Members' Releases and Waivers of Claims. On the Settlement Effective Date, for the Settlement Classes' benefits and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, all Settlement Classes Members who have not timely and properly opted out of the settlement, and each of their respective spouses, heirs, executors, trustees, guardians, wards, administrators, representatives, agents, attorneys (except for the law firm of Nichols Kaster, PLLP), partners, successors, predecessors and assigns, and all those acting or purporting to act on their behalf, fully and forever release, waive, acquit, and discharge Defendants and the Released Persons from any and all claims that the Settlement Classes have arising out of or relating directly or indirectly in any manner whatsoever to the facts alleged or which could have been alleged or asserted in the Complaint or First Amended Complaint, including but not limited to any and all claims under 15 U.S.C. § 1681b(b)(2)(A) and 15 U.S.C. § 1681b(b)(3) of the FCRA, and any parallel state or common law claims, and including but in no way limited to any claims related directly or indirectly in any manner whatsoever to those claims raised by Plaintiff, Class Counsel, or the members of the Settlement Classes in any pleading, motion, or brief. It is expressly intended and

understood by the Parties that this Settlement Agreement is to be construed as a complete settlement, accord, and satisfaction of the Settlement Classes Members' released claims and all of the released claims shall be dismissed with prejudice, even if the Settlement Classes Member never received actual notice of the Settlement prior to the Final Approval Hearing.

40. Named Plaintiff's Releases and Waivers of Claims. On the Settlement Effective Date, the Named Plaintiff, on behalf of herself, her agents, insurers, representatives, attorneys, assignees, heirs, executors, vendors, and administrators, will release and forever discharge Defendants and the Released Persons, to the fullest extent permitted by law, from any and all claims the Named Plaintiff has by reason of any cause, matter or thing whatsoever, from the beginning of the world to the date on which the final Settlement Agreement is executed, including both known and unknown and suspected and unsuspected claims and causes of action in addition to or different from those which they now know or believe to be true with respect to the allegations and subject matters in this case and including but not limited to any claims relating to her employment or separation of her employment with Defendants. Defendants also discharge the Named Plaintiff and her attorneys, agents, insurers, representatives, assignees, heirs, executors, and administrators from any and all claims arising out of facts known to Defendants as of the Settlement Effective Date, including but not limited to any claims relating to her employment or separation of employment from Defendants.

41. Prior Releases and Waivers of Claims. Defendants agree that the Settlement Classes Members', Named Plaintiff's, or Class Counsel's receipt of any funds as a result of this settlement or the assertion of any claims in this Action is not a violation of any prior promises, contracts, agreements, waivers, or covenants between Defendants and the Settlement Classes Members, the Named Plaintiff, or Class Counsel.

42. Known and Unknown Claims Released. The Settlement Classes Members and the Named Plaintiff acknowledge they are releasing both known and unknown and suspected and unsuspected claims and causes of action and are aware that they may hereafter discover legal or equitable claims or remedies presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true regarding the allegations in and subject matter of this Action. Nevertheless, it is the intention of the Settlement Classes Members and the Named Plaintiff to fully, finally, and forever settle and release all such matters, and all claims and causes of action relating thereto, which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in the Action) from the beginning of the world through the Effective Date.

NO ADMISSION OF LIABILITY

43. No Admission. Defendants have asserted and continue to assert many defenses in this Litigation and have expressly denied and continue to deny any fault, wrongdoing or liability whatsoever arising out of the conduct alleged in the Litigation. Defendants expressly deny any fault, wrongdoing or liability whatsoever, as well as the validity of each of the claims and prayers for relief asserted in the Litigation. Defendants have agreed to this Agreement because of the substantial expense of litigation, the length of time necessary to resolve the issues presented, the inconvenience involved, and the disruption to their business operations. The Parties expressly acknowledge and agree that neither the fact of, nor any provision contained in, this Agreement, nor the implementing documents or actions taken under them, nor Defendants' willingness to enter into this Agreement, nor the content or fact of any negotiations, communications, and discussions associated with the settlement shall constitute or be construed as an admission by or against Defendants or any of the Released Persons of any fault,

wrongdoing, violation of law, or liability whatsoever, the validity of any claim or fact alleged in this Action, or any infirmity of any defenses asserted by Defendants in this Action.

NOTICE, OPT OUT, OBJECTIONS, AND SETTLEMENT APPROVAL

44. Notice to Settlement Classes. As soon as practicable but in no event more than fourteen (14) days after the Court has issued an order preliminarily approving this settlement in substantially the same form as Exhibit A, the Settlement Administrator or Class Counsel will send the approved Notice of Settlement and Release of Claims form, attached as Exhibit B, to all members of the Settlement Classes via first-class U.S. Mail, postage prepaid and return service requested. The Notice shall be mailed to each member of the Settlement Classes' last known mailing address, as updated by Class Counsel using the U.S. Postal Service's database of verifiable mailing addresses (the CASS database) and the National Change-of-Address database. The Notice shall bear Class Counsel's mailing address as the return-mail address. The envelope in which the Notice is sent will include an indication that it is a "Court Approved Settlement Notice authorized by the U.S. District Court for the Middle District of North Carolina" and may also include a bar code.

45. Settlement Website. Within 72 hours of the Court's order preliminarily approving the settlement being signed, Class Counsel will cause a Settlement Website to become active at a URL subject to Defendants' approval. The Settlement Website shall include hyperlinks which allow access to the First Amended Complaint, this Agreement, the Court-approved Notice, the Motion for Preliminary Settlement Approval and all memoranda and exhibits filed with the Motion, and the Order preliminarily approving the settlement. The Settlement Website will also contain the "long form" settlement notice attached as Exhibit C, which provides detailed information about the settlement terms in plain language and is accompanied by plain-language

Frequently Asked Questions (“FAQs”). The Settlement Website will further provide the members of the Settlement Classes with the opportunity to submit new addresses and to submit written questions or inquiries about the settlement to Class Counsel. Within two (2) business days of any the following documents being filed, the Settlement Website will also be updated to include copies of the Named Plaintiff’s Motion for Attorney Fees and Costs, Named Plaintiff’s Motion for Service Award, any motion filed by Defendants seeking reimbursement for costs , all notices and memoranda and exhibits submitted in support of the Joint Motion for Final Settlement Approval, and any further Orders issued by the Court, including any Final Approval Order and Judgment.

46. Notices Returned as Undeliverable. For all Notices returned to Class Counsel without forwarding addresses, Class Counsel will use publicly available databases as practicable to update members of the Settlement Classes’ addresses and will cause the Notice to be re-mailed to such members of the Settlement Classes who can be located.

47. Toll-Free Telephone Line. Class Counsel will establish and staff a toll-free telephone line that members of the Settlement Classes can use to contact Class Counsel with questions about the settlement or to change their addresses.

48. Right to Opt Out. All members of the Settlement Classes will have the right to be excluded from, i.e., to “opt out” of, the Settlement Classes. On or before the Opt-Out Deadline established by the Court, but no more than seventy-five (75) days after the mailing date of the initial Notice, each member of the Settlement Classes who elects to opt out of the settlement must send, by first-class U.S. mail, written notice addressed to Class Counsel indicating his or her name and address and stating that he or she desires to opt-out of the settlement or otherwise does not want to participate in the settlement. Any member of the Settlement Classes who does

not timely (as measured by the postmark on that individual's written notice) opt out of the settlement by written notice correctly directed to Class Counsel and containing the requisite information shall become a Settlement Classes Member and shall be bound by any Orders of the Court about the settlement or the Settlement Classes. In no event shall members of the Settlement Classes who purport to opt-out of the settlement as a group, aggregate, collective, or class involving more than one member of the Settlement Classes be considered a successful opt-out. Any member of the Settlement Classes who fails to timely and validly opt out of the Settlement Classes under this Settlement Agreement shall be bound by the terms of this settlement. If more than 5% of the total members of the Settlement Classes validly, timely, and individually opt out of the class, then Defendants may in their sole discretion void the settlement, in which case this Agreement will be vacated, rescinded, cancelled, and annulled, and the Parties will return to the status quo ante as if they had not entered into this settlement. In that event, the settlement and all negotiations and proceedings related to the settlement will be without prejudice of the rights of the Parties, and evidence of the settlement, negotiations, and proceedings will be inadmissible and will not be discoverable.

49. Objections. Any Settlement Classes Member who wishes to object to the settlement must file a timely written statement of objection with the Clerk of Court, and mail a copy of that objection with the requisite postmark to Class Counsel and Defense Counsel no later than the Objections Deadline. The Notice of Objection must state the case name and number; the basis for and an explanation of the objection; the name, address, telephone number, and email address of the Settlement Classes Member making the objection; and a statement of whether the Settlement Classes Member intends to appear at the Final Approval Hearing, either with or without counsel. In addition, any objection must be personally signed by the Settlement Classes

Member and, if represented by counsel, then by counsel. Any Settlement Classes Member who fails to make objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objections, whether by appeal or otherwise, to the settlement. No Settlement Classes Member shall be entitled to contest in any way the approval of the terms and conditions of this Agreement or the Court's Final Approval Order and Judgment except by filing and serving written objections in accordance with the provisions of this Settlement Agreement. Any Settlement Classes Member who fails to object in the manner prescribed shall be deemed to have waived and shall be foreclosed forever from raising any objections to the settlement.

50. Preliminary Settlement Approval. As soon as practicable after the Parties execute this Agreement, the Named Plaintiff will present this Agreement to the Court for preliminary settlement approval and will request by unopposed motion that the Court enter an order preliminarily approving the settlement in substantially the same form as attached Exhibit A.

51. Compliance with CAFA. Within three (3) business days of the Named Plaintiff's filing the motion for preliminary settlement approval, Defendants shall serve (or shall cause the Settlement Administrator to serve) upon the appropriate state officials of each state in which a Named Plaintiff or a Settlement Classes Member resides and upon the pertinent U.S. Attorney General for each such state, a notice of this proposed settlement in accordance with the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715. Defendants will provide a copy of this notice to Class Counsel and will file with the Court a notice of compliance with CAFA's requirements.

52. Final Fairness Hearing & Final Approval Order and Judgment. The Parties will petition the Court to hold a final fairness hearing and to enter an order finally approving the

settlement and entering final judgment dismissing the Action with prejudice in substantially the same form attached as Exhibit D. The Parties agree to cooperate to work to schedule a fairness hearing so it shall be held as soon as practicable, but in no event not before 90 days after Defendants has issued the required CAFA notices.

53. Settlement Not Approved. If the Court, the U.S. Court of Appeals for the Fourth Circuit, or the U.S. Supreme Court either disapproves or sets aside the Parties' settlement or this Agreement or any material part of either for any reason, or refuses to enter or give effect to the Final Approval Order and Judgment as defined above or holds that any terms of the settlement or this Agreement or any of the attached exhibits should be modified in any material way, then the Parties may either jointly agree to accept the settlement or this Agreement as judicially modified or, if they do not agree, either Party may appeal that ruling to the extent possible. If an appeal is filed and if the settlement, this Agreement, or the Final Approval Order and Judgment or its equivalent in all material respects are not in effect after the termination of all proceedings arising out of that appeal, then unless the Parties jointly agree otherwise, this Agreement shall become null and void, the Parties will return to the status quo ante, and the Parties will jointly request that the Action proceed.

54. Settlement Modification. The Parties may agree by stipulation executed by counsel to modify the exhibits to this Agreement to effectuate the purpose of this Agreement or to conform to guidance from the Court about the contents of such exhibits without the need to further amend this Agreement. A stipulation modifying the settlement will be filed with the Court and subject to the Court's approval.

55. Class Certification for Settlement Purposes Only. The Parties' settlement and this Agreement are contingent upon the Court's certifying two Rule 23 classes for settlement

purposes only based upon the class definitions set forth in this Agreement, and if the Court does not so certify the Rule 23 classes, this Agreement will have no effect and will be null and void. Class certification will in all instances be based on Defendants' waiver of certification arguments, but only for purposes of settlement, that may exist to defeat class certification and shall not be construed as an admission by Defendants as to the suitability of class treatment. Specifically, Defendants denies that a Rule 23 class may be properly certified other than for purposes of this Settlement and reserves its rights to continue to contest any class certification motion, and nothing in this Agreement shall be construed as an admission by Defendants or any of the Released Persons that this Action or any similar case is amenable to class certification. Furthermore, nothing in this Agreement shall prevent Defendants from continuing to seek decertification of a certified class if the Court does not issue a Final Approval Order and Judgment or if that Order is not upheld on appeal. In addition, the Parties agree that if, for any reason, the settlement is not approved, the Settlement Classes shall be decertified, and that certification or denial of certification shall not be used by any person, a Party, or the Court as a basis for certifying or denying certification of any class for litigation purposes.

TOTAL RELIEF

56. Total Relief. The Parties expressly agree that under no circumstances whatsoever shall Defendants be responsible for paying any monies, benefits, costs, expenses, or attorneys' fees in settlement of this Litigation other than as expressly provided for in this Agreement, nor will Defendants be required to take any action heretofore or incur any liability or pay any expense or be required to do any other thing, except as expressly provided herein.

CONFIDENTIALITY AND COMMUNICATIONS

57. No Public Comment. The Parties agree that Class Counsel will not issue or cause to be issued any press releases or their equivalent and will not conduct or participate in any press conferences about the settlement. The Parties also agree that, after the settlement is preliminarily approved, Class Counsel may post on their website a mutually-agreeable description of the settlement and resolution of the case. The Parties also agree that Defendants may issue a communication about the settlement to its management team and that from time to time Defendants' managers may be asked questions about the case or the settlement, in which case Defendants will prepare a standard FAQ, which Class Counsel will approve and which Defendants' managers may use to answer questions about the settlement.

58. Communications with Settlement Classes Members. The Parties agree that Class Counsel may communicate directly with members of the Settlement Classes to ensure as much participation in the settlement as possible. The Parties also agree that Defendants may communicate with their customers, employees, or prospective employees, including members of the Settlement Classes, in the ordinary course of business.

59. No Waiver. Nothing in this Agreement is intended to limit or waive the confidentiality of attorney-client privileged communications between Class Counsel and their current clients and Settlement Classes Members, nor is anything in this Agreement intended to limit the ability of Class Counsel to make truthful representations to judicial authorities or other parties about either its appointment as class counsel or the terms of the settlement of this Action. Likewise, nothing in this Agreement is intended to limit Defendants' or its agents' communications with their counsel or their ability to respond to judicial authorities.

OTHER PROMISES

60. Agreement Not Evidence. Neither this Agreement nor any related documents, negotiations, statements, or court proceedings may be construed as, received as, used as, or deemed to be evidence or an admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including but not limited to Defendants, or as a waiver by Defendants of any applicable defense to the merits of the claims asserted or to Plaintiff's ability to maintain this Action as a class action, except that this Agreement is admissible at hearings necessary to obtain and implement Court approval of the Parties' settlement or in hearings to enforce the terms of this Agreement or any related order of the Court.

61. No Waiver. A Party's failure to exercise any rights under this Agreement shall not constitute waiver of that Party's right to exercise those rights later, except as expressly provided in this Agreement. No delay by any Party in exercising any power or right under this Agreement will operate as a waiver of that power or right, nor will any single or partial exercise of any power or right under this Agreement preclude other or further exercises of that or any other power or right, except as expressly provided. The waiver by one Party of any breach of this Agreement will not be deemed to be a waiver of any prior or subsequent breach.

62. Authority. The signatories below represent they are fully authorized to enter into this Agreement and to bind the Parties and the Settlement Classes Members.

63. Best Reasonable Efforts and Mutual Full Cooperation. The Parties agree to fully cooperate with one other to accomplish the terms of this Agreement, including but not limited to, executing such documents and taking such other actions as may be reasonably necessary to implement the terms of this settlement. The Parties to this Agreement will use their best reasonable efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary or ordered by the Court, or otherwise, to effectuate this Agreement and

the terms set forth in it and to ensure that checks are mailed to Settlement Classes Members in a timely manner. As soon as practicable after execution of this Agreement, Class Counsel will, with the assistance and cooperation of Defendants and their counsel, take all necessary steps to secure the Court's final approval of the Parties' settlement.

64. Entire Agreement. This Agreement constitutes the full and entire agreement among the Parties with regard to the subject matter and supersedes all prior representations, agreements, promises, or warranties, written, oral, or otherwise. No Party shall be liable or bound to any other Party for any prior representation, agreement, promise, or warranty, oral or otherwise, except for those that are expressly set forth in or attached to this Agreement.

65. Binding. This Agreement will be binding upon and will inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

66. No Prior Assignments. The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or that are rights released or discharged in this settlement except as set forth in this Agreement.

67. Construction. The Parties agree that the terms and conditions of this Agreement are the result of lengthy, arms-length negotiations between the Parties and that this Agreement will not be construed in favor of or against any Party by reason of the extent to which any Party or the Party's counsel participated in the drafting of this Agreement.

68. Construction of Captions and Interpretations. Paragraph titles, captions, or headings in this Agreement are inserted as a matter of convenience and for reference and in no

way define, limit, extend, or describe the scope of this Agreement or any provision in it. Each term of this Agreement is contractual and is not merely a recital.

69. Notices. Unless otherwise specifically provided in this Agreement, should any notices, demands or other communications be required after entry of the Court's Final Approval Order and Judgment, they will be in writing and will be deemed to have been duly given as of the third business day after mailing by U.S. registered or certified mail, return receipt requested, addressed as follows:

If to Plaintiff:

E. Michelle Drake
Nichols Kaster PLLP
4600 IDS Center
80 S. 8th Street
Minneapolis, MN 55402
Tel.: (612) 256-3200
Fax: (612) 338-4878
Email: drake@nka.com

If to Defendants:

Legal Department
Delhaize America, LLC
2200 Executive Drive
Salisbury, NC 28147

with a copy that does not constitute notice to:

Thomas P. Murphy
HUNTON & WILLIAMS LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037
Telephone: (202) 955-1950
Facsimile: (202) 778-7471
tpmurphy@hunton.com

Any communication made in connection with this Agreement shall be deemed to have been served when sent by overnight delivery or registered or certified first-class U.S. mail, postage prepaid, or when delivered in person at the addresses designed above.

70. Class Signatories. The Parties agree that because the Settlement Classes Members are so numerous, it is impossible and impracticable to have each Settlement Classes Member execute this Agreement. Therefore, the Notice will advise all Settlement Classes Members of the binding nature of the release and will have the same force and effect as if this Agreement were executed by each Settlement Classes Member.

71. Choice of Law. This Agreement shall, in all respects, be interpreted, construed and governed by the laws of the State of North Carolina without regard to application of the choice of law rules of any jurisdiction.

72. Counterparts. This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart will be deemed an original, and, when taken together with other signed counterparts, will constitute one Agreement, which will be binding upon and effective as to all Parties, subject to the Court's approval.

Exhibits

A – Proposed Order Preliminarily Approving Settlement

B – Notice of Settlement and Release of Claims

C – Long Form Settlement Notice

D – Proposed Final Approval Order and Judgment

Executed this 19th day of February, 2015.

Kimberly A. Lyda
On behalf of Defendant Delhatze America, LLC

Kimberly A. Lyda
Print name

Executed this 19th day of February, 2015.

Kimberly A. Lyda
On behalf of Defendant Food Lion, LLC

Kimberly A. Lyda
Print name

Executed this _____ day of _____, 2015.

Thomas P. Murphy, Counsel for Defendant

Executed this 19th day of February, 2015.

Jocelyn Brown
Jocelyn Brown
Individually and on Behalf of the Settlement Classes Members

Executed this 19th day of February, 2015.

Daniel C. Bryden
Daniel C. Bryden, Counsel for Plaintiff and the Classes

Executed this _____ day of _____, 2015.

On behalf of Defendant Delhaize America, LLC

Print name

Executed this _____ day of _____, 2015.

On behalf of Defendant Food Lion, LLC

Print name

Executed this 18th day of February, 2015.



Thomas P. Murphy, Counsel for Defendant

Executed this _____ day of _____, 2015.

Jeneen Brown
Individually and on Behalf of the Settlement Classes Members

Executed this _____ day of _____, 2015.

Daniel C. Bryden, Counsel for Plaintiff and the Classes

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Case No. 1:14-CV-00195**

JENEEN BROWN, as an individual and as
a representative of the classes,

Plaintiff,

v.

DELHAIZE AMERICA, LLC, and FOOD
LION, LLC,

Defendants.

**PROPOSED PRELIMINARY
APPROVAL ORDER**

Based on Plaintiff's Unopposed Motion for Preliminary Approval of the Proposed Settlement and good cause shown therein, IT IS HEREBY ORDERED:

1. Preliminary Approval Of Proposed Settlement. The Agreement, including all exhibits thereto, is preliminarily approved as fair, reasonable and adequate and within the range of reasonableness for preliminary settlement approval. The Court finds that: (a) the Agreement resulted from extensive arm's length negotiations; and (b) the Agreement is sufficient to warrant notice of the Settlement to persons in the Settlement Classes and a full hearing on the approval of the Settlement;

2. Class Certification For Settlement Purposes Only. Pursuant to Federal Rule of Civil Procedure 23(c), the Court conditionally certifies, for settlement purposes only, the following Settlement Classes:

Improper Disclosure Class: All Delhaize subsidiary employees and job applicants in the United States, except for employees and job applicants of Hannaford, who were the subject of a consumer report that was procured by

Delhaize from March 7, 2012 through the date on which the Class List is generated.

Pre-Adverse Action Notice Class: All Delhaize subsidiary employees and job applicants in the United States against whom adverse employment action was taken based, in whole or in part, on information contained in a consumer report from March 7, 2012 through the date on which the Class List is generated.

In connection with this conditional certification, the Court makes the following preliminary findings for settlement purposes only:

A. The Settlement Classes appear to be so numerous that joinder of all members is impracticable;

B. There appear to be questions of law or fact common to the Settlement Classes for purposes of determining whether this Settlement should be approved;

C. Plaintiff's claims appear to be typical of the claims being resolved through the proposed settlement;

D. Plaintiff appears to be capable of fairly and adequately protecting the interests of the Settlement Class Members in connection with the proposed settlement;

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

F. Certification of the Settlement Classes appears to be superior to other available methods for the fair and efficient resolution of the claims of the Settlement Classes.

3. Class Counsel. Nichols Kaster, PLLP is hereby APPOINTED as Class Counsel;

4. Class Representative. Plaintiff Jeneen Brown is hereby APPOINTED Class Representative;

5. Class Notice. The parties' Class Notice is APPROVED for distribution in accordance with the schedule included in the Settlement Agreement;

6. Opt-Outs and Objections. Class Members shall have the right to either opt-out or object to this settlement pursuant to the procedures and schedule included in the Settlement Agreement; and

7. Final Approval Hearing. A Final Approval Hearing is set for _____, 2015 at _____, in Courtroom _____.

IT IS SO ORDERED.

DATED this ____ day of _____, 2015.

Date:

Hon. Thomas D. Schroeder
United States District Judge

EXHIBIT B

COURT ORDERED
NOTICE

Jeneen Brown
v.
**Delhaize America, LLC &
Food Lion, LLC**
Class Action
Notice on Other Side

Brown v. Delhaize America, LLC, et al.
C/O ADMINISTRATOR
ADDRESS
ADDRESS

PRESORT
FIRST CLASS
U.S. POSTAGE
PAID



Postal Service: Please do not mark barcode

ID: 00001234

First Last
Address1
Address2
City State Zip Code

A settlement has been reached in a class action lawsuit claiming statutory damages from Delhaize America, LLC and Food Lion, LLC ("Defendants") for alleged violations of the Fair Credit Reporting Act ("FCRA"). Plaintiff claims that Defendants' Background Check Authorization forms allegedly contained extraneous information that violated the FCRA, and that Defendants failed to provide pre-adverse action notice as required by the FCRA. Defendants vigorously deny that they violated any law, but have agreed to the settlement to avoid the uncertainties and expenses of continuing the case. The total settlement fund is \$2,990,000.

Am I a Class Member? Defendants' records indicate you are a member in one or both of the classes. The class(es) of which you are a member are marked below with an "X".

_____ **Improper Disclosure Class:** All Delhaize subsidiary employees and job applicants in the United States, except for employees and job applicants of Hannaford, who were the subject of a consumer report that was procured by Delhaize from March 7, 2012 through [DATE CLASS LIST IS GENERATED].

_____ **Pre-Adverse Action Notice Class:** All Delhaize subsidiary employees and job applicants in the United States against whom adverse employment action was taken based, in whole or in part, on information contained in a consumer report form March 7, 2012 through [DATE CLASS LIST IS GENERATED].

What Can I Get? If the Court approves the settlement you will receive a payment. If the expected requests for attorneys' fees and expenses and the Plaintiff's award are granted by the Court, Improper Disclosure Class members should receive approximately \$xx and Pre-Adverse Action Notice Class members should receive approximately \$xx. Individuals who are members of both classes will receive both payments, or approximately \$xx.

How Do I Get a Payment? To get a payment, you do not need to do anything.

Who Represents Me? The Court appointed lawyers from Nichols Kaster, PLLP as Class Counsel, whose telephone number is (877) 448-0492. They will seek to be paid legal fees out of the settlement fund of up to one-third of the fund, plus out-of-pocket costs. They will also seek an incentive award of \$2,000 for the Plaintiff who brought this case. You may also hire and pay for a lawyer at your expense.

What If I Don't Like the Settlement? You can exclude yourself or object. To exclude yourself and keep any rights you may have to sue Defendants over the legal issues in this lawsuit, write the settlement administrator by DATE. If you do not exclude yourself, you may object to the proposed settlement. To do so, you must file a written objection with the Court by DATE.

When Will the Court Consider the Proposed Settlement? The Court will hold the Final Approval Hearing at TIME on DATE at the United States Courthouse, 251 N Main Street, Winston-Salem, NC 27101.

How Do I Get More Information? For more information, visit www.DelhaizeFCRASettlement.com, or contact the settlement administrator at 1-855-837-4015 or via mail at ADDRESS.

EXHIBIT C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

**Notice of Class Action Lawsuit and Proposed Settlement.
You May be Entitled to Receive a Settlement Payment.**

A federal court authorized this notice. This is not a solicitation from a lawyer.

- This Notice relates to a proposed settlement in a class action lawsuit which alleges that Delhaize America, LLC and Food Lion, LLC (“Defendants”) violated the Fair Credit Reporting Act (“FCRA”). Defendants deny that they violated the law in any way, but the parties have agreed to resolve the lawsuit by a settlement.
- The proposed settlement includes two classes of people on whom Defendants obtained background reports.

Improper Disclosure Class: All Delhaize subsidiary employees and job applicants in the United States, except for employees and job applicants of Hannaford, who were the subject of a consumer report that was procured by Delhaize from March 7, 2012 through **the date on which the Class List is generated.**

Pre-Adverse Action Notice Class: All Delhaize subsidiary employees and job applicants in the United States against whom adverse employment action was taken based, in whole or in part, on information contained in a consumer report from March 7, 2012 through **the date on which the Class List is generated.**

- You have been identified as a member of one of the classes. Your legal rights are affected whether you act or don’t act. Read this notice carefully.

Your Legal Rights and Options in this Lawsuit	
Do Nothing	If you do nothing and the Court approves this settlement, you will receive a settlement payment. You will not be able to sue Defendants for the same issues as in this lawsuit again.
Ask to be Excluded by DATE	If you do not want to be included in the case and the settlement, you must exclude yourself. This is called “opting out.” This is the only option that allows you to sue Defendants for these same issues again.
Object by DATE	You may write to the Court about why you don’t like the settlement. You cannot object if you opt out.
Go to a Hearing on DATE	You may ask to speak in Court about the fairness of the settlement.

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after appeals are resolved. Please be patient.

What this Notice Contains

Basic Information	3
1. Why did I get this notice?	
2. What is this lawsuit about?	
3. Why is this case a class action?	
4. Why is there a settlement?	
Who is in the Settlement	4
5. How do I know if I am part of the settlement?	
The Settlement Benefits	5
6. What does the settlement provide?	
7. How can I get a benefit?	
8. When would I get my benefit?	
9. What am I giving up to get a benefit?	
10. How do I ask to be excluded?	
11. If I don't exclude myself, can I sue Defendants for the same thing later?	
12. If I exclude myself, can I get benefits from this settlement?	
The Lawyers Representing You	6
13. Do I have a lawyer in this case?	
14. How will the lawyers be paid?	
Objecting to the Settlement	7
15. How do I tell the Court that I don't like the settlement?	
16. What's the difference between objecting and excluding?	
17. When and where will the Court decide whether to approve the settlement?	
18. Do I have to come to the hearing?	
19. May I speak at the hearing?	
Getting More Information	8
20. Are there more details about the settlement?	
21. How do I get more information?	

Basic Information

1. Why did I get this notice?

You may be viewing this Notice because you received a shorter notice in the mail. This Notice has been posted for the benefit of potential members of the Settlement Classes.

The members of the Settlement Classes have been identified based upon Defendants' records. If you are uncertain about whether you are a member of the Settlement Classes, or about which Settlement Class(es) you are a member of, you may contact the Administrator at (800) xxx-xxxx.

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

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

The Court in charge of this case is the United States District Court for the Middle District of North Carolina, and the case is known as *Jeneen Brown v. Delhaize America, LLC, and Food Lion, LLC*, Case No. 1:14-cv-00195-UA-JLW. The person who filed this lawsuit is called the Plaintiff, and Delhaize America, LLC and Food Lion, LLC are the Defendants.

2. What is this lawsuit about?

This case is about whether Defendants violated the FCRA by including extraneous information on their Background Check Authorization forms, and by failing to provide pre-adverse action notice.

Defendants dispute Plaintiff's allegations and denies all liability to Plaintiff and the Settlement Classes. No court has found Defendants to have violated the law in any way. No court has found that the Plaintiff could recover any certain amount in this litigation.

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

3. Why is this case a class action?

Class actions are lawsuits in which the claims and rights of many people are decided in a single proceeding. In a class action, representative plaintiffs ("Class Representatives") seek to assert claims on behalf of all members of a class or classes of similarly situated people. In a class

action, people with similar claims are treated alike. The court is guardian of the class's interests and supervises the prosecution of the class claims by counsel for the class to assure that the representation is adequate. Class members are not individually responsible for the costs or fees of counsel, which are subject to court award.

Here, the Court decided that this lawsuit can be a class action for settlement purposes because it preliminarily meets the requirements of Federal Rule of Civil Procedure 23, which governs class actions in federal courts. Specifically, the Court found that: (1) there are numerous people who fit the class definitions; (2) there are legal questions and facts that are common to each of them; (3) Plaintiff Brown's claims are typical of the claims of the rest of the Classes; (4) Plaintiff Brown, and the lawyers representing the Classes, will fairly and adequately represent the class members' interests; (5) the common legal questions and facts are more important than questions that affect only individuals; and (6) this class action will be more efficient than having individual lawsuits.

4. Why is there a settlement?

The Court did not decide this case in favor of the Plaintiff or Defendants. Instead Counsel for the Settlement Classes investigated the facts and applicable law regarding Plaintiff's claims and Defendants' defenses. The parties engaged in lengthy arms-length negotiations to reach this settlement. The Plaintiff and Counsel for the Settlement Classes believe that the proposed settlement is fair, reasonable, and adequate, and in the best interest of the Classes.

Both sides agree that by settling, Defendants are not admitting any liability or that they did anything wrong. Both sides want to avoid the uncertainties and expense of further litigation.

Who is in the Settlement

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

You are part of the settlement if at any time from March 7, 2012 to **XXXXXX**, Defendants procured a consumer report on you (Improper Disclosure Class), and/or took adverse employment action against you based, in whole or in part, on information contained in a consumer report (Pre-Adverse Action Notice Class).

If you received a notice in the mail, Defendants' records indicate you are a member of one or both of the Settlement Classes. If you are uncertain as to whether you are a member of the Settlement Classes, or as to which class you are a member of, you may contact the Administrator at **(800) xxx-xxxx** to find out. In all cases, the question of class membership will be determined based on Defendants' records.

The Settlement Benefits

6. What does the settlement provide?

If you are a member of the Settlement Classes, you are eligible to receive a benefit under the settlement.

Defendants have agreed to pay \$2,990,000 into a settlement fund. The fund will be divided *pro rata* among all Settlement Class members who do not opt out, with members of the Pre-Adverse Action Notice Class receiving twice the amount of members of the Improper Disclosure Class, after any awarded attorneys' fees and expenses, and Plaintiff Brown's compensation have been deducted. If the expected requests for attorneys' fees and expenses and the Plaintiff's award are granted by the Court, Pre-Adverse Action Notice Class members should receive approximately \$xx and Improper Disclosure Class members should receive approximately \$xx. Individuals who are members of both classes will receive both payments, or approximately \$xx.

Further, following the service of the Complaint, Defendants promptly undertook a review of their processes relating to background checks. Such review is ongoing. .

7. How can I get a benefit?

To receive your settlement payment, you do not have to do anything. Your interest as a member of the Settlement Classes will be represented by the Plaintiff and Counsel for the Classes. You will be bound by any judgment arising from the settlement. If the settlement is approved, you will receive a check for your share of the settlement fund. If you would like to update your address, you may do so on the settlement website.

8. When would I get my benefit?

The Court will hold a final Fairness Hearing at **TIME** on **DATE** in the United States District Court for the Middle District of North Carolina, 251 N Main Street, Winston-Salem, NC 27101 to decide whether to finally approve the settlement. If the settlement is approved, there may be appeals. Payments to members of the Settlement Classes will be made only if the settlement is approved. This may take some time, so please be patient.

9. What am I giving up to get a benefit?

Upon the Court's approval of the settlement, all members of the Settlement Classes who do not exclude themselves (as well as their spouses, heirs, and other who may possess rights on their behalf) will release Defendants (and their affiliates, subsidiaries, employees, and others who may be subject to claims with respect to Defendants as specified in the Settlement Agreement) from any and all claims arising out of or relating directly or indirectly in any manner whatsoever to the facts alleged or which could have been alleged or asserted in the Complaint, including but not limited to any parallel state or common law claims.

This release may affect your rights, and may carry obligations, in the future. To view the full terms of the release, review the Settlement Agreement, which is available at www.DelhaizeFCRASettlement.com.

10. How do I ask to be excluded?

If you choose to be excluded from the settlement, you will not be bound by any judgment or other final disposition of the lawsuit. You will retain any claims against Defendants you may have.

To ask to be excluded, you must send an “Exclusion Request” in the form of a letter sent by U.S. mail, stating “I want to opt out of the Settlement Classes certified in the *Brown v. Delhaize America* litigation.” Be sure to include your name and address. Be sure to also sign the letter. You must mail your Exclusion Request so that it is postmarked by **DATE** to: Nichols Kaster, PLLP, 4600 IDS Center, 80 S 8th Street, Minneapolis, MN 55402.

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

11. If I don’t exclude myself, can I sue Defendants for the same thing later?

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

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

No. If you exclude yourself, you are not part of the settlement and you will not receive a check.

The Lawyers Representing You

13. Do I have a lawyer in this case?

The Court decided that the law firm of Nichols Kaster, PLLP will represent you and the Settlement Classes as Class Counsel. More information about the law firm, its practice, and the lawyers’ experience is available at: www.nka.com. You can also reach Nichols Kaster, PLLP by calling (877) 448-0492.

Class Counsel represent the interests of the Settlement Classes. You may hire your own attorney to advise you, but if you hire your own attorney, you will be responsible for paying that attorney’s fees.

14. How will the lawyers be paid?

Class Counsel intend to apply to the Court for an award of attorneys’ fees, in an amount not to exceed one-third of the settlement fund. The Court may award less. Class Counsel also will seek compensation for their out-of-pocket expenses and compensation for Plaintiff Brown in an amount not to exceed \$2,000. These amounts will be paid from the settlement, not by you.

Objecting to the Settlement

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

You can object to any aspect of the proposed settlement by filing and serving a written objection. Your written objection must include: (1) your name, address, telephone number, email address and signature; (2) a detailed statement of the specific factual and legal basis for the objection(s) being asserted; (3) a notice of your intent to appear at the final Fairness Hearing at **TIME** on **DATE**, if you intend to appear; and (4) a detailed description of any and all evidence, including copies of any exhibits, which you may offer at the Fairness Hearing.

You must file any objection with the Clerk of Court at the address below by **DATE:**

United States District Court for the Middle District of North Carolina
251 N Main Street, Winston-Salem, NC 27101
Case: *Brown v. Delhaize America, LLC, et al.* Case No. 1:14-cv-00195

You must also send your objection by first class mail, postmarked on or before **DATE, to Class Counsel and Defendants' Counsel. These documents should be mailed to Class Counsel at:**

Nichols Kaster, PLLP
Attn: E. Michelle Drake
4600 IDS Center
80 South 8th Street
Minneapolis, MN 55402

and to Defendants' Counsel at:

Hunton & Williams LLP
Attn: Thomas P. Murphy
2200 Pennsylvania Ave, NW
Washington, D.C. 20037

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

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

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

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

There will be a final Fairness Hearing to consider approval of the proposed settlement at **TIME** on **DATE** at the United States District Court for the Middle District of North Carolina, 251 N Main St, Winston-Salem, NC 27401. The hearing may be postponed to a later date without further notice but any such postponements will be posted on the settlement website at www.DelhaizeFCRASettlement.com. The purpose of the hearing is to determine the fairness, reasonableness, and adequacy of the terms of the settlement, whether the Settlement Classes are adequately represented by the Plaintiff and Class Counsel, and whether an order and final judgment should be entered approving the proposed settlement. The Court also will consider Class Counsel's application for an award of attorneys' fees and expenses, and Plaintiff Brown's compensation.

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

18. Do I have to come to the hearing?

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

19. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send with your objection, a notice of intention to appear at the hearing as described in paragraph 15 above. You may not be allowed to speak at the hearing if you exclude yourself.

Getting More Information

20. Are there more details about the settlement?

This Notice is only a summary. For a more detailed statement of the matters involved in the lawsuit or the settlement, you may refer to the papers filed in this case during regular business hours at the office of the Clerk of Court, United States District Court for the Middle District of North Carolina, 251 N Main St, Winston-Salem, NC 27101, Case: *Brown v. Delhaize America, LLC, et al.*, No. 1:14-cv-00195. The full Settlement Agreement and certain pleadings filed in the case are available at www.DelhaizeFCRASettlement.com, or can be requested from Class Counsel, identified above.

21. How do I get more information?

You can visit www.DelhaizeFCRASettlement.com, or contact Class Counsel identified above. **Please do not contact the Court for information.**

EXHIBIT D

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Case No. 1:14-CV-00195**

JENEEN BROWN, as an individual and as
a representative of the classes,

Plaintiff,

v.

DELHAIZE AMERICA, LLC, and FOOD
LION, LLC,

Defendants.

**PROPOSED FINAL
APPROVAL ORDER**

This matter came before the Court for hearing on _____, 2015. The Court, having considered the Motions for Preliminary Approval and Final Approval and the declarations in support thereof, the Settlement Agreement (the “Agreement”), any objections and comments received regarding the proposed settlement, the record in the above captioned action (the “Action”), the evidence presented, and the arguments and authorities presented by counsel, and for good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. The Court, for purposes of this Final Order Approving Settlement, adopts the capitalized terms and their definitions set forth in the Agreement.
2. The Court has jurisdiction over the subject matter of the Action, the Class Representative, the Settlement Class Members, and Defendants.
3. The Court finds that the notice to the Classes of the pendency of the Action and of this settlement constituted the best notice practicable under the circumstances to

all persons within the definition of the Settlement Classes, and fully complied with the requirements of due process and of all applicable statutes and laws.

4. The Court hereby finds and concludes that the notice provided by Defendants to the appropriate state and federal officials pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, fully satisfied the requirements of that statute.

5. The Court hereby finds that the Settlement Agreement is the product of arms-length settlement negotiations among Plaintiff, Class Counsel and Defendants.

6. The Court hereby adopts and approves the Agreement and the settlement terms contained therein and finds that it is in all respects fair, reasonable, adequate, just, and in compliance with all applicable requirements of the United States Constitution (including the Due Process Clause) and all other applicable laws, and in the best interest of the parties and the Settlement Classes.

7. The Court finds that the Parties dispute the merits of the claims and the appropriateness for trying the claims on a class basis. The case involves complex issues of fact and law and the settlement terms reflect the inherent uncertainty of litigation and the challenges of establishing liability in a complex case brought under Federal Rule 23. Any objections have been considered and are hereby overruled. Accordingly, the Court directs the parties and their counsel to implement and consummate the settlement in accordance with the terms and conditions of all portions of the Agreement.

8. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby finally certifies the Settlement Classes, except for the individuals listed in Attachment A hereto, consisting of:

Improper Disclosure Class: All Delhaize subsidiary employees and job applicants in the United States, except for employees and job applicants of Hannaford, who were the subject of a consumer report that was procured by Delhaize from March 7, 2012 through the date on which the Class List is generated.

Pre-Adverse Action Notice Class: All Delhaize subsidiary employees and job applicants in the United States against whom adverse employment action was taken based, in whole or in part, on information contained in a consumer report from March 7, 2012 through the date on which the Class List is generated.

The Settlement Classes as certified satisfy all the requirements of Rule 23 and United States Constitution, and any other applicable law as more fully set forth in the Court's Preliminary Approval Order, which is incorporated into this Final Order by this reference.

9. In certifying this Action as a class action, the Court hereby finds that:
- (a) the members of the Settlement Classes are so numerous that joinder of all Settlement Class Members in this Action is impracticable;
 - (b) there are questions of law and fact common to the members of the Settlement Classes;
 - (c) the claims of the Named Plaintiff are typical of the claims or defenses of the Settlement Classes;

- (d) the questions of law and fact common to members of the Settlement Classes predominate over any questions affecting only individual members of the Settlement Classes;
- (e) a class action was and is superior to other available methods for the fair and efficient adjudication of the controversy, considering, inter alia: (i) the interests of members of the Settlement Classes in individually controlling the prosecution or defense of separate actions; (ii) the extent and nature of any litigation concerning the controversy already commenced by or against members of the Settlement Classes; (iii) the desirability or undesirability of prosecuting the litigation of these claims in this particular forum; and (iv) the difficulties likely to be encountered in the management of the class action; and
- (f) the Named Plaintiff and Class Counsel have fairly and adequately protected the interests of the Settlement Classes.

SETTLEMENT CONSIDERATION

10. Defendants and Plaintiff are hereby ordered to comply with the terms and conditions contained in the Settlement Agreement, which is incorporated by reference herein.

APPLICABILITY

11. The provisions of this Final Order are applicable to and binding upon and inure to the benefit of each party to the Action (including each Settlement Class Member and each of Defendants' successors and assigns).

12. All persons who are included within the definition of either of the Settlement Classes and who did not properly file requests for exclusion are therefore bound by this Final Order and by the Settlement Agreement.

13. As of the Effective Date, the Settlement Class members, including Plaintiff (collectively, the "Releasing Parties"), release Defendants and their U.S. affiliates and subsidiaries and insurers ("Released Parties"), from the "Released Claims."

14. The Releasing Parties stipulate and agree that upon the Court's final approval of this Settlement Agreement, the claims in the case shall be dismissed with prejudice. The Releasing Parties, on behalf of themselves and their respective assigns, agree not to sue or otherwise make a claim against any of the Released Parties that is in any way related to the Released Claims. Attachment A to this Final Order contains a list setting forth the name of each person who timely submitted a request for exclusion from the Settlement Classes in compliance with the procedures set forth in the Preliminary Approval Order. The persons so identified shall not be entitled to benefits from the settlement nor bound by this Final Judgment.

ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

AND SERVICE AWARD

15. The Court approves Class Counsel's application for \$ [REDACTED] in attorneys' fees and costs, and for a service award to the Named Plaintiff in the amount of \$2,000.

16. The Court hereby dismisses this Action and all claims with prejudice, without costs to any party, except as expressly provided for in the Settlement Agreement.

17. Finding that there is no just reason for delay, the Court orders that this Final Approval Order shall constitute a final judgment pursuant to Rule 54 of the Federal Rules of Civil Procedure that is binding on the parties and the Settlement Classes. The Clerk of the Court is directed to enter this Order on the docket forthwith.

18. Jurisdiction is retained by this Court for matters arising out of the Settlement Agreement except as expressly stated therein.

IT IS SO ORDERED.

DATED this ____ day of _____, 2015.

Date:

Hon. Thomas D. Schroeder
United States District Judge

Exhibit 2



FIRM OVERVIEW

With offices in Minneapolis and San Francisco, Nichols Kaster is a premier employment and consumer litigation firm. Nichols Kaster's practice is solely dedicated to plaintiffs' work, advocating for employees' and consumers' rights on both an individual and class action basis. The firm is composed of thirty-three experienced and talented attorneys dedicated to "fighting for the little guy," and who have been recognized locally and nationally for their achievements.

The firm, throughout its thirty-plus years of practice, has developed a sterling reputation as a top employment and consumer plaintiffs' firm. In September 2014, Nichols Kaster was named one of the top 50 Elite Trial Lawyers by *The National Law Journal* and Law.com, a list of firms "that are doing the most creative and substantial work on the plaintiffs side." The Nat'l Law Journal, *Introducing America's Elite Trial Lawyers*, Sept. 8, 2014. In February 2012, the firm was named to *The National Law Journal's* 2011 Litigation Boutiques Hot List for its attorneys' courtroom abilities. In the article spotlighting Nichols Kaster, the *Journal* wrote regarding the firm's consumer practice: "The firm is credited with mounting the first challenge to a banking practice known as forced-place insurance" and that "*American Banker* magazine recently concluded that evidence to date in one of the Nichols Kaster suits against JPMorgan Chase 'suggests serious trouble for the banks.'" Jason McLure, *Nichols Kaster Takes the Employees' Side*, The Nat'l Law Journal, Litigation Boutiques Hot List, Feb. 13, 2012. Nichols Kaster has also been ranked as a Best Law Firm by U.S. News & World Report, as a top plaintiffs' employment law firm by Law360, and by Minnesota Lawyer as one of Minnesota's Top 100 Law Firms. In 2009, Nichols Kaster was ranked as one of the top ten busiest FLSA firms in the country by Litigation Almanac 360, which conducted a study of over 500,000 federal cases and received input from more than 200 law firms. Nichols Kaster was the only plaintiffs' firm in the top ten. Nichols Kaster received a First Tier ranking on the 2014 Best Law Firms list in Minneapolis for Litigation-Labor and Employment by US News-Best Lawyers in November 2013. On Martindale Hubbell, the firm has a 5 out of 5 peer rating. In a recent CityPages article regarding one of the firm's cases, Nichols Kaster was described as "one of the top employment firms in the country." Olivia LaVecchia, *The Perfect Victim: Exploitation and Threat of Deportation*, CityPages, May 29, 2013.

Nichols Kaster, through the years, has and continues to, secure substantial settlements, win significant motions on important issues, and vigorously litigate complex class actions and challenging individual actions against some of the top defense firms nationwide. The firm has been recognized by judges for its successes and extensive experience. Further, Nichols Kaster has been appointed lead or co-counsel on hundreds of class and collective actions and frequently achieves class certification in both litigation and settlement contexts.

Nichols Kaster is led by its experienced and talented partners.

- **Don H. Nichols** has tried over 100 cases to verdict and has obtained over \$50 million dollars for his class and collective clients. Don is highly respected by the legal community, as seen by his fellowship in The College of Labor and Employment Lawyers. Don was recently selected by his peers for inclusion in *The Best Lawyers in America*® 2015 for his work in Litigation-Labor & Employment.
- **James H. Kaster** is also recognized for his abilities and experience in the field. He was ranked by Chambers USA as number one among plaintiffs' employment lawyers in Minnesota, selected as a Fellow of the American College of Trial Lawyers, was named Lawyer of the Year by Best Lawyers in 2012, and was named to the 2013 Super Lawyers Minnesota Top 100 List. In June 2014, Jim was recertified as a Civil Trial Law Specialist, a program administered by the Minnesota State Bar Association and approved by the State Board of Legal Certification.
- **Paul J. Lukas** has been named one of the Top 40 Employment Law Lawyers by Minnesota Law and Politics, named Top Lawyer by Mpls/St. Paul Magazine and named in the Who's Who in Employment Law by Minnesota Law and Politics. Paul is also consistently named to the Minnesota Super Lawyers list each year.
- **Steven Andrew Smith** was named in those lists as well, and also was recently honored by the Minnesota Chapter of the National Employment Lawyers Association as the recipient of the 2014 Karla Wahl Dedicated Advocacy Award. The Award is given to recipients "for their ceaseless and courageous efforts" to protect and advance the rights of Minnesota employees. Steve was also the recipient of the 2011 Distinguished Pro Bono Service Award from the United States District Court for the District of Minnesota, was selected for the Merit Selection Panel regarding the Re-Appointment of U.S. Magistrate Judge Arthur J. Boylan (D. Minn. 2012), has received the Martindale Hubble AV Preeminent rating, and was named to the Best Lawyers in America list for 2014 and 2015.
- **Michele R. Fisher** has a practice primarily dedicated to national wage and hour class and collective action litigation. She has represented over a hundred thousand employees seeking to recover overpayment pay, minimum wages and commission payments. She has successfully handled numerous jury trials and arbitrations. She is the Chair of the firm's Business Development and Marketing Groups, which originate class and collective actions and market the firm. She is also a member of the firm's management committee.
- **Matthew H. Morgan** has been an adjunct faculty member at William Mitchell College of Law and a frequent lecturer at legal seminars. He also received a CALI Award in Business Organization and was named to the Who's Who in Employment Law. Matt was recently named to the 2014 Super Lawyers list, Minnesota Super Lawyers, Mpls/St. Paul Magazine, and Twin Cities Business.

- **E. Michelle Drake** is on the board of the National Association of Consumer Advocates, is a member of the Partner's Council of the National Consumer Law Center, and serves as an At-Large Council Member for the Consumer Litigation Section for the Minnesota State Bar Association. She was named as a Super Lawyer in both 2013 and 2014. In May 2014, Michelle was appointed liaison counsel in the Target Data Breach MDL by Hon. Judge Paul Magnuson of the District Court for the District of Minnesota. She was also appointed to the Federal Practice Committee in 2010 by the United States District Court for the District of Minnesota. Michelle's cases were named as Lawsuits of the Year by Minnesota Law and Politics in both 2008 and 2009.
- **Kai H. Richter** has years of consumer class action experience, having worked with the Minnesota Attorney General's Office prior to coming to Nichols Kaster. He testified before the Minnesota House of Representatives Civil Law Committee regarding consumer litigation in 2012. He is also a 2013-14 Co-Chair of the Consumer Litigation Section for the Minnesota State Bar Association.
- **Rachhana T. Srey** is a frequent lecturer at nationwide seminars. She also contributes to the National Employment Lawyers Association Class and Collective Action Committee's quarterly publication. She recently took a large class case to trial and won significant recovery for the class members.
- **Matthew C. Helland** has been named to the Rising Stars list, Northern California Super Lawyers and San Francisco Magazine and has extensive employment law experience. He has spoken at several conferences and seminars on the WARN Act and EPPA and FLSA collective actions.
- **David E. Schlesinger** has represented thousands of employees in cases involving discrimination, retaliation, breach of contract, unpaid wages, shareholder rights, FLSA, and non-competes and trade secrets. David, as first-chair, has tried and won cases in both trial and arbitration. He has also argued before the Minnesota Supreme Court. David teaches Practice and Professionalism at the University of Minnesota Law School.
- **Tim C. Selander** has litigated claims in federal and state courts, as well as arbitration. Tim has represented workers in disputes related to unpaid wages, overtime pay, commissions, and wrongful termination. Tim has been a frequent speaker at continuing legal education seminars.

The firm's partners are consistently named to the Minnesota Super Lawyers or the Super Lawyers' Rising Stars list. In January 2012, the firm's partners were featured in Newsweek's 20 Leaders in Employment Law showcase.

Many of Nichols Kaster's associate attorneys have also been recognized on the Minnesota Super Lawyers and Rising Stars lists over the years. Nichols Kaster's attorneys are active in many organizations, have been admitted in numerous state and appellate courts, and frequently speak to national audiences. Nichols Kaster has tried multiple large class actions to verdict, and its attorneys have experience arguing before the United States Supreme Court, several federal Courts of Appeals and the Minnesota Supreme Court.

JUDICIAL RECOGNITION

Courts have widely acknowledged Nichols Kaster's exemplary class action practice. Below are a few examples of such recognition.

From Judge William Alsup of the U.S.D.C. N.D. Cal.:

...Mr. Richter did a fine job in a case I had. and he came back with a real settlement that benefited those class members. He did an excellent job in that case.

Lane v. Wells Fargo Bank, N.A., No. 12-4026 (Transcript of Hearing on Motion for Class Certification and Nichols Kaster's Motion to Intervene, referring to the settlement achieved by Nichols Kaster attorney Kai Richter in Hofstetter v. Chase Home Finance, LLC, No. 10-01313).

I want to say that both sides here have performed at an admirable level. And I wish that the lawyers of all cases would perform at your level. I say this to both of you, because you have you have been of assistance to the Court.

Hofstetter v. Chase Home Finance, LLC, No. 10-01313 (N.D. Cal.) (Transcript of Final Class Settlement Approval Hearing, November 7, 2011).

Plaintiffs' counsel are experienced class-action counsel.

Hofstetter, 2011 WL 1225900 (Order appointing Nichols Kaster as class counsel and certifying the classes) (N.D. Cal. Mar. 31, 2011).

From Judge Sidney H. Stein of the U.S.D.C. S.D.N.Y.:

Fourth, the quality of representation, as evidenced by the substantial recovery and the qualifications of the attorneys, is high. As then District Judge Gerard E. Lynch recognized, Nichols Kaster is "a reputable plaintiff-side employment litigation boutique with a nationwide practice and special expertise prosecuting FLSA cases."

Febus v. Guardian First Funding Group, LLC, et al., 870 F. Supp. 2d 337 (Order granting motion for attorneys' fees) (S.D.N.Y. June 22, 2012) (citing Imbeault v. Rick's Cabaret Int'l Inc., No. 08 Civ. 5458 (GEL), 2009 WL 2482134, at *3 (S.D.N.Y. Aug. 13, 2009)).

From Judge Richard H. Kyle of the U.S.D.C. D. Minn.:

Well, I think you did a great job on this. I mean, I really do. It's nice to see when cases go, and go quickly, and I know that it's a little different than a lot of other cases but it still -- you still have a lot of fooling around here that doesn't have to be done, but it seems to me you folks have gotten it done the right way. So I look forward to seeing you all [at the final approval hearing].

Bible v. General Revenue Corp., 12-CV-1236-RHK-JSM (D. Minn.), Transcript from Preliminary Approval Hearing, January 6, 2014.

..the court finds that Plaintiffs' Lead Counsel are qualified to represent the Class.

Stewart v. CenterPoint Energy Resources Corp., 05-CV-1502-RHK/AJB, 2006 WL 839509, at *1 (D. Minn. Mar. 28, 2006) (Order appointing class counsel and preliminarily certifying consumer protection class regarding illegal heat shut-offs for settlement purposes).

The Court finds that counsel is competent and capable of exercising all responsibilities as Class Counsel for the Settlement Class.

Bible, (D. Minn. Jan. 7, 2014) (Order appointing Nichols Kaster as class counsel and preliminarily certifying a consumer protection class regarding claims under the Fair Debt Collection Protection Act).

From Chief Judge Deborah Chasanow of the U.S.D.C. D. Md.:

...the attorneys at Nichols Kaster, PLLP are qualified, experienced, and competent, as evidenced by their background in litigating class-action cases involving FCRA violations.

....

As noted above, Plaintiffs' attorneys are experienced and skilled consumer class action litigators who achieved a favorable result for the Settlement Classes.

Singleton v. Domino's Pizza, LLC, No. 8:11-cv-01823-DKC, Order granting final approval of consumer class action settlement. (D. Md. Oct. 2, 2013).

...the attorneys at Nichols Kaster, PLLP, are qualified, experienced, and competent.

Singleton (Order appointing class counsel and preliminarily certifying consumer protection classes regarding claims under the Fair Credit Reporting Act for settlement purposes) (D. Md. May 13, 2013).

From Judge David N. Hurd of the U.S.D.C. N.D.N.Y.:

Finally, Plaintiffs and their counsel have fairly and adequately represented the interests of the Settlement Classes.

Casey v. Citibank, N.A., et al., 12-CV-820, and Coonan v. Citibank, N.A., 13-CV-353 (N.D.N.Y. April 2, 2014) (Order appointing Nichols Kaster as co-lead counsel and preliminarily approving class wide settlement classes in a \$110MM force-placed insurance settlement)

From Judge Lorna G. Schofield of the U.S.D.C. S.D.N.Y.:

Nichols Kaster has demonstrated it is able fairly and adequately to represent the interests of the putative class

Ernst v. DISH Network, LLC, et al., 12-CV-8794 (S.D.N.Y. July 23, 2013) (Order appointing Nichols Kaster as interim class counsel for a putative class with Fair Credit Reporting Act claims against consumer reporting agency)

From Judge Joan M. Azrack of the U.S.D.C. E.D.N.Y.:

...Plaintiffs' counsel "have an established record of competent and successful prosecution of large wage and hour class actions, and the attorneys working on the case are likewise competent and experienced in the area."

Nichols Kaster and O&G's lawyers have substantial experience prosecuting and settling employment class actions, including wage and hour class actions and are well-versed in wage and hour law and in class action law....Courts have repeatedly found Nichols Kaster and O&G to be adequate class counsel in employment law class actions.

Westerfield v. Washington Mutual Bank, No. 06-2817, 2009 WL 6490084 (Order preliminarily approving settlement and appointing class counsel) (E.D.N.Y. June 26, 2009).

From Judge Virginia A. Phillips of the U.S.D.C. C.D. Cal.:

Plaintiffs have demonstrated sufficiently that their counsel will represent the proposed classes adequately. Counsel has identified and investigated the claims in this action, has extensive experience handling class actions similar to this one, has demonstrated knowledge of the applicable law, and has adequate resources to represent the proposed classes.

Cervantez v. Celestica Corp., No. 07-729 (Order appointing class counsel and certifying the class) (July 30, 2008, C.D. Cal.).

Over the past two years, Class Counsel has been active in all stages of litigation and has particularly benefitted Plaintiffs through capable handling of motion practice. For example, Plaintiffs obtained summary judgment on a key issue involving the Morillion doctrine and defeated summary judgment on Defendants' de minimis defense.

Cervantez, No. 07-729 (Order granting final approval of settlement) (Oct. 29, 2010, C.D. Cal.).

From Magistrate Judge Laurel Beeler of U.S.D.C. N.D. Cal.

Plaintiffs retained counsel with significant experience in prosecuting force-placed insurance cases, and other courts in this district have appointed them class counsel in force-placed insurance cases. ... Counsel have worked vigorously to identify and investigate the claims in this case, and, as this litigation has revealed, understand the applicable law and have represented their clients vigorously and effectively.

Ellsworth v. U.S. Bank, N.A., No. C 12-02506 LB, 2014 WL 2734953 (Order granting Plaintiffs' Motion for Class Certification and appointing Nichols Kaster as class counsel) (N.D. Cal. June 13, 2014)

From Judge Gary Larson of Minn. Dist. Ct., Hennepin County:

...Plaintiff's counsel are qualified, experienced attorneys that are fully capable of conducting this class action litigation...they are highly qualified, knowledgeable attorneys that are willing to invest the resources necessary to fully prosecute this case.

Karl v. Uptown Drink, LLC, No. 27-CV-10-1926 (Order appointing Nichols Kaster as class counsel and certifying the class) (Nov. 17, 2010, Minn. Dist. Ct.).

From Judge John G. Koetl of the U.S.D.C. S.D.N.Y.:

..class counsel ha[s] demonstrated their interest in vigorously pursuing the claims of the class.

Hart v. Rick's Cabaret, Intl., Inc., No. 09-3043, 2010 WL 5297221 (Order appointing Nichols Kaster as class counsel and certifying the class) (S.D.N.Y. Dec. 20, 2010).

From Judge Michael J. Davis of the U.S.D.C. D. Minn.:

The settlement was the result of arm's-length negotiations between experienced counsel. Class Counsel is well known by this Court for their expertise in wage and hour litigation.

Burch v. Qwest Communications Intl., No. 06-03523 (Order granting settlement approval) (D. Minn. Sept. 14, 2012).

From Magistrate Judge Tony N. Leung of the U.S.D.C. D. Minn.:

...the combined experience of Plaintiffs' counsel as well as the fact that employment law, particularly the representation of employees, forms a large part of both the firm and counsel's practice persuades this Court that the law firm of

Nichols Kaster, PLLP, and its attorneys Steven Andrew Smith and Anna P. Prakash will more than adequately protect the interests of the Class Members.

Fearn v. Blazin' Beier Ranch, Inc., No. 11-743 (Report and Recommendation preliminary approving settlement and appointing class counsel) (D. Minn. Jan. 30, 2012).

In this case, Plaintiffs have shown good cause under Rule 16(b) because Plaintiffs' new counsel has shown the necessary diligence. Plaintiffs brought on Nichols Kaster, an experienced employment law firm of high repute as lead counsel in May 2012. Since that time, Plaintiffs have made a concerted effort to comply with this Court's orders and deadlines.

Alvarez v. Diversified Maintenance Systems, Inc., No. 11-3106 (Order granting motion to amend) (D. Minn. Aug. 21, 2012).

From Judge Susan Richard Nelson of the U.S.D.C. D. Minn.:

Plaintiffs' Counsel are qualified attorneys with extensive experience in class action and wage and hour litigation and are hereby appointed as Class Counsel.

Alvarez v. Diversified Maintenance Systems, Inc., No. 11-3106 (Order appointing class counsel and preliminarily certifying the class for settlement purposes) (D. Minn. Feb. 14, 2013).

From Judge Thomas D. Schroeder of the U.S.D.C. M.D.N.C.:

However, the difficulty of the legal issues involved [and] the skill and experience of Plaintiffs' counsel in FLSA cases . . . make an enhancement of the lodestar amount appropriate in this case.

Latham v. Branch Banking and Trust Company, No. 1:12-cv-00007 (Order granting final approval of class action settlement) (M.D.N.C. Jan. 14, 2014).

From Arbitrator Joel Grossman, Esq.

The Arbitrator also notes that the briefs submitted by Claimant's counsel and the performance at the hearing by Claimant's counsel were of a very high quality.

Green v. CashCall, Inc., JAMS Arbitration No. 1200047225 (Final Award regarding Nichols Kaster's fees and costs) (JAMS Aug. 22, 2014)

AREAS OF PRACTICE

EMPLOYMENT LITIGATION (Both individual and collective/class actions)

Nichols Kaster has, and continues to, litigate on behalf of thousands of employees in multiple state and nationwide cases. The firm has filed lawsuits regarding various violations, including but not limited to, failure to pay overtime, minimum wage violations, misclassification, off-the-clock work, donning and doffing, discrimination, and Minnesota gratuities statutes violations.

Types of Employment Cases Nichols Kaster Handles:

- Fair Labor Standards Act, Overtime & Minimum Wage Violations
- Sexual Harassment
- Criminal Background Discrimination
- Federal Railway Safety Act Violations
- Breach of Contract
- Defamation
- Discrimination
- Employee Benefits
- Family Medical Leave Act
- Non-Compete Agreements
- Retaliation Claims
- Severance
- Wage Fixing
- Workers Adjustment Retraining Notification Act

CONSUMER LITIGATION (class actions)

Nichols Kaster has developed a consumer class action team dedicated to investigating and filing suits to ensure consumers' rights are represented. The consumer cases the firm has filed have alleged various violations, some of which are listed below. Since the formal inception of Nichols Kaster's consumer litigation group, the firm has initiated over 40 national class action lawsuits and in 2013 alone, filed 14 national consumer class actions.

Types of Consumer Cases Nichols Kaster Handles:

- Force-Placed Insurance
- Fair Credit Reporting Act
- Improper Background Checks
- Fair Debt Collection Practices Act
- Student Loans
- False Advertising & Deceptive Marketing
- Information Privacy/Data Breach
- Interest Overcharges & Misapplication of Loan Payments
- Predatory Lending
- Unfair & Deceptive Business Practices
- Unfair & Unconscionable Contracts

- Unfair Credit Billing Practices
- Unfair Credit Reporting Practices
- Unfair Debt Collection Practices

WHISTLEBLOWER/QUI TAM

Nichols Kaster represents whistleblowers across the country, protecting individuals who have “blown the whistle” on illegal activity. These cases involve the reporting of possible government fraud, mishandling of toxic substances, violations of tax or securities laws, discrimination in education, failure to provide access to public facilities, and more. Nichols Kaster also represents individuals who have brought claims on behalf of the government against entities who have defrauded the government under the False Claims Act (also known as “qui tam” lawsuits).

NOTABLE LITIGATION RESULTS

Recent highlights of Nichols Kaster's cases include:

In *Hart v. Rick's Cabaret Int'l, Inc.*, No. 09 Civ 3043, the court denied decertification of the FLSA Collective and Rule 23 Class of approximately 2,300 adult entertainers at Rick's Cabaret in New York and granted, in part, plaintiffs' affirmative motion for partial summary judgment on damages, finding that no reasonable jury could conclude the Class was owed less than \$10.8 million. 2014 WL 6238175 (S.D.N.Y. Nov. 14, 2014). This significant ruling came approximately one year after the court ruled that the Class and Collective Members are employees as a matter of law under the FLSA and New York Labor Law and that Rick's Cabaret violated both laws by failing to pay wages. The court further held that the money entertainers received from Rick's Cabaret's customers were tips and not service charges that could offset wage obligations and that Rick's Cabaret violated New York Labor Law by charging Class and Collective Members fines and fees as a condition of employment. 967 F. Supp. 2d 901 (S.D.N.Y. Sept. 10, 2013).

In *Clark v. Centene Company of Texas, LP*, No. A-12-CA-174-SS (W.D. Tex. Sept. 3, 2014), the court issued an order on the parties' cross-motions for summary judgment and defendant's motion for decertification, ruling that the defendant misclassified its utilization nurses. The court ruled that plaintiffs are not exempt from the Fair Labor Standards Act's overtime laws and are thus eligible for overtime pay. The court further held that defendant's claim that each plaintiff's claim would need to be analyzed individually to determine liability and damages was without merit.

In the consolidated lawsuits of *Casey v. Citibank, N.A.*, No. 5:12-cv-0820 (N.D.N.Y.) and *Coonan v. Citibank, N.A.*, No. 1:13-cv-00353 (N.D.N.Y.) (Aug. 21, 2014), the court granted final approval of an approximately \$110 million settlement on behalf of settlement classes who were force-placed with flood or hazard insurance by Citibank, N.A. The settlement also provides substantial injunctive relief, forbidding Citibank and its affiliates from accepting commissions or any other form of compensation in connection with force-placed insurance for a period of six years, places limits on the amount of insurance coverage that Citibank may require borrowers to maintain, and requires Citibank to offer class members the opportunity to reduce their flood insurance coverage if Citibank had increased their coverage amount to an amount in excess of the amount required under federal law. The court found the settlement to be "fair, reasonable, and adequate, in the best interests of the Settlement Classes" and overruled nine objections.

In *Bible v. General Revenue Corp.*, No. 12-cv-01236 RHK (D. Minn. June 27, 2014), the court granted final approval of a \$1.25 million settlement on behalf of approximately 134,000 class members, more than double the statutory cap for a Fair Debt Collection Practices Act class action.

In *Pearsall-Dineen v. Freedom Mortgage Corp.*, No. 13-cv-06836-JEI-JS, 2014 WL 2873878 (D. N.J. June 25, 2014), the court conditionally certified the Fair Labor Standards Act overtime case as a collective action. The judge's order authorized notice of the lawsuit to be disseminated to all mortgage underwriters who worked for Freedom Mortgage in the last three years,

providing them the opportunity to join the lawsuit and to assert their overtime claims against the defendant for failing to pay them overtime hours.

In *Wolfram v. PHH Corp.*, No. 12-cv-599 (S.D. Ohio June 17, 2014), the court granted plaintiffs' motion for partial summary judgment, finding that the assigned real estate offices from where plaintiffs, who are current or former loan officers employed by defendant, worked where all serving as the "employer's place of business" under the outside sales exemption of the Fair Labor Standards Act. This established that an employee may work from multiple sites, not technically owned or operated by the employer, and each of those sites can be considered the "employer's place of business" under the regulations, therefore any work performed at these sites is not "outside" work under the outside sales exemption.

In *Ellsworth v. U.S. Bank, N.A., et al.*, No. C 12-2506-LB, 2014 WL 2734953 (N.D. Cal. June 13, 2014), the court issued a broad class certification ruling on behalf of plaintiff-borrowers who were force-placed with flood insurance. In its order, the court certified multi-state classes of borrowers spanning forty different states to pursue claims against U.S. Bank for breach of their mortgage agreements stemming from U.S. Bank's force-placed insurance practices. In addition, the court separately certified classes of borrowers in California and New Mexico to pursue claims against U.S. Bank and its force-placed insurance vendor, ASIC, for unjust enrichment, unfair business practices, and/or breach of the covenant of good faith and fair dealing.

In *MacIntyre v. Lender Processing Services, Inc.*, No. 3:13-cv-89-J-25JBT (M.D. Fla. April 29, 2014), the court granted affirmative summary judgment to plaintiff (a Minnesota resident) on a breach of contract claim for an unpaid bonus, and used its discretion to enforce Minnesota state law for defendant's (a Florida company) failure to promptly pay wages. The court simultaneously denied defendant's motion to dismiss plaintiff's gender discrimination claims ruling, in part, that defendant's actions toward plaintiff constituted direct evidence of gender discrimination.

In *Arnett v. Bank of America, N.A.*, No. 3:11-cv-01372-SI (D. Or. April 17, 2014), the court preliminarily approved a \$31 million settlement for approximately 625,000 class members, the largest common fund settlement ever negotiated in a case involving force-placed flood insurance.

In *Rhodes v. CashCall*, JAMS Ref. No. 1200047475 and *Garcia v. Cashcall*, JAMS Ref. No. 1200047422 (2014), a JAMS arbitrator ruled that CashCall misclassified Mr. Rhodes, a loan processor, and Mr. Garcia, an underwriter, as exempt from the overtime requirements of California and federal law. The arbitrator awarded Mr. Rhodes \$15,000 in unpaid overtime plus an additional \$15,000 in liquidated damages, along with \$88,179 in attorneys' fees and costs. The same arbitrator awarded Mr. Garcia \$10,000 in unpaid overtime plus an additional \$10,000 in liquidated damages, along with \$98,709 in attorneys' fees and costs.

In *Farmer v. Bank of America, N.A.*, No. 5:11-cv-00935-OLG (W.D.T.X. Oct. 18, 2013), the court granted final approval of the parties' multi-million dollar settlement with significant prospective injunctive relief, finally certifying a class of 25,000 Texas mortgagors who had been sent letters requesting proof of hazard insurance in violation of the language of their deeds of trust, and appointing Nichols Kaster as class counsel.

In *Huff v. Pinstripes, Inc.*, No. 11-3681, --- F. Supp. 2d ---, 2013 WL 5405566 (D. Minn. Sept. 26, 2013), the court ruled in plaintiffs' favor on cross-motions for summary judgment, finding that Pinstripes had violated the Minnesota Fair Labor Standards Act's provisions on tip-pooling by requiring its servers to share their tips with "server assistants," who act as servers' support staff at the restaurant.

In *Monroe, et al. v. FTS USA, LLC and Unitek USA, LLC*, No. 2:08-cv-02100-JTF-cgc (W.D. Tenn. Sept. 18, 2013), the court upheld plaintiffs' trial verdict and damages award of more than \$3.8 million for the approximately 300-person collective of cable technicians who were denied overtime pay under the Fair Labor Standards Act. After extensive post-trial briefing, the court denied defendants' motion for judgment as a matter of law, motion for new trial, motion to alter or amend judgment, and motion for decertification. The court additionally granted plaintiffs' motion to compel defense counsel's billing records as part of the then-pending fight over plaintiffs' counsel's requested fee award.

In *Walsten v. Shank Power Products Co., Inc.*, No. 19HA-CV-12-1094 (Minn. Dist. Ct., Sept. 9, 2013), a minority shareholder case, an advisory jury returned a \$700,000 verdict for the plaintiff, finding for him on his claims for breach of fiduciary duty and violation of his reasonable expectation of continuing employment. The trial judge subsequently issued an order sustaining the \$700,000 advisory verdict and awarding \$200,000 in attorneys' fees.

In *Karl v. Uptown Drink, LLC*, 835 N.W.2d 14 (Minn. Aug. 14, 2013), the Minnesota Supreme Court ruled that under Minnesota law, employers cannot require employees to reimburse them from their tips for items such as cash register shortages, unsigned credit card receipts, and customer walk outs. The Court also found that employees do not have to show that because of the deductions their wages fell below the minimum wage in order to prove a violation of Minn. Stat. § 181.79. In this case, the plaintiffs were over 750 employees who worked at three different bars/night clubs in Minneapolis. At a jury trial in 2011, the plaintiffs prevailed on their record-keeping and certain minimum wage claims, but lost on the unlawful deductions claims. Nichols Kaster appealed the deductions issue, and took it all the way to the Minnesota Supreme Court, where the Court agreed with plaintiffs and instructed the lower court to enter judgment on the plaintiffs' behalf on this claim.

In *Ernst v. DISH Network, LLC*, No. 12-8794-LGS (S.D.N.Y. July 23, 2013), the court appointed Nichols Kaster as interim class counsel for the putative class with claims against Defendant Sterling Infosystems, Inc., finding that Nichols Kaster had "demonstrated it is able fairly and adequately to represent the interests of the putative class. On September 22, 2014, the court ruled on plaintiff's and two of the defendants' cross-motions for partial summary judgment, granting plaintiff's motion and denying defendants'. The court ruled that the summary report received by two of the defendants was a "consumer report" for purposes of the Fair Credit Reporting Act because it "communicated information bearing on Plaintiff's character, general reputation, or mode of living, and the information was collected and expected to be used for 'employment purposes.'" (Order, S.D.N.Y. Sept. 22, 2014.)

In *Holmes v. Bank of America, N.A.*, 2013 WL 2317722 (W.D.N.C. May 28, 2013), the court denied four motions to dismiss plaintiffs' claims regarding force-placed insurance and allowing the case to proceed.

In *Singleton v. Domino's Pizza, LLC*, No. 8:11-cv-01823(D. Md. May 13, 2013), the court granted preliminary approval of the parties' proposed \$2.5 million settlement under the Fair Credit Reporting Act in a case where plaintiffs alleged that the defendant employer had improperly procured consumer reports on employees and applicants and had failed to comply with the pre-adverse action notice requirements of the Act. The court preliminarily certified three settlement classes of over 50,000 people and appointed Nichols Kaster as class counsel, describing the firm as "qualified, experienced, and competent."

In *Ulbrich v. GMAC Mortgage*, No. 11-32424 (S.D. Fla. May 10, 2013), the court granted final settlement approval and appointed Nichols Kaster as class counsel for a 2,000+ nationwide class. The case involved claims against GMAC Mortgage, LLC and Balboa Insurance Services, Inc. relating to force-placed wind insurance.

In *Kirsch v. St. Paul Motorsports, Inc.*, No. 11-cv-02624, 2013 WL 1900620 (D. Minn. May 7, 2013), the court denied defendants' motion for summary judgment in its entirety, finding that plaintiff had put forth sufficient evidence for a prima facie claim of age discrimination.

In *Gustafson v. BAC Home Loan Services, LP*, No. 8:11-cv-00915 (C.D. Cal. Feb. 27, 2013), Judge Josephine Staton Tucker appointed Nichols Kaster as co-lead interim class counsel for multiple putative classes in a force-placed insurance case against Bank of America and other defendants.

In *Boaz v. Federal Express Customer Info. Services, Inc.*, 725 F.3d 603 (6th Cir. 2013), the U.S. Court of Appeals for the Sixth Circuit ruled that plaintiff, a FedEx project manager who had claimed that FedEx had failed to pay her overtime wages, in violation of the Fair Labor Standards Act, and paid her less than male coworkers performing the same job, in violation of the Equal Pay Act, could pursue her overtime and gender discrimination claims. The federal laws at issue provide employees three years to file a lawsuit and FedEx had plaintiff sign an application which stated that lawsuits had to be brought within 6 months or claims were lost. The lower court had dismissed plaintiff's claims, citing the application. The Sixth Circuit unanimously sided with plaintiff, reversed the dismissal and remanded the case for trial.

In *Calderon v. GEICO General Insurance Co.*, 2012 WL 6889800 (D. Md. Nov. 29, 2012), the court granted summary judgment in favor of approximately one hundred current and former Security Investigators for GEICO, finding that they were not covered by the administrative exemption. Specifically, the court held that plaintiffs did not exercise discretion and independent judgment as to matters of significance.

In *Spar v. Cedar Towing & Auction, Inc.*, Case No. 27-CV-11-24993 (Minn. Dist. Ct., Oct. 16, 2012), Nichols Kaster won class certification and was appointed class counsel for a class of approximately six thousand Minneapolis consumers who plaintiffs alleged had been charged illegal towing fees by defendant.

In *Walls v. JPMorgan Chase Bank, N.A.*, Civ. No. 3:11-cv-00673, 2012 WL 3096660 (W.D. Ky. July 30, 2012), a case regarding force-placed flood insurance, the court denied defendant's motion to dismiss, stating that the plaintiff's mortgage agreement did not explicitly provide that the lender's flood insurance requirement could change at will and that Kentucky contracts contain provisions which can impose limits on discretion afforded by a contract, thus rejecting defendant's interpretation of plaintiff's mortgage agreement for purposes of the motion.

In *Bollinger v. Residential Capital*, 863 F. Supp. 2d 1041 (W.D. Wash. May 30, 2012), the court granted plaintiffs' motion for partial summary judgment, finding that defendants misclassified the underwriter plaintiffs under the administrative exemption, and rejected defendants' argument that there was no evidence of willful violation of the FLSA, stating that "a jury could conclude that Defendants knowingly and recklessly" misclassified plaintiffs.

In *Lass v. Bank of America, N.A.*, 695 F.3d 129 (1st Cir. 2012), the United States Court of Appeals for the First Circuit struck down the district court's ruling that had dismissed plaintiff's claims. The Court found that plaintiff's allegations regarding excessive flood insurance and improper kickbacks had been properly alleged and that the case should proceed.

In *Kasten v. Saint-Gobain Performance Plastics Corp.*, 131 S. Ct. 1325 (2011), the United States Supreme Court found in favor of the plaintiff and held that "an oral complaint of a violation of the Fair Labor Standards Act is protected conduct under the [Act's] anti-retaliation provision." This was a huge win for employees all over the country, as the Supreme Court's decision set a new FLSA anti-retaliation standard.

In *Clinicy v. Galardi South Enterprises, Inc.*, 808 F. Supp. 2d 1326 (N.D. Ga. Sept. 7, 2011), the court granted plaintiffs' motion for partial summary judgment on the issue of misclassification, finding that defendants misclassified adult entertainers as independent contractors and that the entertainers were in fact employees covered by the FLSA.

In *Eldredge v. City of Saint Paul*, Civ No. 09-2018 (D. Minn. 2011), plaintiff Eldredge reached a settlement of his case that was the second largest paid by the City of Saint Paul in an employment lawsuit.

In *Hofstetter v. JPMorgan Chase Bank, N.A.*, 2011 WL 1225900 (N.D. Cal. Mar. 31, 2011), Nichols Kaster was appointed class counsel for four classes encompassing approximately 40,000 mortgagors against Chase Bank. In the same case, Nichols Kaster secured an approximately \$10MM settlement for the classes. *Hofstetter*, 2011 WL 5545912 (N.D. Cal. Nov. 14, 2011).

In *Stewart v. CenterPoint Energy Resources Corp.*, 2006 WL 839509 (D. Minn. Mar. 26, 2006), Nichols Kaster achieved a significant class action settlement on behalf of more than 2,500 low-income households who were left without heat by CenterPoint Energy in violation of Minnesota's "Cold Weather Rule."

ATTORNEYS LIST

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Partners:

Donald H. Nichols, Of Counsel: Don graduated from the University of Minnesota Law School in 1971. He has over 35 years of experience in the practice of law. He has tried over 100 cases to verdict and has litigated close to 50 overtime and minimum wage class and collective actions on behalf of thousands of clients and has obtained over \$50MM for those clients. Don's national reputation has provided him the opportunity to lecture at over 100 seminars involving a myriad of legal topics. Recently, Don was selected by his peers for inclusion in *The Best Lawyers in America*® 2015 for his work in Litigation-Labor & Employment.

James H. Kaster: Jim graduated from Marquette University in 1979. He has since tried well over 100 cases to verdict or decision, including a successful case in front of the United States Supreme Court (*Kasten v. Saint-Gobain Performance Plastics Corp.*). His success in the courtroom includes earning many million dollar and multi-million dollar recoveries for the plaintiffs. Jim is also a frequent lecturer before local, state, and national organizations on damage recovery and trial skills. He has been published multiple times in the Minnesota Trial Lawyer publication and was selected as a Fellow of the American College of Trial Lawyers which is a premier professional trial organization in America whose membership is limited to 1% of the trial lawyers in any state or province. Jim was also selected by his peers for inclusion in *The Best Lawyers in America*® 2015 for his work in Litigation-Labor & Employment. In June 2014, Jim was recertified as a Civil Trial Law Specialist, which is earned by leading attorneys who have completed a rigorous approval process, including an examination in the specialty area, peer review, and documented experience. The achievement has been earned by fewer than 3% of all licensed Minnesota attorneys.

Paul J. Lukas: Paul graduated from William Mitchell College of Law in 1991. Early in his career, Paul tried a wide variety of criminal cases, including the nationally renowned *State v. Porter* case before the Minnesota Supreme Court. He then focused his practice on civil plaintiff litigation, representing thousands of employees and consumers and obtaining well over \$100MM for his clients. Paul is a frequent lecturer on a national level and has been recognized consistently by the Minnesota Super Lawyers.

Steven Andrew Smith: Steve graduated from William Mitchell College of Law in 1995, *cum laude*. Steve's trial experience includes trials to verdict in sexual harassment, whistleblower, reprisal/retaliation, commission, contract, gender discrimination, marital status discrimination, disability, and wage and hour claims. Steve has also litigated several notable cases having substantial effect on employees' rights under state and federal employment laws. Steve is often invited to lecture on employment issues both nationally and locally. He has also authored a number of articles on employment law issues such as sexual harassment in the workplace. Steve was selected by his peers for inclusion in *The Best Lawyers in America* in 2014 and 2015 for his work in Employment Law-Individuals. Steve was also recently honored as the recipient of the 2014 Karla Wahl Dedicated Advocacy Award by the Minnesota Chapter of the National Employment Lawyers Association. He was further recognized in 2014 by the United States District Court and Chief Judge Michael J. Davis for his involvement in the Pro Se Project, a project by the United States District Court of Minnesota for assisting individuals representing themselves in federal court.

Michele R. Fisher: Michele graduated from William Mitchell College of Law in 2000 and is a managing partner with Nichols Kaster, PLLP. In addition to litigating wage and hour class and collective actions, she is a regular speaker at local and national conferences and routinely acts as an author and editor for wage and hour publications. Michele is the co-chair of the Practicing Law Institute's Managing Wage & Hour Risks Annual Conference in New York City. She is also the Co-Editor-In Chief of the Fair Labor Standards Act Mid-Winter Report for the ABA's Federal Labor Standards Act Legislation subcommittee, an editorial board member for BNA's The Fair Labor Standards Act treatise, and a chapter editor for BNA's Wage and Hour Laws, A State-by-State Survey. She has been routinely named to the Super Lawyers and Rising Star lists and the Who's Who in Employment Lawyers.

E. Michelle Drake: Michelle graduated from Harvard Law School in 2001. She began her practice of law by trying high stakes criminal cases as a public defender in Atlanta, Georgia. She then moved to Minnesota and began practicing civil litigation with Nichols Kaster. Michelle has earned recognition in the legal community, as seen by the fact her opinions have been published in the National Law Journal, her cases have been named "Lawsuits of the Year" by Minnesota Law & Politics and she has spoken at numerous legal education seminars. Michelle heads the Consumer Class Action Team at Nichols Kaster and has been instrumental in the success of that practice for the firm. In particular, Michelle is currently lead counsel on several cases involving Fair Credit Reporting Act violations. She was also appointed as a 2013-14 At-Large Council Member of the Minnesota State Bar Association's Consumer Litigation Section and as a 2013 and 2014 Minnesota Super Lawyer.

Matthew H. Morgan: Matt graduated from William Mitchell College of Law in 2000. He has become a skilled litigator since, trying cases to verdict in both jury and bench trials. In

2012, Matt tried two jury trials against large health organizations and received verdicts in favor of the plaintiff in each of them. Matt has represented clients on a variety of complex matters including non-competition and non-solicitation provisions of employment and separation agreements, discrimination, retaliation, professional licensure, sexual harassment, breach of duty of loyalty, unfair competition, and breach of contract.

Kai H. Richter: Kai attended University of Minnesota Law School, graduating *cum laude*. Kai has extensive consumer litigation experience, beginning with his time managing the Complex Litigation Division of the Minnesota Attorney General's office. He was integral to the afore-mentioned achievement of class certification and settlement in the *Hofstetter* case. Kai also has testified before the Minnesota House of Representatives Civil Law Committee regarding consumer enforcement litigation and other social justice matters. He was appointed as a 2013-14 Co-Chair for the Minnesota State Bar Association's Consumer Litigation Section.

Rachhana T. Srey: Rachhana graduated from William Mitchell College of Law *cum laude*. She has handled a variety of cases in her career and was a part of the trial team who won in the afore-mentioned *FTS* matter. Rachhana contributes to the National Employment Lawyers Association Class and Collective Action Committee's quarterly publication and has spoken nationally and locally on topics related to the FLSA and discovery in civil litigation.

Matthew C. Helland: Matt attended University of Minnesota Law School and graduated *magna cum laude*. He works out of the firm's San Francisco office and is well-versed in both California and Minnesota state law. Matt has worked on multiple large class actions in his career, involving a variety of issues, including wage and hour rights, WARN Act violations, breach of contract, and Truth in Lending Act claims.

David E. Schlesinger: David graduated from University of Minnesota Law School *cum laude*. He has since represented thousands of employees in cases involving discrimination, retaliation, breach of contract, unpaid wages, shareholder rights, FLSA, and non-competes and trade secrets. David, as first-chair, has tried and won cases in both trial and arbitration. He has also argued before the Minnesota Supreme Court. David teaches Practice and Professionalism at the University of Minnesota Law School.

Tim C. Selander: Tim received his J.D. from William Mitchell College of Law and has since litigated claims in federal and state courts, as well as arbitration. Tim has represented workers in disputes related to unpaid wages, overtime pay, commissions, and wrongful termination. Tim has been a frequent speaker at continuing legal education seminars and was recognized as a Rising Star in 2012 and a Super Lawyer in 2013.

Associates:

John G. Albanese: John attended Columbia School of Law. He is a member of the firm's consumer class action team and works primarily on Fair Credit Reporting Act cases. Prior to joining the firm, John worked as a law clerk for a magistrate judge in the Northern District of Illinois and at a class action firm in New York that represented employees and consumers.

G. Tony Atwal: Tony graduated from William Mitchell Law School in 2003. He has extensive appellate experience and has recently begun to focus on plaintiff class actions. Tony is a part of Nichols Kaster's wage and hour litigation team. Tony also teaches appellate briefing at William Mitchell.

Alexander M. Baggio: Alex attended University of Minnesota Law School and graduated *cum laude*. Alex focuses on class and collective actions, currently representing thousands of employees regarding commission payments, minimum wage, overtime, and improper meal and break deductions. Prior to working at Nichols Kaster, Alex clerked for the Honorable Gary Larson and Janet Poston of the Minnesota District Courts.

Rebekah L. Bailey: Rebekah also attended University of Minnesota Law School and graduated *magna cum laude*. She has significant experience in litigating complex class actions and had been involved in several of the firm's biggest consumer cases. She is also a board member for the Alumni Advisory Journal of Law & Inequality and has won an award for Excellence in Labor and Employment Law, ABA-BNA.

Daniel S. Brome: Daniel graduated from University of California, Berkeley, School of Law, and while in law school he worked with the California Labor Commissioner, served as the Editor-in-Chief of the Berkeley Journal of Employment and Labor Law, and as Director of the Workers' Rights Clinic. After law school, Daniel worked with a California law firm representing workers and unions in arbitrations and litigation. Daniel continues pursuing his passion for employment law at Nichols Kaster, working with the National Wage and Hour Litigation Team out of the San Francisco office.

Daniel C. Bryden: Dan graduated from University of Minnesota Law School, *cum laude*. Prior to joining the firm, Dan was an Assistant Attorney General at the Minnesota Attorney General's Office in the Civil Enforcement Group, and before that, was a partner at a Minneapolis law firm where he represented consumers, employees, and student loan borrowers in class actions. He has had a case recognized as a "Lawsuit of the Year" by Minnesota Law & Politics Magazine in 2007 and has been recognized as a "Rising Star." Dan is a member of the firm's Consumer Class Action team.

Reena I. Desai: Reena graduated from the University of Minnesota Law School *cum laude*. She has dedicated the majority of her career to helping thousands of employees recover unpaid wages and has also handled cases involving race and disability discrimination. Reena has extensive complex litigation experience and has spoken on several panels regarding employment and civil rights.

Kate Fisher: Kate attended University of St. Thomas School of Law as well, graduating *cum laude*. Kate has been dedicated to employment law since law school, and garnered recognition from St. Thomas and the Minnesota State Bar Association for her efforts while a student, winning the Dean's Award in Employment Law and Labor Law and the MSBA Labor & Employment Law Section Student Award.

Adam W. Hansen: Adam received his J.D. from University of Minnesota Law School and began his career in the judicial system clerking in the Minnesota Supreme Court and the United States Court of Appeals for the Eighth Circuit. He then moved to civil litigation, representing

clients in a variety of contexts, including discrimination, retaliation, harassment, whistleblower, breach-of-contract, severance, wage and hour disputes, and Fair Credit Reporting Act violations. Adam currently works out of Nichols Kaster's San Francisco office and works with the Wage and Hour Team.

Joe Hashmall: Joe graduated *cum laude* from Cornell Law School. Joe is a member of Nichols Kaster's consumer class action team. He also is a part of the consumer origination group, working to investigate and identify new areas in consumer litigation. Prior to joining Nichols Kaster, Joe clerked for President Judge Bonnie B. Leadbetter of the Pennsylvania Commonwealth Court and for the Honorable David J. Ten Eyck of the Minnesota District Court.

Jason P. Hungerford: Jason attended University of Minnesota Law School and graduated *magna cum laude*. Prior to joining Nichols Kaster, Jason practiced in Texas, litigating cases involving breach of contract, banking fraud, wrongful foreclosure, and consumer bankruptcy. Jason is now a member of Nichols Kaster's Whistleblower/Qui Tam team, and represents individual employees in a wide range of matters including harassment and discrimination.

Lucas J. Kaster: Lucas received his J.D. from Marquette University Law School, where he focused his coursework on litigation. Prior to joining Nichols Kaster, Lucas was the founding attorney of Kaster Law in Milwaukee, Wisconsin where he did criminal defense work. Now, Lucas works as a part of Nichols Kaster's individual rights team, focusing on aggressive advocacy, creative solutions and responsiveness to clients.

Janet Olawsky: Janet attended William Mitchell College of Law and graduated *magna cum laude*. Janet works on individual employee rights cases with Nichols Kaster, fighting unlawful employment conduct and discrimination. Prior to joining Nichols Kaster, Janet volunteered with the Innocence Project of Minnesota and served as a judicial law clerk for the Hon. Kevin A. Lund and Hon. Robert Birnbaum in Rochester, Minnesota. Janet is also a qualified neutral under Rule 114 of the Minnesota Rules of General Practice.

Anna P. Prakash: Anna graduated from Cornell Law School and began her career as a civil rights attorney for the United States Department of Education in Washington, D.C. Since joining Nichols Kaster in 2009, Anna has represented thousands of employees and consumers in collective and class actions under the Fair Labor Standards Act, Fair Credit Reporting Act, and state employment and consumer protection laws. She is a skilled civil litigator and has achieved many successes for her clients, including the aforementioned summary judgment victories in *Huff*, *Hart*, and *Clinicy* and the trial verdict in *FTS*.

Brittany Bachman Skemp: Brittany attended William Mitchell College of Law, graduating *magna cum laude*. She is part of Nichols Kaster's Wage and Hour Litigation team and focuses on class and collective actions. Prior to working as an associate at Nichols Kaster, Brittany clerked for Judge Thomas J. Kalitowski and Judge Jill Flaskamp Halbrooks of the Minnesota Court of Appeals. Brittany also serves as the community service director of the New Lawyers Section of the Hennepin County Bar Association.

Bonnie M. Smith: Bonnie attended University of Wisconsin Law School, graduating *cum laude*. She has won an unemployment benefits appeal, defeated summary judgment in a

pregnancy discrimination case, second-chaired an arbitration to hold an employer liable for breach of contract, and negotiated substantial settlements for clients in several cases. Bonnie has also been a contributor to an ABA subcommittee on the FMLA.

Brock J. Specht: Brock graduated from University of St. Thomas School of Law *magna cum laude*. Brock has experience litigating complex multi-million dollar lawsuits in numerous federal courts around the country and currently works with the firm's individual practice, assisting plaintiffs with claims such as retaliation, breach of contract, and whistleblower claims. Prior to joining the firm, Brock worked with a major Twin Cities law firm, and as a clerk for two judges on the Minnesota Court of Appeals. Brock also has worked as a Special Assistant State Public Defender, *pro bono*, and as an Adjunct Professor of Law at the University of St. Thomas School of Law.

Nicholas Thompson: Nick attended the University of Minnesota Law School and graduated in 2008. Prior to joining Nichols Kaster, Nick worked on personal injury and criminal cases. Currently, Nick is part of Nichols Kaster's Consumer Litigation Team. He focuses on the Fair Credit Reporting Act, fighting for people who have been denied opportunities due to credit reports and/or background checks.

Ashley Thronson: Ashley graduated from the University of Minnesota Law School *magna cum laude*. She is a member of Nichols Kaster's individual rights team, working on behalf of employees who have been treated unfairly. Prior to joining Nichols Kaster, Ashley interned with the Equal Employment Opportunity Commission, worked as a certified student attorney in the Housing Law Clinic, helped update the legal treatise *Minnesota Practice Series: Employment Law and Practice*, and completed an externship with the Hon. Ann D. Montgomery of the U.S.D.C. for the District of Minnesota.

Megan D. Yelle: Megan attended University of Minnesota Law School, graduating *magna cum laude*. She has experience in a variety of complex matters including commercial, professional liability, products liability and commercial contract litigation matters. Megan is now a member of Nichols Kaster's Consumer Class Action Team and advocates for consumers who have been victimized by unfair, deceptive, and unlawful trade practices. During law school, Megan participated in the Asylum Law Project helping recent immigrants to receive legal Ex 2asylum in the United States.

Staff Attorneys:

David J. Carrier: David attended University of St. Thomas School of Law. He is a member of Nichols Kaster's consumer class action team and works on litigation regarding unfair, deceptive and unlawful practices. Prior to joining Nichols Kaster, David clerked for the U.S. Attorney's Office for the District of Minnesota and the Ramsey County Attorney's Office.