

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**COLIN SPEER, on behalf of himself
and all similarly-situated individuals,**

Plaintiffs,

v.

Case No.: 8:14-CV-3035-RAL-TBM

WHOLE FOODS MARKET GROUP, INC.,

Defendant.

_____ /

**JOINT MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiff, COLIN SPEER (“Named Plaintiff”) and Defendant, WHOLE FOODS MARKET GROUP, INC. (“Defendant”), collectively referred to herein as the “Parties,” file this Joint Motion (“Joint Motion”), with incorporated Memorandum of Law, seeking an Order: (1) preliminarily approving the Settlement Agreement between Named Plaintiff, the putative class, and Defendant; (2) preliminarily certifying a class for settlement purposes only; (3) approving the form and manner of notice to the class; (4) scheduling a fairness hearing for the final consideration and approval of the Parties’ settlement; and, finally, (5) approving the settlement in a subsequent Order. In support of their Joint Motion, the Parties respectfully submit the following:

I. BACKGROUND AND OVERVIEW OF SETTLEMENT

On or about December 10, 2014 Named Plaintiff, Colin Speer, filed his class action lawsuit (the “FCRA Litigation”) asserting claims against Defendant under the Fair Credit Reporting Act on behalf of himself and on behalf of a proposed class of similarly situated individuals. Plaintiff filed his Amended Complaint on February 6, 2015 (*see* Doc. 14), and on

March 5, 2015 filed a Motion seeking Class Certification under Rule 23 (*See* Doc. 20). The Parties have since reached an agreement that, if approved by this Court, will resolve all claims of the Named Plaintiff and putative class members against Defendant.

The settlement provides for settlement payments to be made to approximately 20,000 class members. Defendant will create a non-reversionary common fund for Class Members consisting of \$802,720.00. The Class Members will not be required to take any action to receive a portion of the funds, making it a “claims paid” settlement. Members of the class will receive a *pro rata* gross amount of the settlement fund totaling approximately \$40.00. This gross amount is consistent with FCRA class action settlements that have been approved by other federal courts. If the requested amounts are granted for attorneys’ fees, administrative expenses, and a Class Representative service award, the parties anticipate that each class member will receive a net payment of approximately \$ 24.00. If any money remains in the fund after these distributions and after Class Members have had 60 days to cash their settlement checks, left over funds shall be paid as a *cy pres* donation to Whole Kids Foundation, a non-profit 501(c)(3) charity.¹ The proposed settlement is fair and reasonable, and should be granted preliminary approval by the Court.

A. Allegations included in Named Plaintiff’s Complaint

This is a putative class action brought by Plaintiff against Defendant under the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.* (“FCRA”). The lawsuit generally alleges that Defendant violated the FCRA by failing to comply with the FCRA’s disclosure and authorization requirements related to consumer reports procured for “employment purposes.” Specifically, the

¹ The Whole Kids Foundation is an organization dedicated to supporting schools and improving the nutrition and health of children. For more information see www.wholekidsfoundation.org.

lawsuit alleges that Defendant's inclusion of a liability waiver in the disclosure and/or authorization/consent document(s) presented to its applicants violated Section 604(b)(2)(A) of the FCRA, 15 U.S.C. § 1681b(b)(2)(A).

According to Plaintiff's First Amended Complaint, Defendant owns and operates grocery stores throughout the country selling high-end food products. (Doc. 14, ¶ 1). Plaintiff worked for Defendant in Tampa, Florida. (Doc. 14, ¶ 1). Defendant routinely obtains and uses information in consumer reports to conduct background checks on prospective employees. (Doc. 14, ¶ 2). Prior to working for Defendant, Plaintiff filled out a job application packet from Defendant that contained, among other things, two forms, including a "Consent and Release of Information Authorization" form (*see* Exhibit B to Amended Complaint, Doc. 14-1), and a "Disclosure Statement" (*see* Exhibit A to Amended Complaint, Doc. 14-2); (Doc. 14, ¶¶ 8-11; 20).

While the use of consumer report information for employment purposes is not *per se* unlawful, it is subject to strict disclosure and authorization requirements under the FCRA. (Doc. 14, ¶ 3). Plaintiff's Amended Complaint alleges Defendant violated 15 U.S.C. § 1681b(b)(2)(A)(i) by procuring consumer reports on Plaintiff and other putative class members for employment purposes without first making proper disclosures in the format required by the statute. (Doc. 14, ¶ 5). Specifically, Plaintiff alleged Defendant's application process violated the FCRA due to the inclusion of a liability waiver in its FCRA disclosure. (Doc. 14, ¶ 7). The first claim in the Amended Complaint is brought against Defendant under 15 U.S.C. § 1681b(b)(2)(A)(i). (Doc. 14, p. 10). The second claim in the Amended Complaint is brought under 15 U.S.C. § 1681b(b)(2)(A)(ii). (Doc. 14, p. 12).

Based on the foregoing alleged violations, Named Plaintiff asserted FCRA claims against Defendant on behalf of himself and a class of Defendant's employees and prospective employees. Named Plaintiff's Complaint, and Rule 23 Motion, sought to have certified the following class:

Proposed Class: All WHOLE FOODS MARKET GROUP, INC.'s ("Whole Foods") employees or prospective employees in the United States who were the subject of a consumer report that was procured by Whole Foods (or that Whole Foods caused to be procured), within five years of the filing of the complaint through the date of final judgment in this action.

B. Defendant's Defenses

Defendant asserted numerous defenses to the FCRA Litigation. Specifically, Defendant denied, and continues to deny, that it violated the FCRA with regard to the Named Plaintiff and/or any putative class members. Defendant asserted, and continues to assert, that inclusion of a liability release/waiver on its authorization/consent document, and not on its disclosure document did not, and does not, violate the FCRA, much less constitute a willful violation of the FCRA as is/was necessary to demonstrate liability in this case. Moreover, for example, Defendant asserted, and continues to assert, that Named Plaintiff and the alleged putative class members lack standing to assert the instant claims, and that Named Plaintiff's and the alleged putative class members' claims are barred by the applicable statute of limitations.

As part of the Settlement Agreement, Defendant specifically denies that it engaged in any wrongdoing, does not admit or concede any actual or potential fault, wrongdoing or liability in connection with any facts or claims that have been alleged against it in the Action, denies that the claims asserted by Named Plaintiff are suitable for class treatment other than for settlement purposes, and denies that it has any liability whatsoever. The Settlement Agreement and this Joint Motion are not, and shall not, in any way be deemed to constitute an admission or evidence of any wrongdoing or liability on the part of Defendant, nor of any violation of any federal, state,

or municipal statute, regulation, principle of common law or equity. However, Defendant agreed to resolve the FCRA Litigation through settlement because of the substantial expense of litigation, the length of time necessary to resolve the issues presented in this case, the inconveniences involved, and the disruption to its business operations.

C. Procedural Background

To initiate the action, Named Plaintiff filed his Complaint, Amended Complaint, and Rule 23 Motion for Class Certification. Plaintiff also propounded class-wide discovery. Defendant filed a Motion to Dismiss that was denied, and then filed its Answer and Affirmative Defenses. During the pendency of the FCRA Litigation, the Parties exchanged preliminary documents and information, including headcount data on the putative class members in the proposed Settlement Class (approximately 20,000 people), information on Defendant's number of stores, and the FCRA disclosure and authorization/consent forms received by the Named Plaintiff. Prior to the deadline for Defendant to respond to Named Plaintiff's Motion for Class Certification, the Parties filed a Motion seeking a stay from the Court pending mediation. The Parties' Motion to Stay was granted (*see* Doc. 49), and mediation was held on June 29, 2015.

D. Settlement Negotiations and Mediation

The Parties attended an all-day mediation before a highly-respected mediator, Carlos J. Burruezo, on June 29, 2015. As explained in the mediation report filed by Mr. Burruezo with the Court (*see* Doc. 52), a framework for settlement was reached at mediation. The parties left mediation and continued to review and assess the framework to determine whether it is a workable solution given the issues in the case. A final agreement to settle was reached on July 8, 2015 and Mr. Burruezo informed the Court of same. Pursuant to Local Rule 3.08(b), based on

the Parties' agreement, the Court entered a 60 day Order of Dismissal on July 8, 2015. (*See* Doc. 53).

As a result of the agreement reached, the Parties agreed to enter into a settlement agreement (the "Settlement Agreement") attached hereto as Exhibit A, for which they now seek Court approval. The Parties have agreed to fully and finally compromise, settle, and resolve any and all demands, claims, damages, and causes of action, present and future, arising from, related to, or based upon the FCRA Litigation as to the Named Plaintiff and all putative class members.

Based on the information available, the Parties hereby represent and warrant that a list of the members of the below-defined Settlement Class will be provided to the settlement administrator, Rust Consulting, upon filing of the instant Motion. The Parties have confirmed that the Settlement Class constitutes all the Defendant's hires encompassed by the proposed Settlement Class definition. Importantly, this settlement does not preclude any of the individual Settlement Class members from opting-out of the class and pursuing their own claims, should they be so inclined.

II. THE PROPOSED SETTLEMENT

A. The Proposed Settlement Class

The Settlement Agreement defines the proposed Settlement Class as follows: "All Whole Foods Market Group, Inc., hires who received the Disclosure Statement form and Consent and Release of Information Authorization form, or similar form(s), between December 4, 2009 and November 5, 2012, **and which Defendant utilized to procure a consumer report for employment purposes,**" (referenced herein as the "Settlement Class").

B. Benefits to the Settlement Class and Named Plaintiff

The Settlement Agreement, if approved, will resolve all claims of the Named Plaintiff and all members of the Settlement Class in exchange for Defendant's agreement to pay \$802,720.00 to the Common Fund. 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 negotiate attorneys' fees until after all terms related to the size of the common settlement fund, and the class definitions, were agreed upon.

With the Settlement Class comprised of approximately 20,000 members, each Settlement Class member who does not opt-out of the settlement will receive a gross settlement payment of \$40.00. This a "claims paid" settlement. Class members do not have to submit claim forms to receive a share of the settlement proceeds. Rather, all Class members who do not opt out will simply receive checks after final approval. If settlement checks are not cashed, the Settlement Agreement provides for a donation to a cy pres recipient. If the requested amounts are granted for attorneys' fees, administrative expenses, and a Class Representative service award, the parties anticipate that each Class Member will receive a net payment of approximately \$24.00.

The Named Plaintiff shall have, in addition to the claim provided him as a member of the Settlement Class, an additional claim in the sum of \$2,500 as an Incentive Payment for the services provided to the Settlement Class in connection with the prosecution of this action. 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. Counsel is authorized to file an unopposed petition for up to one-third of the fund as attorneys' fees and costs. 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.

C. Administration of Notice

The Parties have agreed to utilize a private, third-party vendor, Rust Consulting, to administer notice in this case. The Parties have also agreed that all fees and expenses charged by the Settlement Administrator shall be paid from the Common Fund.

Within ten (10) business days of the Court's preliminary approval of the Settlement Agreement, the Settlement Administrator shall mail the Notice Form, attached to the Settlement Agreement as Exhibit A, by U.S. mail to all Settlement Class members. The Notice Form shall apprise the Settlement Class of the existence of the Settlement Agreement and of the Settlement Class members' eligibility to recover their pro-rata portion of the settlement proceeds, and will include an explanation of the "claims paid" process, as well as an explanation as to what happens if the settlement checks are not timely cashed. Namely, the funds will be made part of a donation to a cy pres recipient.

The Notice shall inform Settlement Class members of: (1) the material terms of the Settlement Agreement; (2) their right to object and how to do so; (3) their right to exclude themselves by opting out and how to do so within 60 days; (4) that they will be bound by the Settlement Agreement if they do not opt out; (5) the date, time and location of the final fairness hearing scheduled by the Court (to be held at least 90 days after Defendant files the required CAFA notices); and (6) that the Court retains the right to reschedule the final fairness hearing without further notice.

The Settlement Agreement provides that Class members who choose to opt out or object to the settlement may do so within 60 days of the Notice mailing date. If the Court grants final approval of the settlement, Defendant will transfer the full amount of the settlement Common Fund to the Settlement Administrator within ten (10) business days of the Court's Order.

Settlement checks will be mailed to all Class members within ten (10) business days after receipt by the Settlement Administrator of the Common Fund monies. To the extent any money remains in the fund after these distributions and after Class members have had 60 days to cash their settlement checks, such monies shall be paid as a cy pres donation to The Whole Kids Foundation, subject to Court approval.

D. Attorneys' Fees and Expenses

Pursuant to the Settlement Agreement, Class Counsel is authorized to petition the Court for up to one-third of the fund as attorneys' fees and costs. Class Counsel will file a separate motion seeking approval for fees and costs. Defendant agrees to not oppose the amount of fees and costs sought by Class Counsel, up to the percentage identified herein.

E. Class Action Fairness Act Notice

Defendant will cause notice of the proposed settlement to be served upon the appropriate Federal and State officials, as required by the Class Action Fairness Act of 2005 ("CAFA"). Defendant will timely serve upon the appropriate State official of each State in which a Settlement Class member resides and the United States Attorney General, a notice of the proposed settlement, in accordance with 28 U.S.C. § 1715, and will file a notice of compliance with the Court. This must be done within ten days of the filing of the Parties' proposed Settlement Agreement in order to satisfy CAFA requirements.

III. PRELIMINARY CLASS CERTIFICATION

As part of preliminary approval of the settlement, the Parties respectfully seek certification of the Settlement Class for the purposes of settlement, as described above.

A. The Settlement Class Meets the Requirements of Rule 23(a)²

A court can certify a settlement class where the proposed class and proposed class representatives meet the four prerequisites in Federal Rule of Civil Procedure 23(a) – numerosity, commonality, typicality, and adequacy of representation – and one of the three requirements of Federal Rule of Civil Procedure 23(b). Here, pursuant to Rules 23(a) and 23(b)(3), Named Plaintiff seeks certification of a defined settlement class (the “Settlement Class”) to consist of:

All Whole Foods Market Group, Inc. hires who received the Disclosure Statement form and Consent and Release of Information Authorization form at issue in this case, or similar form(s), between December 4, 2009 and November 5, 2012, and which Defendant utilized to procure a consumer report for employment purposes.

Certification of a class under Federal Rules of Civil Procedure 23(a) and (b) is subject to a slightly different analysis where certification is contested than where, as here, a proposed settlement is under review. “In its preliminary assessment of the fairness of the proposed agreement, the Court must take care not to intrude upon the private settlement negotiations of the parties any more than is necessary to determine that the agreement is not the result of fraud or collusion, and that it is fair and adequate in light of the potential outcome and the costs of litigation.” *Smith v. Ajax Magnethermic Corp.*, 2007 U.S. Dist. LEXIS 85551, at *14, 17-18 (N.D. Ohio Nov. 6, 2007); *see also La. Wholesale Drug Co. v. Abbott Labs. (In re Terazosin Hydrochloride Antitrust Litig.)*, 2005 U.S. Dist. LEXIS 46189, at *14 (S.D. Fla. Mar. 17, 2005)

² Defendant does not challenge certification of the Settlement Class for the purpose of settlement; however, Defendant does not concede that certification is appropriate under Federal Rule of Civil Procedure 23 for any other purpose.

(“All proposed classes must meet the requirements of Rule 23, but the fact of settlement can have an effect on the analysis.”)

The proposed Settlement Class here meets the Rule 23(a) prerequisites of numerosity, commonality, typicality, and adequacy of representation.

1. Numerosity

The proposed class of approximately 20,000 individuals is “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). The Court may find the numerosity factor satisfied if the Court concludes it would be difficult, inconvenient, and wasteful to attempt to join numerous plaintiffs into one case, using permissive joinder. “While Rule 23 does not specify an exact number necessary to satisfy numerosity, the Eleventh Circuit has indicated that having more than 40 class members is generally enough to satisfy the rule.” *Klewinowski v. MFP, Inc.*, 2013 U.S. Dist. LEXIS 130591, at *4 (No. 8:13-cv-1204-T-33TBM, M.D. Fla. Sept. 12, 2013) (citing *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986)).

Further, the nature and size of the individual claims also make joinder impracticable. Under the FCRA if the Court determines that Defendants willfully failed to comply with the FCRA, as alleged in Named Plaintiff’s Complaint, Defendants are liable for statutory damages (ranging between \$100 and \$1,000), and attorneys’ fees and costs. *See* 15 U.S.C. § 1681n.³ As such, most of the members of the proposed class do not have claims which are sufficiently large for individuals to pursue on their own. Courts have found modest claims such as these are well suited for class action. *Reardon v. ClosetMaid Corp.*, 2013 U.S. Dist. LEXIS 169821 (W.D. Pa. Dec. 2, 2013) (FCRA class certification granted based on nearly identical claims); *see also* *Alberts v. Nash Finch Co.*, 245 F.R.D. 399 (D. Minn. 2007) (small size of individual claims

³ Punitive damages are also available in certain instances but are not at issue here.

considered in certifying class action for individuals in a WARN Act action). Additionally, the judicial resources required to remedy the potential 20,000 FCRA claims against Defendant, as could be at issue in this lawsuit, would be tremendous and wasteful. Therefore, the Settlement Class of approximately 20,000 persons here is sufficiently numerous.

2. Commonality

The United States Supreme Court recently clarified that to satisfy the commonality requirement of Rule 23(a), the plaintiff must “demonstrate that the class members ‘have suffered the same injury.’” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011) (citing *Gen. Tel. Co. of the Southwest v. Falcon*, 457 U.S. 147 (1982)). Courts in this Circuit have applied *Dukes* to the commonality analysis, but caution that *Dukes* does not set an impossible standard for commonality. “[T]his prerequisite does not mandate that all questions of law or fact be common; rather, a single common question of law or fact is sufficient to satisfy the commonality requirement, as long as it affects all class members alike.” *Klewinowski*, 2013 U.S. Dist. LEXIS 130591, at *5-6 (internal quotations and citation to *Dukes*, 131 S. Ct. at 2556, and others omitted); see also *Waters v. Cook’s Pest Control, Inc.*, 2012 U.S. Dist. LEXIS 99129, at *26-27 (N.D. Ala. July 17, 2012) (citing *Williams v. Mohawk Indus.*, 568 F.3d 1350, 1355 (11th Cir. 2009)).

In the instant case, the essence of Named Plaintiff’s claims posit that Defendant failed to provide sufficient notice to class members, pursuant to the requirements of the FCRA. Determining liability on these claims will require resolving numerous common questions of fact, including, but not limited to: (1) whether Defendant’s “Consent and Release of Information” form and its “Disclosure Statement” satisfy the notice and authorization requirements under 15 U.S.C. § 1681b(b)(2)(A); (2) whether the inclusion of a liability waiver in the Consent and

Release of Information form violates the FCRA; and, (3) whether Defendant acted willfully in its failure to satisfy the requirements under the FCRA, which is relevant to damages. *See* 15 U.S.C. § 1681n and § 1681s; *see also Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 675 (D. Md. 2013) (granting final certification for the Settlement classes under the FCRA).

Over the years numerous FCRA classes have been certified in cases in which common documents or forms have been provided to class members, or when a defendant's purportedly uniform policies and procedures impacted class members in the same way. In such circumstances, courts have found a single common question of law or fact will suffice. *See, e.g. Murray v. E*Trade Fin. Corp.*, 240 F.R.D. 392, 396 (N.D. Ill. 2006) (finding commonality and certifying FCRA class when all class members received the same mailer); *Murray v. New Cingular Wireless Servs., Inc.*, 232 F.R.D.295 (N.D. Ill. 2005) (same); *Walker v. Calusa Investments, LLC*, 244 F.R.D. 502 (S.D. Ind. 2007) (same); *Kudlicki v. Capital One Auto Fin., Inc.*, 241 F.R.D. 603 (N.D. Ill. 2006) (same); *see also Serrano v. Sterling Testing Systems, Inc.*, 711 F. Supp. 2d 402, 411 (E.D. Pa. 2010) (finding commonality where class members sought statutory damages under the FCRA and the case turned on whether the defendants' alleged conduct was willful); *Campos v. ChoicePoint, Inc.*, 237 F.R.D. 478, 485 (N.D. Ga. 2006) (finding commonality and certifying FCRA class when defendant consumer reporting agency consistently and as a matter of policy failed to provide full file disclosures to consumers who requested them); *Summerfield v. Equifax Info. Servs. LLC*, 264 F.R.D. 133, 139 (D.N.J. 2009) (finding commonality and certifying FCRA class when consumer reporting agency sent allegedly misleading form letter to consumers who disputed information on their reports); *Chakejian v. Equifax Info. Servs. LLC*, 256 F.R.D. 492 (E.D. Pa. 2009) (same); *Gillespie v. Equifax Info. Servs., LLC*, 05 C 138, 2008 WL 4614327, *4 (N.D. Ill. Oct. 15, 2008) (finding commonality

and certifying FCRA class when consumer reporting agency's standard procedure allegedly caused inaccurate reporting); *Williams v. LexisNexis Risk Mgmt. Inc.*, 2007 WL 2439463 (E.D. Va. Aug. 23, 2007) (finding commonality and certifying FCRA class when claim revolved around consumer reporting agency's procedures for notifying class members that adverse public record information about them was being reported).

The claims of the Settlement Class members are based on the same set, or a similar set, of operative facts. An award of damages to one Settlement Class member for a violation of the FCRA would justify the award of damages to the remaining hires in the same Settlement Class on the same legal theory, subject to the same defenses. Even if the award of damages were to vary slightly among class members (which it does not), the Eleventh Circuit has held that the presence of individualized damages does not prevent a finding of commonality. *See Allapattah Serv., Inc. v. Exxon Corp.*, 333 F. 3d 1248, 1261 (11th Cir. 2003). Accordingly, the requirement of commonality has been met.

3. Typicality is satisfied

Under Federal Rule of Civil Procedure 23(a)(3), typicality does not require identical claims:

The focus of Rule 23(a)(3) typicality is whether the class representative's interests are aligned with the proposed class so as to stand in their shoes for the purposes of the litigation and bind them in a judgment on the merits. The typicality requirement is generally met if the class representative and the class members received the same unlawful conduct, irrespective of whether the fact patterns that underlie each claim vary.

“A class representative must possess the same interest and suffer the same injury as the class members in order to be typical under Rule 23(a)(3). Typicality measures whether a sufficient nexus exists between the claims of the named representatives and those of the class at large.” *Rosario-Guerro*, 265 F.R.D. at 627 (citing *Busby v. JRHBW Realty, Inc.*, 513 F. 3d 1314,

1322 (11th Cir. 2008). The typicality requirement “is said to limit class actions to those fairly encompassed by the named plaintiffs’ claims.” *GTE Co. of the Northwest v. EEOC*, 446 U.S. 318, 330 (1980).

In this case, the legal theory underlying the claims of the putative class members is virtually identical to the Named Plaintiff’s FCRA claims. Here, all of the claims are based on a substantially similar, if not identical, set of facts and are grounded in the same legal theories; namely, that Defendant’s FCRA form(s) failed to satisfy the requirements under the FCRA. The Class Representative’s claims are “typical” of the Class and, consequently, the typicality requirement of Rule 23(a)(3) has been met. *See* FED. R. CIV. P. 23(a)(3); *see also Reardon v. Closetmaid Corp.*, 2013 WL 6231606, at *16 (W.D. Pa. Dec. 2, 2013) (finding typicality with regards to pre-adverse action notice).

4. Adequacy of Representation

The fourth requirement of Rule 23(a) is that “the representative parties will fairly and adequately protect the interests of the class.” FED. R. CIV. P. 23(a)(4). “This requirement ‘encompasses two separate inquiries: (1) whether any substantial conflicts of interest exist between the representatives and the class; and (2) whether the representatives will adequately prosecute the action.’” *Battle v. Law Offices of Charles W. McKinnon, P.L.*, 2013 U.S. Dist. LEXIS 29263, at *10 (S.D. Fla. Mar. 5, 2013) (*citing Busby v. JRHBW Realty, Inc.*, 513 F.3d 1314, 1323 (11th Cir. 2008)).

Here, the adequacy-of-representation requirement has been met. The Named Plaintiff, Colin Speer, is adequate given that his interests are equivalent to those of the Settlement Class. There is also no obvious conflict of interest between the Named Plaintiff and the Settlement Class. The Named Plaintiff has the same interest as the Settlement Class members in prosecuting

his claims and, in fact, participated actively in the FCRA Litigation by assisting Class Counsel in developing the facts necessary to file the Complaint, and by appearing at mediation and supporting the claims of his fellow Settlement Class members.

With respect to Class Counsel, the proposed attorneys have extensive class and collective action experience, as detailed in the declarations of Luis A. Cabassa and Brandon J. Hill of Wenzel Fenton Cabassa, P.A., previously filed in this case. (Decl. of L. Cabassa, Doc. 34; Decl. of B. Hill, Doc. 20-3). When, as here, the Parties are represented by counsel who have significant experience in class-action litigation and settlements and in FCRA cases, and no evidence of collusion or bad faith exists, the judgment of the litigants and their counsel concerning the adequacy of the settlement is entitled to deference. *Thacker v. Chesapeake Appalachia, L.L.C.*, 695 F. Supp. 2d 521, 532-33 (E.D. Ky. 2010) *aff'd sub nom. Poplar Creek Dev. Co. v. Chesapeake Appalachia, L.L.C.*, 636 F.3d 235 (6th Cir. 2011) (“in deciding whether a proposed settlement warrants approval, the informed and reasoned judgment of plaintiffs’ counsel and their weighing of the relative risks and benefits of protracted litigation are entitled to great deference”); *see, e.g., UAW v. Ford Motor Co.*, 2008 WL 4104329 at *26 (E.D. Mich. August 29, 2008) (“[t]he endorsement of the parties’ counsel is entitled to significant weight, and supports the fairness of the class settlement.”).

Proposed Class Counsel has represented Rule 23 classes in other cases. For example, the undersigned were recently appointed as co-class counsel in another nationwide FCRA case styled *Brown, et al. v. Lowe’s Companies, Inc., et al.*, Case No.: 5:13-CV-00079-RLV-DSC, currently pending in the United States District Court for the Western District of North Carolina. Additionally, Mr. Cabassa and Mr. Hill have demonstrated diligence in pursuit of class claims here. They already filed a motion seeking class certification, propounded class wide discovery,

and obtained a favorable ruling on Defendant's Motion to Dismiss. Counsel experienced in plaintiffs' representation in class actions is generally considered adequate under Rule 23(a)(4) in this Circuit. *See Waters*, 2012 U.S. Dist. LEXIS 99129, at *28 (approving class counsel as adequate where "Plaintiffs' attorneys have demonstrated extensive experience as litigators in federal court class action litigation."). Thus, Plaintiff's proposed Class Counsel satisfied Rule 23.

B. The Settlement Class Meets the Requirements of Rule 23(b)(3)

Under Rule 23(b)(3), a proposed class must satisfy two factors: predominance and superiority. As discussed below, the proposed Settlement Class meets the requirements of Federal Rule of Civil Procedure 23(b)(3) because common questions of law or fact between the Parties predominate over individual questions, and class action is the best available method for adjudicating this controversy.

1. Predominance

Predominance is governed by an analysis of whether liability may be resolved on a class-wide basis. "Under Rule 23(b)(3) it is not necessary that all questions of law or fact be common, but only that some questions are common and that they predominate over the individual questions . . . In essence, the Court must determine whether there are common liability issues which may be resolved efficiently on a class-wide basis." *Battle*, 2013 U.S. Dist. LEXIS 29263, at *10-11 (*internal citations omitted*). Though not a determination on the merits, a Rule 23(b)(3) analysis prevents the class from degenerating into a series of individual trials. *Andrews v. AT&T*, 95 F.3d 1014, 1023 (11th Cir. 1996).

Here, common questions of law and fact predominate. The central common issues in this case are whether Defendant's FCRA forms satisfy the notice and authorization requirements

under the FCRA and, if not, whether Defendant's failure to comply with the FCRA was willful. These common issues are the most important issues in the case, and can be decided uniformly for all Settlement Class members in broad strokes. Thus, class certification is appropriate. *See Reardon v. Closetmaid Corp.*, 2013 WL 6231606, at *18 (stating "[t]he fact that [defendant] may raise distinct factual defenses as to some members of [the class] based on the different reasons for which [defendant] allegedly declined to hire different [class] members is not fatal to the predominance requirement's fulfillment.").

2. Superiority

The Court must also consider whether the superiority requirement has been met. In making this determination, the Court may consider, among other factors: (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action. FED. R. CIV. P. 23(b)(3).

Superiority is met with regard to these first two factors under the Federal Rule of Civil Procedure 23(b)(3) analysis. Given the low amount of damages for members of the Settlement Class in this case and the fact that there are common issues shared by the Settlement Class members, the individual interest in controlling the case through separate actions is relatively low. *See Kizer*, 2012 U.S. Dist. LEXIS 63795, at *20 ("Given the small amount of damages for most class members in this case and the fact that there are common issues shared by the class members, the individual interest in controlling the case through separate actions is relatively low.").

Furthermore, concentrating the litigation and settlement of this action in this forum is in the interest of judicial economy. “Separate actions by each of the class members would be repetitive, wasteful, and an extraordinary burden on the courts.” *In re Checking Account Overdraft Litig.*, 275 F.R.D. 666, 679 (S.D. Fla. 2011). Defendant’s hires at issue in this Settlement Class come from stores in various states/regions of the country. So, rather than having separate lawsuits filed in different parts of the country in different courts by different putative class members, the Settlement Agreement -- if approved -- will instead allow all claims by the Settlement Class to be resolved in one case. Finally, under the Federal Rule of Civil Procedure 23(b)(3) superiority analysis, since the Court is asked to certify this action for settlement purposes only, to approve the Settlement Class it would not need to determine whether the class would be manageable for litigation purposes. *Kizer v. Summit Partners, L.P.*, 2012 U.S. Dist. LEXIS 63795, at *21 (E.D. Tenn. May 7, 2012) (approving class settlement under superiority analysis where “given that this matter did not go to trial, concerns regarding management of the class action are minor”).

Hence, the superiority analysis under Federal Rule of Civil Procedure 23(b)(3) is met. *See Smith*, 2007 U.S. Dist. LEXIS 85551, at *12-14 (finding superiority under Rule 23(b)(3)); *Kizer*, 2012 U.S. Dist. LEXIS 63795, at *20-21 (same); *Jankowski v. Castaldi*, No. 01 Civ. 164 (SJF)(KAM), 2006 WL 118973, at *4 (E.D.N.Y. Jan. 13, 2006) (finding superiority where “the proposed class members are sufficiently numerous and seem to possess relatively small claims unworthy of individual adjudication due to the amount at issue). Concentrating all the potential litigation concerning the FCRA rights of Named Plaintiff and the Settlement Class in this Court will avoid a multiplicity of suits while also conserving judicial resources and the resources of the

Parties. Thus, this proposed settlement is the most efficient means of resolving the FCRA claims of the Named Plaintiff and Settlement Class members.

C. The Class Notice Meets the Requirement of Rule 23(c)

1. Contents of Notice

The Parties submit that the proposed Notice and Official Notice Form (hereinafter “Class Notice”), a copy of which is attached to the Settlement Agreement (Ex. A) as Exhibits A and B, meet the requirements of Federal Rule of Civil Procedure 23(c)(2)(B). That rule, in pertinent part, provides as follows:

Under Federal Rule of Civil Procedure 23(c)(2)(B), the notice must concisely state in plain, easily understood language:

- (i) the nature of the action;
- (ii) the definition of the class certified;
- (iii) the class claims, issues, or defenses;
- (iv) that a class member may enter an appearance through an attorney if the member so desires;
- (v) that the court will exclude from the class any member who requests exclusion;
- (vi) the time and manner for requesting exclusion; and
- (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

The proposed Class Notice satisfies each of the foregoing requirements. The Class Notice summarizes the nature of the pending FCRA Litigation and the Settlement Agreement’s essential terms, and provides each Settlement Class member with an individualized, projected gross settlement payment, exclusive of attorneys’ costs and fees. The Class Notice further discusses the nature of the action, describes the Settlement Class definition, and informs Settlement Class members of the Class claims and the Parties’ contentions and defenses. The Class Notice also states that a Settlement Class member may enter an appearance through counsel. The right of the Settlement Class members to exclude themselves, and the time,

manner, and process for doing so, is prominently detailed in the Class Notice. The Class Notice also explains in clear terms that the Agreement, when approved, will be binding on all members of the Settlement Class who do not exclude themselves. The Class Notice also appraises the Class, among other things, that complete information regarding the Settlement Agreement is available upon request from Class Counsel. In addition, the Class Notice informs the Settlement Class of the request for the approval of Class Counsel's attorneys' fees to be paid from the common fund. *See* FED. R. CIV. P. 23(h).

2. Manner of Notice

As to the manner of giving notice, Federal Rule of Civil Procedure 23(c)(2)(B) provides, in pertinent part, that, “[f]or any class certified under Rule 23(b)(3) the Court must direct to class members the best notice practicable under the circumstances including individual notice to all members who can be identified through reasonable effort.” An individual mailing to each class member’s last known address has been held to satisfy the “best notice practicable” test. *Eisen v. Carlisle & Jacquelin et al.*, 417 U.S. 156 (1974) (noting that individual mailings satisfy Rule 23(c)(2)).

The Settlement Agreement provides that a Court-approved notice shall be mailed to the last known address of each Settlement Class member, as reflected in Defendant’s records, or as instructed by the Settlement Class member through Class Counsel. The mailing and the fairness hearing will be timed in compliance with CAFA so that the members of the Settlement Class will have not less than 90 days from the date of delivery of the mailing to object to the Settlement Agreement and to appear by counsel. *See* 28 U.S.C. § 1715(d) (requiring fairness hearing no less than 90 days after service on officials). In the case of any returned envelopes, Defendant will forward these envelopes to such corrected addresses as the Claims Administrator may otherwise

obtain based on a reasonable search. The Parties submit that giving notice in this manner satisfies the “best notice practicable” test.

D. The Settlement is Fair, Adequate, and Reasonable

In determining whether a proposed settlement is fair, adequate and reasonable, the Court should consider several factors, including: (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate, and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved. *Waters*, 2012 U.S. Dist. LEXIS 99129, at *33 (*citing In re CP Ships Ltd. Securities Litigation*, 578 F.3d 1306, 1317-18 (11th Cir. 2009)). “Preliminary approval is appropriate where the proposed settlement is the result of the parties’ good faith negotiations, there are no obvious deficiencies and the settlement falls within the range of reason. Settlement negotiations that involve arm’s length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness.” *In re Checking Account Overdraft Litig.*, 2012 U.S. Dist. LEXIS 56115, at *51-52 (*citations and quotations omitted*).

As set forth above, continuing the FCRA Litigation would have been complicated, protracted, and expensive. The risk of the Named Plaintiff being unable to establish liability and damages was also present because of the numerous defenses asserted by Defendant. Because this case settled not long after filing, Named Plaintiff had yet to survive class certification, and summary judgment. Each of these phases of litigation presented serious risks, which the settlement allows Named Plaintiff and the Settlement Class to avoid. *See, e.g. In re Painewebber Ltd. P’ships Litig.*, 171 F.R.D. 104, 126 (S.D.N.Y. 1997) (“Litigation inherently involves risks.”).

Courts reviewing the issue of fairness have favored settlements that allow even partial recovery for class members where the results of suits are uncertain. *Murray v. GMAC Mortg. Corp.*, 434 F.3d 948, 952 (7th Cir. 2006) (“Risk that the class will lose should the suit go to judgment on the merits justifies a compromise that affords a lower award with certainty.”); *see In re Mexico Money Transfer Litigation*, 267 F.3d 743 (7th Cir. 2001); *Pinsker v. Borders Group, Inc. (In re BGI, Inc.)*, 465 B.R. 365, 379 (Bankr. S.D.N.Y. 2012) (approving class settlement with 17% cap on total liability, on grounds that “Class Members would have received nothing if they were not successful. Therefore, it is reasonable for the Class Members to take the bird in the hand instead of the prospective flock in the bush”) (citations omitted); *Kizer*, 2012 U.S. Dist. LEXIS 63795, at *23-24 (approving class settlement awarding approximately 30% of possible recovery); *Smith*, 2007 U.S. Dist. LEXIS 85551, at *15 (approving class settlement where, “Plaintiffs concede that their case against the [] Defendants is not a sure success”).

In the FCRA context, the gross *pro rata* Settlement Class member recovery of \$40.00 in this settlement is in line with per class member settlement amounts in similar cases under the FCRA. *See, e.g. 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); *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. 3:07-cv-469, Order Granting Final Approval (E.D. Va. May 1, 2009) (ECF No. 39) (approving settlement providing for \$54 gross amount per class member).

The Settlement therefore is within the range of other large-scale FCRA class action cases. The Settlement was reached after contentious litigation, as well as after an all day mediation that was followed by a series of post-mediation settlement discussions. Defendant's deadline to respond to Named Plaintiff's Motion for Class Certification was also looming as the Court Ordered litigation stay was about to expire.

On one hand, there is a chance that Defendant (if found to be liable) could be assessed a judgment for between \$100 - \$1,000 to each member of the Settlement Class while, on the other hand, the Settlement Class, if unsuccessful, could receive nothing if Defendant prevailed. Under the Parties' Settlement Agreement the Settlement Class members can quickly realize a significant portion of their possible FCRA claims from the Settlement Fund, even if the amount is slightly less than the minimum that could have been recovered through successful litigation. Likewise, Defendant caps its exposure at less than the minimum it could owe to each Settlement Class member if it were to lose at trial, in addition to avoiding protracted litigation and a trial which would involve significant time and expense for all Parties. The Named Plaintiff supports the Settlement. Class Counsel believes that the bulk of the other members of the Settlement Class will have a favorable reaction to the Settlement and not object to it once they have been advised of the settlement terms through a Court-approved certification and settlement notice.

IV. CONCLUSION

The Agreement is in the best interest of the Parties and is fair and reasonable to all concerned. **WHEREFORE**, the Parties respectfully request that the Court enter an order: (1) preliminarily approving the Agreement between Named Plaintiff, on his own behalf and on behalf of the Settlement Class of similarly situated applicants to, and current and former employees of Defendant; (2) preliminarily certifying the above-described Settlement Class for settlement purposes; (3) approving the form and manner of Notice to Class and the right to Object to the Agreement; (4) scheduling a Fairness Hearing for the Final Consideration and approval of the Agreement; and (5) finally approving the settlement in a subsequent Order.

Respectfully submitted this 14th day of September, 2015.

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of September, 2015, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which sent notification of this filing to:

Michael H. Kestenbaum
Luks, Santaniello, Petrillo & Jones
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Tampa, FL 33602
Email Address: mkestenbaum@ls-law.com
Attorney For: Whole Foods

/s/Brandon J. Hill
BRANDON J. HILL

EXHIBIT A

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**COLIN SPEER, on behalf of himself
and all similarly-situated individuals,**

Plaintiffs,

v.

Case No.: 8:14-CV-3035-RAL-TBM

WHOLE FOODS MARKET GROUP, INC.,

Defendant.

_____ /

SETTLEMENT AGREEMENT

I. Introduction

This Settlement Agreement (“Agreement”) is made and entered into this ____th day of September 2015, by and between Plaintiff, COLIN SPEER (hereinafter “Plaintiff” or the “Class Representative”), on his own behalf and on behalf of the Settlement Class defined below and described herein, and WHOLE FOODS MARKET GROUP, INC. (hereinafter referred to as “Defendant”).

II. Recitals

A. Plaintiff has brought the above-captioned lawsuit in the U.S. District Court for the Middle District of Florida (hereinafter referred to as the “Action”). Plaintiff brings the Action as a class action on behalf of all hires of Defendant who executed an FCRA Disclosure and/or Consent form containing a liability release, and for whom, on the basis of such form, Defendant procured or caused to be procured consumer reports, as defined by the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (“FCRA”), between December 4, 2009 and November 5, 2012, inclusive (the “Class,” and all persons fitting this description will hereinafter be described as “Class Members”).

B. The Action generally alleges that Defendant violated the FCRA by failing to

comply with the FCRA's disclosure and authorization requirements related to consumer reports procured for "employment purposes." Specifically, the Action alleges that Defendant's inclusion of a liability waiver in the disclosure and/or consent/authorization document violated Section 604(b)(2)(A) of the FCRA, 15 U.S.C. § 1681b(b)(2)(A).

C. Defendant denies that it engaged in any wrongdoing, does 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 it in the Action, denies that the claims asserted by Plaintiff are suitable for class treatment other than for settlement purposes, denies that it has any liability whatsoever, but has entered into 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 its business operations. This Agreement is not, and shall not, in any way be deemed to constitute an admission or evidence of any wrongdoing or liability on the part of the Defendant, nor of any violation of any federal, state, or municipal statute, regulation, principle of common law or equity.

D. The attorneys representing the Settlement Class defined below are experienced in litigating class action claims of the type involved in this Action.

E. The parties to this Agreement and their respective attorneys of record, taking into account the risks, uncertainties, delay, and expense involved in the Action, as well as other relevant considerations, have concluded that it is in the best interests of all parties and the potential class to compromise and fully and finally settle this Action in the manner and upon the terms and conditions hereinafter set forth. The parties to this Agreement intend that this settlement will end and encompass all pending, threatened, or possible litigation and/or claims against Defendant that arise or relate to the Action or that could have been brought in this Action, upon entry of a final order approving this settlement and this Agreement.

F. The parties specifically agree that Defendant's execution of this Agreement is not, and shall not be construed as, an admission by Defendant or deemed to be evidence of the validity of any of the claims made by Plaintiff on behalf of himself or the members of the Settlement Class or of any liability to Plaintiff or to any member of the Settlement Class, or that Defendant violated Federal or other applicable law. The parties further agree that neither this Agreement itself, nor any of the documents prepared or executed by any party to this Agreement in negotiating or implementing the settlement called for by this Agreement, nor any of the terms of any such documents, shall ever be offered in evidence in or shared with any party to any civil, criminal, or administrative action or proceeding without Defendant's express written consent, except to enforce compliance with this Agreement.

G. The relief provided to the Class Members and the procedures set forth in this Agreement for the distribution of relief provide a fair, flexible, speedy, cost-effective, and assured monetary settlement to the Class Members. Thus, this Agreement provides considerable benefit to the Class Members while avoiding costly litigation of difficult and contentious issues.

H. Based on Class Counsel's extensive analysis of the law and facts at issue in this Action, and the fair, flexible, speedy, cost-effective, and assured procedures for providing a monetary settlement to the Class Members, the Class Representative (on advice of Class Counsel) has determined that this settlement with Defendant on the terms set forth below is fair, adequate, and reasonable, and thus in the best interests of the Class Members.

III. Definitions.

For purposes of this Agreement, the following definitions shall apply:

A. The "Action" shall mean and refer to *Colin Speer v. Whole Foods Market Group, Inc.*, pending as Case No. 8:14-CV-3035-RAL-TBM, in the U.S. District Court for the Middle District of Florida.

B. “Agreement” means this Settlement Agreement and Release.

C. “Class Representative” or “Named Plaintiff” means Plaintiff Colin Speer.

D. “Class Counsel” means Luis A. Cabassa and Brandon J. Hill of the law firm Wenzel Fenton Cabassa, P.A.

E. “Defendant” means Defendant Whole Foods Market Group, Inc, its respective present, former, and future affiliates, parents, subsidiaries, corporate family members, officers, directors, partners, employees, agents, heirs, administrators, executors, members, member entities, shareholders, predecessors, successors, representatives, trustees, principals, assigns, and insurers individually, jointly, and severally.

F. “Class List” means a list of all members of the Settlement Class, to be generated by Defendant and provided to Class Counsel and the Settlement Administrator not more than ten (10) business days after the Court enters a Preliminary Approval Order. 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 Defendant’s records: First Name, Middle Initial (if available), Last Name, Street Address 1, Street Address 2, City, State, and Zip Code. Defendant shall provide the last known address for each class member. Upon request of the Settlement Administrator, Defendant shall provide Dates of Birth if required to identify or locate members of the Settlement Class, and full Social Security Numbers for any member of the Settlement Class for whom the Settlement Administrator requires same for the purpose of tax reporting.

G. “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.

H. “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 Defendant incurs and the Court approves.

I. "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 Class to explain the terms of the settlement and the claims process.

J. "Opt-Out" or "Objection Deadline" means the date the Court establishes as the deadline by which members of the Settlement Class 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 be sixty (60) days after the date on which the Notice of Settlement and Release of Claims is to be mailed pursuant to this Agreement.

K. "Parties" means the Plaintiff and Defendant.

L. Settlement Administrator means the administrator that is chosen by Defendant, subject to Plaintiff's approval (which shall not be unreasonably withheld), after a reasonable effort has been made to ensure that costs are kept to a minimum and that a reputable Settlement Administrator is chosen.

M. "Settlement Class" means the following: "All Whole Foods Market Group, Inc. hires who received the Disclosure Statement form and Consent and Release of Information Authorization form at issue in this case, or similar form(s), between December 4, 2009 and November 5, 2012, and which Defendant utilized to procure a consumer report for employment purposes." The Settlement Class is made up of approximately 20,000 individuals. The Settlement Class will not include any individuals who timely opt out of the settlement.

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

O. “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 Defendant’s counsel have executed this Agreement; b) the Court has preliminarily approved this settlement; c) reasonable notice has been given to members of the Settlement Class, 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:

First. 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; and/or

Second. 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.

P. 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.

Q. “Settlement Fund” means \$802,720.00, which Defendant 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 administration, whether incurred by Settlement Administrator, Class Counsel or Defendant.

There shall be no reversion of the Settlement Fund to Defendant. Unclaimed Settlement Funds will be paid to a cy pres recipient, Whole Kids Foundation.

IV. Relief and Benefits

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

1. Monetary Benefits to Settlement Class. In exchange for the releases and waivers of claims described below, members of the Settlement Class shall each be entitled to receive from the Net Settlement Fund a payment. Payments shall be calculated on a *pro rata* per person basis by and distributed by the Settlement Administrator.

2. Service Payment to Named Plaintiff. Plaintiff's Counsel may petition the Court for a \$2,500 service award for the Named Plaintiff, in consideration for his service as Named Plaintiff and as consideration for the general release he is giving Defendant under this Agreement. 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 Class. The Named Plaintiff will file it 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.

3. 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 paid from the common fund. Defendant agrees not to oppose Plaintiff's application for fees and expenses consistent with these limitations. 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.

4. Settlement Class 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 Class who did not validly and timely opt-out of the Settlement Class. Settlement Class Members shall have 60 days from the date on which checks are mailed to negotiate their checks.

5. Cy Pres. Any unclaimed portion of the Settlement Fund after distributing the Net Settlement Fund proceeds, and after the 60-day period for negotiating checks, will constitute a cy pres fund and, subject to the Court's approval, will be donated to Whole Kids Foundation, a 501c(3) non-profit corporation.

6. Taxes. The Parties agree the payments to each Settlement Class Member are not wages, each Settlement Class Member will be solely responsible for correctly characterizing this payment for tax purposes and for paying any taxes owed on 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 Defendant's behalf will issue to Named Plaintiff an IRS Form 1099 for this payment.

7. Payments to Class Counsel. As soon as practicable after the Settlement

Effective Date, but in no event later than ten (10) business days after that Date, the Settlement Administrator will pay, or cause to be paid, by wire transfer, any approved attorneys' fees and costs to Class Counsel out of the Common Fund.

8. Payment of Net Settlement Fund. As soon as practicable after the Settlement Effective Date, but in no event later than ten (10) business days after that Date, Defendant 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 above. Defendant shall have no further obligations to any Named Plaintiff or Settlement Class Member upon payment of the Net Settlement Fund.

9. Service Payment to Named Plaintiff and Payments to Settlement Class Members. All payments to Settlement Class Members will be mailed by the Settlement Administrator by check and delivered by first-class U.S. mail, postmarked within ten (10) business days of the Settlement Effective Date. All checks will expire 60 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 un-cashed or not negotiated before it expires, neither Defendant nor the Settlement Administrator nor Class Counsel shall have any further obligations to any Named Plaintiff or Settlement Class 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 Class 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 Class Members waive and abandon any ownership interest in any undeliverable, returned, un-cashed, or non-negotiated checks and further agree that no obligation has been generated or proven with respect to such undeliverable, returned, un-cashed, or non-negotiated checks.

V. RELEASE OF CLAIMS.

A. Settlement Class Members' Releases and Waivers of Claims. On the Settlement Effective Date, for the Settlement Class' benefits and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, all Settlement Class 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 Wenzel Fenton Cabassa, P.A.), partners, successors, predecessors and assigns, and all those acting or purporting to act on their behalf, fully and forever release, waive, acquit, and discharge Defendant and the Released Persons from any and all claims that the Settlement Class 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 First Amended Complaint, including any and all claims under the FCRA, 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 related to background checks or consumer reports for employment purposes. 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 Class Members' released claims and all of the released claims shall be dismissed with prejudice as to claims that could have been brought in

this case, even if the Settlement Class Member never received actual notice of the Settlement prior to the Final Approval Hearing.

B. Named Plaintiff's General Release and Waiver of Claims. On the Settlement Effective Date, the Named Plaintiff, on behalf of himself, his agents, insurers, representatives, attorneys, assignees, heirs, executors, vendors, and administrators, will release and forever discharge Defendant 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 also including but not limited to any and all claims whatsoever relating to his employment or separation of his employment with Defendant.

C. Prior Releases and Waivers of Claims. Defendant agrees that the Settlement Class 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 Defendant and the Settlement Class Members, the Named Plaintiff, or Class Counsel.

VI. NO ADMISSION OF LIABILITY

A. No Admission. Defendant has asserted and continues to assert many defenses in this litigation and expressly denied and continues to deny any fault, wrongdoing or liability whatsoever arising out of the conduct alleged in the Litigation. Defendant expressly denies any fault, wrongdoing or liability whatsoever, as well as the validity of each of the claims and prayers for relief asserted in the Litigation. Defendant has entered into 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 its 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 Defendant's 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 Defendant 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 Defendant in this Action.

VII. NOTICE, OPT OUT, OBJECTIONS, AND SETTLEMENT APPROVAL

A. Notice to Settlement Class. As soon as practicable but in no event more than ten (10) business 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 Class via first-class U.S. Mail, postage prepaid and return service requested. The Notice shall be mailed to each member of the Settlement Class' 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 Florida" and may also include a bar code.

B. 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 Class' address and will ask the Settlement Administrator to re-mail to such members of the Settlement Class who can be located.

C. Right to Opt Out. All members of the Settlement Class will have the right to be excluded from, i.e., to "opt out" of, the Settlement Class. On or before the Opt-Out Deadline established by the Court, but no more than sixty (60) days after the mailing date of the initial Notice, each member of the Settlement Class 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 Class 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 Class Member and shall be bound by any Orders of the Court about the settlement or the Settlement Class.

In no event shall members of the Settlement Class who purport to opt-out of the settlement as a group, aggregate, collective, or class involving more than one member of the Settlement Class be considered a successful opt out. Any member of the Settlement Class who fails to timely and validly opt out of the Settlement Class under this Settlement Agreement shall be bound by the terms of this settlement.

If more than 5% of the total members of the Settlement Class validly, timely, and individually opt out of the class, then Defendant may in its 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.

D. Objections. Any Settlement Class 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 (60 days after mailing). 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 Class Member making the objection; and a statement of whether the Settlement Class 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 Class Member and, if represented by counsel, then by counsel. Any Settlement Class 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 Class 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 Class 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.

E. 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 filing a Joint Motion that the Court enter an order preliminarily approving the settlement in substantially the same form as attached Exhibit A.

F. Compliance with CAFA. In accordance with CAFA, within ten (10) days of the Named Plaintiff's filing the motion for preliminary settlement approval, Defendant shall serve (upon the appropriate state officials of each state in which a Named Plaintiff or a Settlement Class 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. Defendant will provide a copy of this notice to Class Counsel and will file with the Court a notice of compliance with CAFA's requirements.

VIII. HEARING ON THE PROPOSED SETTLEMENT

A. On the date set by the Court for the Fairness Hearing, Plaintiff and Defendant shall jointly request the Court to review any petitions to intervene or objections to the Agreement which have been timely filed and to conduct such other proceedings (including the taking of testimony, receipt of legal memoranda and hearing of arguments from the parties or others properly present at the Fairness Hearing) as the Court may deem appropriate under the circumstances.

B. At the Fairness Hearing, Plaintiff and Defendant shall jointly request the Court to enter an order and final judgment and decree which, among other things:

1. Approves, without material alteration, the proposed settlement, pursuant to the terms of this Agreement;
2. Finds that the terms of this Agreement are fair, reasonable and adequate to the Settlement Class;
3. Provides that each member of the Settlement Class shall be bound by this Agreement;
4. Finds that the mailing of the Notice in the form attached as Exhibit A and the other means of notice required by this Agreement satisfy the requirements of Rule 23 and the

requirements of due process;

5. Approves the amount of attorneys' fees and costs to be paid to Class Counsel;

6. Dismisses all claims made in this case on the merits and with prejudice;

7. Protects the confidentiality of the names and addresses of Class Members and other information as set forth herein; and

8. Retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this Agreement.

IX. MISCELLANEOUS PROVISIONS.

A. 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.

B. Communications with Settlement Class Members. The Parties agree that Class Counsel may communicate directly with members of the Settlement Class to ensure as much participation in the settlement as possible and/or to answer questions, as needed. The Parties also agree that Defendant may communicate with its customers, employees, or prospective employees, including members of the Settlement Class, in the ordinary course of business.

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

D. 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 Class Members in a timely manner. As soon as practicable after execution of this Agreement, Class Counsel will, with the assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the Court's final approval of the Parties' settlement.

E. 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.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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:

To Plaintiffs:

Luis A. Cabassa, Esq.
lcabassa@wfcclaw.com
Brandon J. Hill, Esq.
bhill@wfcclaw.com
Wenzel, Fenton, Cabassa, P.A.
1110 N. Florida Ave., Suite 300
Tampa, Florida 33602-3300
Telephone: 813.224.0431
Facsimile: 813.229.8712
Attorneys for Plaintiffs

To Defendant:

Michael H. Kestenbaum
LUKS, SANTANIELLO
PETRILLO & JONES
100 N. Tampa Street, Suite 2120
Tampa, FL 33602
Tel:813/226-0081; Fax:813/226-0082
mkestenbaum@ls-law.com
Counsel for Defendant

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.

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

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

M. Counterparts. This Agreement may be executed in counterparts, and when each

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P.03

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.


X. EXHIBITS

A. Proposed Short Form Settlement Notice.

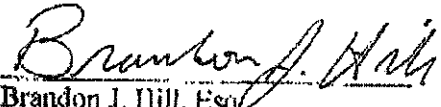
B. Proposed Long Form Settlement Notice.

XI. EXECUTION

The undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by all the undersigned.


 Colin Speer
 Named Plaintiff and Class Representative

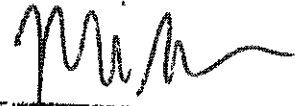
9/14/2015
 Date


 Brandon J. Hill, Esq.
 Class Counsel and Counsel for Plaintiff

9/14/15
 Date

Whole Foods Market Group, Inc.
 By: _____
 Its: _____

 Date


 Michael H. Kostenbaum, Esq.
 Counsel for Defendant

9/14/15
 Date

EXHIBIT A

COURT ORDERED NOTICE

Colin Speer
v.
*Whole Foods Market
Group, Inc.*

Class Action
Notice on Other Side

Speer v. Whole Foods Market Group,
Inc.
c/o ADMINISTRATOR
ADDRESS

PRESORT
FIRST CLASS
U.S. POSTAGE
PAID

0 1 2 3 4 5 6 7 8 9 0 1 0 2 0 3 0 4

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 Whole Foods Market Group, Inc. ("Defendant") for alleged violations of the Fair Credit Reporting Act ("FCRA"). Plaintiff claims that Defendant's Background Check Authorization forms allegedly contained extraneous information that violated the FCRA. Defendant vigorously denies that it violated any law, but has agreed to the settlement to avoid the uncertainties and expenses of continuing the case. The total settlement fund is \$802,720.00.

Am I a Class Member? Defendant's records indicate you are a member of the class. The class of which you are a member is defined as follows: "All Whole Foods Market Group, Inc. hires who received the Disclosure Statement form and Consent and Release of Information Authorization form at issue in this case, or similar form(s), between December 4, 2009 and November 5, 2012, and which Defendant utilized to procure a consumer report for employment purposes."

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, you should receive approximately \$24.00.

How Do I Get a Payment? To get a payment, you do not need to do anything. This is a "claims paid" settlement, which means that you will receive your pro-rata portion of the settlement fund provided you do not opt-out of the Settlement.

Who Represents Me? The Court appointed lawyers Luis A. Cabassa and Brandon J. Hill from Wenzel Fenton Cabassa, P.A. as Class Counsel, whose telephone number is (813) 224-0431. 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 \$2,500.00 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 Defendant over the legal issues in this lawsuit, and 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 on [date] at the United States Courthouse for the Middle District of Florida, Tampa Division, 901 North Florida Avenue, Tampa, Florida 33602, in Courtroom [].

How Do I Get More Information? For more information, contact the settlement administrator at [NUMBER HERE] or via e-mail at [EMAIL ADDRESS].

EXHIBIT B

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**COLIN SPEER, on behalf of himself
and all similarly-situated individuals,**

Plaintiffs,

v.

Case No.: 8:14-CV-3035-RAL-TBM

WHOLE FOODS MARKET GROUP, INC.,

Defendant.

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND HEARING

A 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 Defendant Whole Foods Market Group, Inc. ("Defendant") violated the Fair Credit Reporting Act ("FCRA"). Plaintiff Colin Speer ("Plaintiff") alleged that Defendant violated the FCRA by inserting a liability release provision into forms purporting to grant Defendant authority to obtain and use consumer report information in background checks it performed for employment purposes. Defendant denies that it violated the law in any way whatsoever. The two sides disagree as to whether Defendant's conduct was permitted under the FCRA, whether Defendant would be liable under the FCRA with respect to that conduct and, if so, the extent of any such liability. The parties have, however, agreed to resolve the lawsuit through a Court-supervised settlement.
- The proposed settlement class includes people who, between December 4, 2009, and November 5, 2012, , inclusive, were hired by Whole Foods Market Group, Inc. and Defendant procured or caused to be procured their consumer report on the basis of a disclosure and/or authorization/consent form containing a liability release. Membership in the settlement class will be determined based upon Defendant's records.
- You are receiving this notice because Defendant's records indicate that you may be eligible to receive benefits from this class action settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
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 Defendant 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 Defendant 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	Ask to speak in Court about the fairness of the settlement.

- Your rights and options—and the deadlines to exercise them—are explained in this Notice; The Court still has to decide whether to approve this settlement, which may take some time.

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Basic Information

1. Why did I get this notice?

This notice has been sent for the benefit of potential members of the following Settlement Class:

All Whole Foods Market Group, Inc. hires who received the Disclosure Statement form and Consent and Release of Information Authorization form at issue in this case, or similar form(s), between December 4, 2009 and November 5, 2012, and which Defendant utilized to procure a consumer report for employment purposes.”

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

This Notice explains the 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 is available to Class Members upon written request to Claims Administrator c/o Rust Consulting, 625 Marquette Avenue, Suite 880 Minneapolis, MN 55402. This Notice contains only a summary of the Settlement Agreement.

The Court in charge of this case is the United States District Court for the Middle District of Florida, Tampa Division, and the case is known as *Colin Speer, on behalf of himself and all similarly-situated individuals v. Whole Foods Market Group, Inc.*, Case No. 8:14-CV-3035-RAL-TBM. The person who filed this lawsuit, Colin Speer, is called the Plaintiff, and Whole Foods Market Group, Inc. is the Defendant.

2. What is the lawsuit about?

Plaintiff alleges that Defendant’s pre-employment Background Investigation and Authorization form(s), and Defendant’s alleged procurement of consumer reports on the basis of the form(s), violates the Fair Credit Reporting Act (“FCRA”). Based on this allegation, Plaintiff seeks statutory damages.

Defendant disputes the Plaintiff’s allegations and denies all liability to Plaintiff and the Settlement Class. In the lawsuit, Defendant denied Plaintiff’s allegations and raised a number of defenses to the claims asserted. No court has found Defendant 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 Class 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 Settlement 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.

4. Why is there a settlement?

The Court did not decide this case in favor of the Class Representative or in favor of Defendant. Instead, Counsel for the Settlement Class investigated the facts and applicable law regarding the Class Representative’s claims and Defendant’s defenses. The parties engaged in lengthy and arm’s-length negotiations to reach this settlement. The Class Representative and Counsel for the Settlement Class believe that the proposed settlement is fair, reasonable, and adequate and in the best interests of the class.

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

Who Is In The Settlement

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

You are a part of the settlement if between December 4, 2009 and November 5, 2012 you were hired by Defendant and Defendant procured or caused to be procured your consumer report on the basis of a consent and/or authorization/disclosure form containing a liability release.

If you received a notice, Defendant’s records indicate you are a member of the Settlement Class. If you are not certain as to whether you are a member of the Settlement Class, you may contact the Claims Administrator to find out. In all cases, the question of class membership will be determined based on Defendant’s records.

The Settlement Benefits—What You Get

6. What does the settlement provide?

If you are a member of the Settlement Class, you will receive benefits under the settlement.

If you are a member of the Settlement Class, you are eligible to receive a benefit under the settlement. Defendant has agreed to pay \$802,720.00 into a settlement fund. The fund will be divided pro rata among all Settlement Class members who do not opt out. If the expected requests for attorneys’ fees and expenses and the Plaintiff’s award are granted by the Court, you should receive approximately \$ 24.00.

If any settlement funds remain after all checks have been distributed, and after all attorneys’ fees, expenses and administrative costs have been paid, subject to Court approval, any unclaimed

portion of the Settlement Fund after distributing the Net Settlement Fund proceeds and after the 60-day period for negotiating checks will constitute a “cy pres” fund and, subject to the Court’s approval, will be donated to Whole Kids Foundation.

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 Class will be represented by the Plaintiff and Counsel for the Class. 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.

8. When would I get my benefit?

The Court will hold a Fairness Hearing at _____ a.m. on _____ in the United States District Court for the Middle District of Florida, Tampa Division, 801 North Florida Avenue, Tampa, Florida 33602, in Courtroom _____ to decide whether to approve the settlement. If the settlement is approved, there may be appeals. Payments to members of the Settlement Class will be made only if the settlement is finally approved. This may take some time, so please be patient.

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

Upon the Court’s approval of the settlement, all members of the Settlement Class who do not exclude themselves (as well as spouses, heirs, and others who may possess rights on their behalf) will fully release Defendant (and its affiliates, subsidiaries, employees, and others who may be subject to claims with respect to Defendant as specified in the Settlement Agreement) for all claims, including claims for statutory damages and actual damages, 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 this case, including but not limited to any and all claims under the FCRA. This release may affect your rights, and may carry obligations, in the future. To view the full terms of this release, which are contained in the Settlement Agreement, please send a written request to Claims Administrator c/o Rust Consulting, 625 Marquette Avenue, Suite 880 Minneapolis, MN 55402.

10. How do I get out of the Settlement?

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 Defendant you might have. To request exclusion, you must state in writing your desire to be excluded from the Settlement Class. **Your request for exclusion must be sent by first class mail, postmarked on or before [date] days after the postmark on this Notice, addressed to:**

Speer v. Whole Foods Market Group, Inc.
Claims Administrator
c/o Rust Consulting
625 Marquette Avenue, Suite 880

Minneapolis, MN 55402

If the request is not postmarked on or before [date] days after the postmark on this Notice, your request for 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 Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Defendant for the claims that this settlement resolves regarding background check-related claims

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

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

The Lawyers Representing You

13. Do I have a lawyer in this case?

The Court has appointed Colin Speer as Class Representative. The Court has appointed Wenzel Fenton Cabassa, P.A. as Counsel for the Settlement Class:

Luis A. Cabassa, Esq.
Brandon J. Hill, Esq.
WENZEL FENTON CABASSA, P.A.
1110 North Florida Ave., Suite 300
Tampa, Florida 33602
Telephone: (813) 224-0431

Counsel for the Settlement Class represent the interests of the Settlement Class. 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 Colin Speer in an amount not to exceed \$2,500. These amounts will be paid from the settlement fund, 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 the Court at the address below within 30 days of the postmark on this Notice.

United States District Court for the Middle District of Florida
Tampa Division
801 North Florida Avenue
Tampa, Florida 33602

You must also send your objection by first class mail, postmarked on or before [date] of the postmark on this Notice, to Counsel for the Settlement Class and counsel for Defendant. These documents should be mailed to Settlement Class Counsel at:

Luis A. Cabassa, Esq.
Brandon J. Hill, Esq.
WENZEL FENTON CABASSA, P.A.
1110 North Florida Ave., Suite 300
Tampa, Florida 33602

And to counsel for Whole Foods Market Group, Inc. at:

Michael H. Kestenbaum
LUKS, SANTANIELLO
PETRILLO & JONES
100 N. Tampa Street, Suite 2120
Tampa, FL 33602
Tel:813/226-0081; Fax:813/226-0082
mkestenbaum@ls-law.com
Counsel for Defendant

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

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

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

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

There will be a Fairness Hearing to consider approval of the proposed settlement at _____ a.m.

on _____ at the United States District Court for the Middle District of Florida, Tampa Division, 801 North Florida Avenue, Tampa, Florida 33602 in Courtroom _____. The hearing may be postponed to a later date without further notice. The purpose of the hearing is to determine the fairness, reasonableness, and adequacy of the terms of settlement; whether the Settlement Class is adequately represented by the Class Representative and Counsel for the Settlement Class; and whether an order and final judgment should be entered approving the proposed settlement. The Court also will consider Settlement Class Counsel's application on an award of attorneys' fees and expenses and Class Representative's compensation.

You will be represented at the Fairness Hearing by Counsel for the Settlement Class, 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. Counsel for the Settlement Class will represent the Settlement Class 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.

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 the Court, United States District Court for the Middle District of Florida, Tampa Division, 801 North Florida Avenue, Tampa, Florida 33602, File: *Speer v. Whole Foods Market Group, Inc.*, Case No. 8:14-CV-3035-RAL-TBM. The full Settlement Agreement and certain pleadings filed in this case can also be requested, in writing, from the Claims Administrator, identified in Paragraph 10 above.

21. How do I get more information?

You can contact the Claims Administrator, identified in Paragraph 10 above. **Please do not contact the Court for information.**