

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

KELVIN M. THOMAS, et al.,

Plaintiff,

v.

Case No. 3:13-cv-00825-REP

FTS USA, LLC, et al.,

Defendants.

JOINT NOTICE OF FILING OF AMENDED PROPOSED SETTLEMENT AGREEMENT

COMES NOW the Plaintiff, KELVIN M. THOMAS, by Counsel, and hereby jointly files with Defendant, by counsel, the agreed revised proposed Settlement Agreement and Exhibits as directed by the Court's Order of September 6, 2016 (Doc. 278).

Respectfully Submitted,

KELVIN M. THOMAS, et al

By: _____/s/_____

Leonard Anthony Bennett, Esq.
VSB# 37523

CONSUMER LITIGATION ASSOCIATES, P.C.

763 J Clyde Morris Boulevard, Suite 1-A

Newport News, VA 23601

757-930-3660 - Telephone

757-930-3662 - Fax

Email: lenbennett@clalegal.com

Susan Mary Rotkis VSB # 40693
CONSUMER LITIGATION ASSOCIATES, P.C.
763 J Clyde Morris Boulevard, Suite 1-A
Newport News, VA 23601
757-930-3660 - Telephone
757-930-3662 - Fax
Email: srotkis@clalegal.com

Christopher Colt North, Esquire
VSB #16955
William Leonard Downing, Esquire
**THE CONSUMER & EMPLOYEE RIGHTS LAW FIRM,
P.C.**
751-A Thimble Shoals Boulevard
Newport News, VA 23606
Phone: (757) 873-1010
Fax: (757) 873-8375
Email: cnorthlaw@aol.com
Email: wdowninglaw@aol.com

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of September, 2016, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Jessica (Perro) Haire
Fox Rothschild LLP (DC)
1030 15th Street NW
Suite 380 East
Washington, DC 20005
(202) 461-3100
Fax: (202) 461-3102
Email: jhaire@foxrothschild.com

Colin David Dougherty
Fox Rothschild LLP
10 Sentry Parkway
Suite 200
P.O. Box 3001
Blue Bell, PA 19422-3001
(610) 397-3908
Fax: (610) 397-0450
Email: cdougherty@foxrothschild.com

Zachary Arbitman
Christopher E. Polchin
Fox Rothschild LLP
10 Sentry Parkway
Suite 200
P.O. Box 3001
Blue Bell, PA 19422-3001
(610) 397-3918
Fax: (610) 397-0450
Email: zarbitman@foxrothschild.com
Email: cpolchin@foxrothschild.com

/s/
Leonard Anthony Bennett, Esq.
VSB# 37523
CONSUMER LITIGATION ASSOCIATES, P.C.
763 J Clyde Morris Boulevard, Suite 1-A
Newport News, VA 23601
757-930-3660 - Telephone
757-930-3662 - Fax
Email: lenbennett@clalegal.com

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

**Kelvin Thomas, on behalf of himself and
others similarly situated,**

Plaintiff,

v.

FTS USA, LLC, et al.,

Defendants.

Civil No. 3:13-cv-00825-REP

SETTLEMENT AGREEMENT

This matter has been resolved by compromise and subject to Court approval of the terms and conditions of a Settlement Agreement is made and entered into, as of August 19, 2016, by and among Plaintiff Kelvin Thomas (the “**Named Plaintiff**” or “**Thomas**”), on behalf of himself and the classes as defined below (the “**Classes**” and, with the Named Plaintiff, the “**Plaintiffs**”), and FTS USA, LLC and UniTek Global Services, Inc. (“**FTS**,” “**UniTek**” or, collectively “**Defendants**”) related to claims in *Thomas v. FTS USA, LLC, et al.*, No. 3:13-cv-00825-REP (E.D. Va.) (the “**Action**”). Plaintiff and Defendants are collectively referred to herein as the “**Parties**.” This Settlement Agreement is intended by the Parties to fully, finally and forever resolve, discharge and settle the “**Released Claims**” (as defined below), upon and subject to the terms and conditions hereof (the “**Settlement**”). This Agreement Settlement settles the class action claims as follows:

I. THE FAIR CREDIT REPORTING ACT LITIGATION CLAIMS

On December 11, 2013, Plaintiff filed a Complaint in the United States District Court for the Eastern District of Virginia. (Doc. 1.) The civil action alleges that Defendants violated certain provisions of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681a–1681x (“FCRA”) in connection with their use of consumer reports in their hiring process. The lawsuit was filed on behalf of Mr. Thomas, individually, as well as on behalf of consumers residing in the United States who applied for employment subject to a background check, which is a consumer report under the FCRA. Defendants are users of the consumer reports about Mr. Thomas and “**Class Members**” (as defined below).

Plaintiff alleges that Defendants violated the FCRA as to Mr. Thomas and Class Members because they procured a consumer report for employment purposes using a written disclosure which was not the “clear and conspicuous disclosure . . . in a document that consists solely of the disclosure that a consumer report may be obtained for employment purposes.” That conduct, if proven by Plaintiff, constitutes a violation 15 U.S.C. § 1681b(b)(2). Plaintiff also alleged that Defendants failed to provide him and Class Members with notice before taking adverse-employment actions against them. That conduct, if proven by Plaintiff, constitutes a violation 15 U.S.C. § 1681b(b)(3).

The Action seeks to recover statutory damages, punitive damages, and attorneys’ fees and costs. Plaintiff and putative class members in the Action are represented by Leonard A. Bennett, Susan M. Rotkis, and Craig C. Marchiando of Consumer Litigation Associates, P.C.; and Christopher C. North and William L. Downing of The Consumer & Employee Rights Law Firm (“**Class Counsel**,” as defined below). Defendants are represented by Colin Dougherty and Jessica Haire of Fox Rothschild, LLP (hereinafter, “Defendant’s Counsel”).

Following the filing of the Action, the Parties engaged in written discovery and depositions, significant motions practice, trial preparation, and a presentation of both sides' evidence at trial. Along the way, the Court certified two classes of consumers to whom notice was provided. The Parties reached the Settlement after the presentation of evidence at trial, but before the case went to the jury.

II. DEFENDANTS' DENIAL OF WRONGDOING AND LIABILITY

Defendants deny all charges of wrongdoing or liability arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Action and believe they have multiple legal and factual defenses to the Released Claims asserted by the Plaintiff and Classes in this Action. Defendants have agreed to settle this Action to avoid further fees and expenses and to bring closure to this litigation, and, in fact, expressly deny any liability. This Settlement constitutes a compromise settlement of disputed claims and shall not be deemed or construed to be an admission or acknowledgement of liability on any allegations or claims asserted in this Action.

III. CLAIMS OF PLAINTIFF AND BENEFITS OF SETTLEMENT

Plaintiff believes that the claims asserted in the lawsuit have merit and that if the case did not settle he would prevail at trial. However, Plaintiff and Class Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the case against Defendants through trial and through appeals. Plaintiff and Class Counsel also have taken into account the uncertain outcome and the risk of any litigation, including proceedings involving class certification. Plaintiff and Class Counsel believe that the settlement set forth in this Settlement Agreement confers substantial benefits on the Classes and is fair, reasonable, and adequate, and in the best interests of Plaintiff and the Classes.

IV. TERMS OF THE AGREEMENT OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Parties, by and through their respective attorneys, that, subject to the approval of the Court, the Action and the Released Claims shall be finally and fully compromised, settled, and released, and the Action shall be dismissed with prejudice upon and subject to the terms and conditions of the Settlement as follows:

1. Definitions

1.1 “Action” means the case styled *Kelvin Thomas v. FTS USA, LLC, et al.*, currently pending in the United States District Court for the Eastern District of Virginia, Docket No. 3:13-cv-00825-REP (E.D. Va.).

1.2 “CAFA” means the Class Action Fairness Act of 2005, 28 U.S.C. § 1711, *et seq.*

1.3 “CAFA Notice” means the notice described in Paragraph 4.7 below.

1.4 “Class Counsel” means Leonard A. Bennett, Susan M. Rotkis, and Craig C. Marchiando of Consumer Litigation Associates, P.C.; and Christopher C. North and William L. Downing of the Consumer & Employee Rights Law Firm.

1.5 “Class Member(s)” mean(s) any member(s) of the Impermissible Use Class and the Adverse Action Class, as set forth in 2.2 and 2.3 below, respectively, but specifically does not include those individuals who timely opt-out of the Settlement as forth in 4.4.

1.6 “Class Period” means December 11, 2011, through December 11, 2013.

1.7 “Court” means the United States District Court for the Eastern District of Virginia.

1.8 “Defendants” means FTS USA, LLC and UniTek Global Services, Inc.

1.9 “Opt-Out” means to timely request exclusion from the Settlement pursuant to Federal Rule Civil Procedure 23(c)(2)(B) and the procedure set forth in Paragraph 4.4 below.

1.10 “Effective Date” means the date on which the Judgment finally approving this Agreement and the Settlement becomes Final. The Effective Date shall be, if there are no timely objections to the Settlement, 35 days after entry of the Court’s order granting final approval of the Settlement.

1.11 “Final” means the date on which all appellate rights with respect to the Judgment have expired or have been exhausted in such a manner as to affirm the Judgment, and when no further appeals are possible, including review by the Supreme Court of the United States.

1.12 “Final Notice” shall have the meaning described in Paragraphs 4 and 5 below.

1.13 “FCRA” means the Fair Credit Reporting Act, 15 U.S.C. §§ 1681a–x.

1.14 “Judgment” means a judgment and order of dismissal entered by the Court in the Action granting Final approval of the Settlement and entering a judgment according to the terms set forth in this Settlement Agreement.

1.15 “Person” means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

1.16 “Preliminary Approval Order” means the order proposed and submitted by the Parties as set forth in 4.1.

1.17 “Named Plaintiff” or “Thomas” means Kelvin Thomas, the sole named plaintiff in the Action.

1.18 “Released Claims” means all claims set forth in the Action, including all known or unknown claims, demands, rights, liabilities, and causes of action under federal or state law,

whether based on statutory or common law, whether class or individual in nature, whether concealed or hidden, and that were asserted or could have been asserted in the Action and that related to the use of consumer reports by Defendants in their hiring process.

1.19 “Released Defendants” mean FTS USA, LLC and UniTek Global Services, Inc. and their current and former parents, subsidiaries, affiliates, divisions, associates, agents, predecessors, successors, receivers, shareholders, assignors, assignees, and/or assigns and their respective subsidiaries, affiliates, divisions, associates, agents, successors, assignors, assignees and/or assigns, and each of their respective present, former or future officers, directors, shareholders, agents, control persons, advisors, employees, representatives, consultants, insurers and reinsurers, accountants, attorneys, and any representative of the above. In addition to FTS USA, LLC and UniTek Global Services, Inc., the definition of “Released Defendants” specifically includes, but is not limited to, DirectSat USA, LLC, Pinnacle Wireless USA, Inc., and NexLink Global Services, Inc.

1.20 “Service Award” means the one-time payment to the Named Plaintiff for the time and resources he has put into representing the Class Members, as set forth in Paragraph 7.2 below.

1.21 “Settlement” means the terms and conditions of settlement as described in this Settlement Agreement and Exhibits.

1.22 “Classes” means the two nationwide settlement classes set forth in Paragraphs 2.2 and 2.3 below.

1.23 “Settlement Funds” means the amounts set forth in Paragraph 2.7 below.

1.24 “Final Fairness Hearing” means the hearing described in Paragraph 4.6 below.

1.25 “Settlement Notice” means the form of notice to be provided to the Classes after preliminary approval of this Settlement by the Court, as further described in Paragraph 4 below.

1.26 “Settling Parties” means Named Plaintiff and Defendants as described in Paragraphs 1.8 and 1.17 above.

1.27 “Termination Notice” shall have the meaning set forth in Paragraph 8 below.

2. The Settlement

2.1 The “**Impermissible Use Class**” consists of: All natural persons residing in the United States (including all territories and other political subdivisions of the United States), who applied for an employment position with Defendants or any of their subsidiaries within the two years immediately preceding the filing of the Complaint in this matter on December 11, 2013, and as part of this application process were the subject of a consumer report obtained by Defendants, (a) where the Defendants failed to provide a written disclosure as stated at 15 U.S.C. § 1681b(b)(2)(A)(i) to the applicant that they intended to obtain a consumer report for employment purposes, (b) and where as a result the Defendants failed to obtain a proper written authorization as stated at 15 U.S.C. § 1681b(b)(2)(A)(ii) signed by the applicant prior to obtaining a consumer report.

The Parties believe that this Class consists of approximately 7,044 individual members.

2.2 The “**Adverse Action Class**” consists of: All natural persons residing in the United States (including all territories and other political subdivisions of the United States), who applied for an employment position with Defendants or any of their subsidiaries within the two years immediately preceding the filing of the Complaint in this matter on December 11, 2013, and as part of this application process were the subject of a consumer report obtained by Defendants, (a) where the Defendants failed to provide a written disclosure as stated at 15 U.S.C. § 1681b(b)(2)(A)(i) to the applicant that they intended to obtain a consumer report for employment purposes, (b) and where as a result the Defendants failed to obtain a proper written authorization

as stated at 15 U.S.C. § 1681b(b)(2)(A)(ii) signed by the applicant prior to obtaining the consumer report, and (c) whom Defendants found ineligible for the position for which the applicant had applied based on the applicant's consumer report; (d) to whom Defendants did not provide a copy of the consumer report as stated at 15 U.S.C. § 1681b(b)(3)(A)(i) at least five business days before the date the adverse employment decision is first noted in Defendants' records, and (e) to whom Defendants did not provide a written summary of Fair Credit Reporting Act rights as stated at 15 U.S.C. § 1681b(b)(3)(A)(ii) at least five business days before the date the adverse employment decision is first noted in Defendants' records.

The Parties believe that this Class consists of approximately 1,209 individual members.

2.3 Defendants agree to pay a maximum of One Million Three Hundred Thousand Dollars (\$1,300,000) to settle the claims set forth by the Classes (hereinafter, the "Settlement Fund"). The Settlement Fund shall be disbursed as follows: to the Settlement Class Administrator, the reasonable costs of class notice and settlement administration expenses and taxes (not to exceed \$100,000); to the Named Plaintiff such service award that may be awarded by the Court (not to exceed \$20,000); to Class Counsel, subject to Court approval, up to \$500,000 as attorneys' fees and costs of litigation; and the remaining to be net cash payments to class members in the approximate amounts of \$50 each to the approximately 7,044 Impermissible Use Class Members who do not exclude themselves from the Class; \$250 each to the approximately 1,209 Adverse Action Class Members, to be calculated in these same proportions pro rata; and then to Defendants, any amount remaining in the Fund after the check-stale date described in Paragraphs 2.5 and 4.3 below. Under no circumstances are Defendants required to pay more than \$1,300,000 to settle this Action and Defendants have the right to void this Action if it is required to pay more than \$1,300,000.

2.4 Defendants shall deposit the Settlement Funds into an escrow account at an FDIC-insured financial institution designated by Class Counsel. Defendants shall use their best efforts to complete deposit of the balance of the \$1,300,000 within fifteen (15) calendar days of the Court's Final approval of the Settlement.

2.5 All checks paid pursuant to this Settlement shall become stale after 120 days of their mailing. All funds not disbursed because the checks paid were not cashed within this 120-day period—for Class Members for whom the Settlement Class Administrator used commercially reasonable methods to obtain current addresses—shall be paid to Defendants.

2.6 All taxes on any income of the Settlement Fund and tax-related expenses incurred in connection with the taxation of the Settlement Fund shall be paid out of the Settlement Fund. Defendants shall have no liability nor responsibility whatsoever for any such taxes or tax-related expenses.

2.7 Members of the Classes shall be solely responsible for the taxes, interest, and penalties due and owing, if any, should the payment of Settlement Funds, or any portion thereof, be determined to be taxable.

2.8 Upon final approval of the Settlement at the Final Fairness Hearing, this Action will be dismissed with prejudice.

2.9 Plaintiff shall propose a Settlement Class Administrator to whom Defendants shall have a reasonable right to disagree. Should the Parties be unable to reach an agreement on the Administrator after good-faith discussions, they shall submit their disagreement to Magistrate Judge David Novak for resolution.

3. Release

Upon the Effective Date, each member of the Classes who has not validly opted out of the Settlement, and each of their respective spouses, executors, representatives, heirs, successors, bankruptcy trustees, guardians, wards, joint tenants, tenants in common, tenants in the entirety, co-borrowers, agents, successors, assignees and assigns, and all those others who also claim through them or who assert claims on their behalf shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against the Released Defendants. The Parties hereby acknowledge that the Released Defendants are expressly intended beneficiaries of this Release.

Also, upon the Effective Date, the Named Plaintiff and each member of the Classes who have not opted out of the Settlement shall be permanently enjoined and barred from filing, commencing, prosecuting, intervening (as class members or otherwise) or receiving any benefits from any lawsuit or arbitration proceeding arising from any of the Released Claims.

4. Notice of Order and Settlement Hearing

4.1 On execution of this Settlement Agreement, the Settling Parties shall jointly apply to the Court for preliminary approval of the Settlement set forth in this Settlement Agreement. It is contemplated that the joint application for preliminary approval will be filed contemporaneously with the filing of this Agreement of Settlement. The Parties shall submit to the Court the Settlement Agreement, together with its Exhibits, and shall apply for entry of the Preliminary Approval Order, substantially in the form and content of Exhibit A attached hereto, requesting, *inter alia*, (a) preliminary approval of the Settlement, and (b) approval for the distribution of the Settlement Notice substantially in the form and content of Exhibit B (for the Impermissible Use Class) and Exhibit C (for the Adverse Action Class) attached hereto, and (d) a time and date for the Final Fairness Hearing for final approval of the Class Action Settlement. Should any court reject or

materially alter the Parties' agreed-upon Preliminary Approval Order or Settlement Notices, then the Defendants will have the option to void the Settlement if the Parties are unable, after good-faith negotiations presided over by Magistrate Judge David Novak, to agree on a form of Preliminary Approval Order and Settlement Notices acceptable to the Court.

4.2 No later than fifteen (15) calendar days after preliminary approval of this Settlement Agreement by the Court, Class Counsel shall cause the Settlement Class Administrator to update, using commercially reasonable methods, the addresses of Class Members previously provided to Class Counsel. Class Counsel shall then, through the Settlement Class Administrator, provide to each member of the Classes a Settlement Notice within thirty (30) days after receiving the Class List in substantially similar form as the notices attached hereto as Exhibits B and C, notifying him or her of his or her right to participate in the settlement or to object to or opt out of the settlement. All putative Class Members who do not opt out or object within sixty (60) days from the date they were sent the Settlement Notice, as described in the Settlement Notices, shall be considered Class Members and shall be bound by the terms of the Settlement.

4.3 Members of the Classes shall be informed in the Settlement Notices that he or she is entitled to the cash funds, as set forth in Paragraph 2.3 above, without the need to submit a claim to receive payment. Within thirty (30) days of date on which the Order of Approval of Class Action Settlement becomes Final, the Administrator shall mail checks to the Class Members who have not opted out of the Settlement at the last known address on file, which check shall become void 120 days after issuance.

The Settlement Class Administrator shall make commercially reasonable efforts to update Class Member addresses and remail any checks returned as undeliverable. Once this effort is

completed, any funds remaining in the Settlement Fund after checks become stale will automatically be distributed to the Defendants.

4.4 Procedure to Opt-Out of the Settlement: A Class Member may request to be excluded from the Class by sending a written request for exclusion to the Settlement Class Administrator at the address provided in the Notice. The Class Member's Opt-Out request must contain the Class Member's original signature, current postal address, and a specific statement that the Class Member wants to be excluded from the Classes. Opt-Outs must be postmarked no later than the deadline set by the Court in the Preliminary Approval Order. In no event shall persons who purport to opt out of the Class as a group, on an aggregate basis or as a class involving more than one Class Member be considered valid Opt-Outs. Requests for exclusion that do not comply with any of the foregoing requirements are invalid. No later than seven (7) business days after the deadline for submission of request for exclusion of Opt-Out, the Settlement Class Administrator shall provide Class Counsel and Defendants' Counsel with a complete list of all persons who have properly Opted Out of the Settlement together with copies of the opt-out requests. Defendants will have the right to withdraw from the Settlement if more than 5% of the Class Members submit a valid request for exclusion.

4.5 Procedure to Object to the Settlement: Any Class Member who does not opt out but who instead wishes to object to the Settlement or any matters as described in the Notices, may do so by filing with Court a notice of their intention to object (which shall set forth each objection and the basis therefore and contain the objecting Class Member's signature), with any papers in support of their position, and serve copies of all such papers on Class Counsel and Defendants' Counsel. Objections must be filed and served so that they are received no later than the deadline set by the Court in the Preliminary Approval Order. Objections to Class Counsel's attorneys' fees

may be supplemented up to seven (7) days after the filing of a motion for such fees to address additional information or materials in the motion. The objection and any supplement must indicate whether the Class Member and/or his attorney(s) intends to appear at the Final Fairness Hearing. Any attorney who intends to appear at the Final Fairness Hearing must enter a written Notice of Appearance of Counsel with the Clerk of Court no later than the deadline set by the Court in the Preliminary Approval Order.

4.6 The Parties agree to seek a final approval hearing date not earlier than one-hundred and twenty (120) days from the date of preliminary approval of the Settlement.

4.7 Defendants have caused notice of the Settlement that meets the requirements of the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715, to be served on the appropriate federal and state officials (“CAFA Notice”).

5. Final Fairness Hearing Judgment and Notice.

5.1 The Final Fairness Hearing, as established in the Notice Order, shall be for the purpose of consideration of final approval of the Settlement set forth in the Agreement.

5.2 On or before the Final Fairness Hearing, the Settlement Class Administrator will certify to the Court that it has fully complied with the notice provisions set forth Paragraph 4.2 above.

6. Administration and Supervision of the Settlement Fund

6.1 A Settlement Class Administrator will directly administer the Notice of the Settlement and the Claims process and shall control the Settlement Funds, subject to Court approval. The Settlement Class Administrator shall administer and oversee the mailing of the Court-approved notice and distribution from the Settlement Funds only with mutual approval of Defendants and Class Counsel. All funds shall be maintained in a bank escrow account unless the

parties jointly agree otherwise. On completion of the administration of the Settlement, the Settlement Class Administrator shall provide or cause to be provided to the Court a final report on its administration of the Settlement. Settlement administration costs shall be paid from the Settlement Fund from any funds remaining before returning those funds to Defendants. Class Counsel shall have and shall provide to Defendants reasonable access to documents relating to compliance and administration of the Settlement, with the right, but not the obligation, to review and audit the documents to determine full compliance with the terms of the Settlement.

6.2 No person shall have any claim against Class Counsel based on the monetary payments made substantially in accordance with this Agreement and the Settlement contained herein, or further order(s) of the Court.

7. Plaintiff's Counsel's Attorneys' Fees, Reimbursement of Expenses, and Payment of Additional Costs

7.1 Class Counsel shall make an application to the Court for an award from the Settlement Funds for attorneys' fees, costs, and other expenses in an amount not to exceed \$500,000 of the Settlement Fund. The Parties will ask the Court to refer the attorneys fees and costs decision to Magistrate Judge David Novak for Report and Recommendation sufficient time for decision at least thirty (30) days before the date of the Fairness Hearing. Defendants shall not oppose or object to this application provided that the request for an award of fees is consistent with this Settlement Agreement. Nothing in this provision will require Defendants to pay any attorneys' fees or litigation costs to Class Counsel with respect to the litigation over and above the Settlement Funds.

7.2 Kelvin Thomas shall apply to the Court to receive compensation for serving as class representative in the amount of \$20,000 (the "Service Award"), which shall be in addition to any other sums he may receive as a Class Member. Defendants shall not oppose or object to this

application provided that the request for Service Award is consistent with this Agreement. This amount is payable from the Settlement Fund on the day that Judgment becomes final and is not appealable.

8. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination

8.1 Plaintiff or Defendants, at any of their sole discretion, shall each have the right to terminate the Settlement and this Agreement, including dissolution of the Classes, if any of the following conditions subsequently occurs (“Terminating Events”):

- a. the Court’s refusal to preliminarily or permanently approve this Agreement or any material part of it;
- b. the Court requires a notice program in addition to or substantially different from that set forth herein;
- c. the Court orders Defendants to pay attorneys’ fees with respect to the litigation other than as provided herein;
- d. the Court orders Defendants to pay, with respect to the litigation, any amount above the contribution to the Settlement Funds, other than as provided herein;
- e. the Court declines to enter the Judgment in any material respect; or
- f. the Judgment is reversed, vacated or modified in any material respect by the Fourth Circuit Court of Appeals, the Supreme Court of the United States, or adverse action being taken by any other trial court or appellate court in any jurisdiction.

8.2 The failure of the Court or any appellate court to approve in full the request by Class Counsel for attorneys’ fees, incentive awards, costs and other expenses shall not be grounds for Named Plaintiff, the Classes, or Class Counsel to terminate this Agreement.

8.3 If any Party exercises its respective rights to terminate this Settlement and Agreement pursuant to Paragraph 8.1 above, they shall terminate the Settlement, by delivering written notice of the electing party's election to do so ("Termination Notice") to all other parties hereto within thirty (30) days of a Terminating Event or within thirty (30) days of any event described in Paragraph 8.1 above. In the event that a Termination Notice is so provided, then the Settlement and this Agreement shall be canceled and terminated unless and until Class Counsel and counsel for Defendants mutually agree in writing to proceed with the Agreement.

8.4 In the event that the Settlement and this Agreement are terminated as provided for herein, then (a) this Agreement shall be null and void and of no further force and effect; (b) the Settling Parties shall be restored to their respective positions in the Action immediately prior to the execution of this Agreement; (c) any portion of the Settlement Funds not used to fund notice and administration shall be returned to Defendants together with any interest earned thereon; (d) this Agreement shall not be used in the Action or in any other proceeding for any purpose; and (e) any judgment or order entered by the Court in accordance with the terms of the shall be treated as vacated, *nunc pro tunc*.

8.5 Upon the filing of the proposed Settlement Agreement with the Court, all proceedings shall be stayed until further order of the Court except such proceedings as may be necessary either to implement the proposed Agreement or to comply with or effectuate the terms of this Agreement.

9. Final Judgment

The Parties shall jointly seek entry by the Court of a Final Judgment that includes provisions:

- a. granting final approval of this Agreement, and directing its implementation pursuant to its terms and provisions;
- b. ruling on Class Counsel's application for attorneys' fees, costs and other expenses;
- c. discharging and releasing the Released Defendants from the Released Claims as provided in Paragraph 3 above;
- d. directing that the Action be dismissed with prejudice, and
- e. reserving to the Court continuing and exclusive jurisdiction over the parties with respect to the Agreement and the Final Judgment.

10. Miscellaneous Provisions

10.1 Best Efforts: The Settling Parties: (a) acknowledge that it is their intent to consummate this agreement, and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of this Agreement.

10.2 Confidentiality: The Parties agree to make no statement either directly or indirectly to any media source, or any social media or website or public communication (conferences, etc.) concerning the Settlement prior to the Preliminary Approval Hearing. The Parties agree to make no statements either directly or indirectly to any media source, or any social media or website or public communication (conferences, etc.) concerning the Settlement subsequent to the Preliminary Approval Hearing regarding the Settlement without the consent of the other Party. This provision does not prohibit Class Counsel from posting on Class Counsel's respective law firm websites their participation in the Settlement beginning sixty days after the Effective Date. This provision does not apply to communications between Class Counsel and any client, Class Members, or any

person directly involved in this case. Nothing prevents Class Counsel from discussing the underlying case theory at any time.

10.3 Jurisdiction: The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in this Agreement.

10.4 Execution in Counterparts: This Settlement Agreement may be executed in counterparts, including by signature transmitted by facsimile. Each counterpart when so executed shall be deemed to be an original, and all such counterparts together shall constitute the same instrument.

10.5 Amendment: Before entry of the Order of Approval of Class Action Settlement becomes Final, the Settlement may be modified or amended only by written agreement signed by or on behalf of all Parties with notice to be given to the Court of the agreed modification or amendment. After the Order of Approval of Class Action Settlement becomes Final, the Settlement may be modified or amended only by written agreement signed by or on behalf of all Parties, and approved by the Court.

10.6 Waiver: The provisions of this Settlement may be waived only by an instrument in writing executed by the waiving party. The waiver by any of the Parties of any breach of this Settlement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement.

10.7 Binding Effect: This Settlement binds and inures to the benefit of the Parties, their assigns, affiliates, heirs, administrators, executors, and successors.

10.8 No Benefits to Non-Parties: Except as otherwise expressly stated herein, this Settlement is not intended to confer any benefits upon any non-Party.

10.9 Entire Agreement: This Settlement constitutes the entire agreement among the Parties pertaining to the settlement of the Action and supersedes any and all prior and contemporaneous undertakings of the Parties in connection therewith. In entering into this Settlement, the Parties have not relied upon any representation or promise made by the other Party not contained in this Settlement.

10.10 Headings: The headings in this Settlement are included for convenience only and shall not be deemed to constitute part of this Settlement or to affect its construction.

10.11 Notice to Parties: Where this Settlement requires any party to provide notice or any other communication or document to any other party, such notice, communication, or document shall be provided by electronic mail or overnight delivery to:

10.12 For the Class:

Leonard A. Bennett
CONSUMER LITIGATION ASSOCIATES, P.C.
763 J. Clyde Morris Blvd., Suite 1-A
Newport News, VA 23601

10.13 For Defendant:

Colin Dougherty
FOX ROTHSCHILD LLP
10 Sentry Parkway, Suite 200
P.O. Box 3001
Blue Bell, PA 19422-3001
(610) 397-3908 - direct
CDougherty@foxrothschild.com

10.14 Authority to Execute: Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement, subject to Court approval.

10.15 Disputes: The Parties agree that any disputes regarding this Agreement shall be submitted to Magistrate Judge David Novak for resolution.

The Court, having reviewed the Agreement of Settlement, approves the same and Orders the Parties to proceed as agreed.

AGREED:

/s/

PLAINTIFF

Leonard A. Bennett (VSB 37523)
Susan M. Rotkis (VSB 40693)
Craig C. Marchiando (VSB 89736)
CONSUMER LITIGATION ASSOCIATES, P.C.
763 J. Clyde Morris Blvd. Suite 1A
Newport News VA 23601
Telephone: 757-930-3660
Fax: 757-930-3662
Email: lenbennett@clalegal.com
Email: srotkis@clalegal.com

Counsel for Plaintiff

/s/

DEFENDANTS

Colin Dougherty
FOX ROTHSCHILD LLP
10 Sentry Parkway, Suite 200
P.O. Box 3001
Blue Bell, PA 19422-3001
(610) 397-3908 - direct
CDougherty@foxrothschild.com

Counsel for the Defendants
FTS USA, LLC and
UniTek Global Services, Inc.

Exhibit A – Proposed Preliminary Approval Order

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

KELVIN M. THOMAS, *et al.*,

Plaintiff,

v.

Case No.: 3:13cv825

FTS USA, LLC, *et al.*,

Defendants.

PRELIMINARY APPROVAL ORDER

WHEREAS, the Court has been advised that the Parties to this action, Kelvin Thomas (“Plaintiff”), and FTS USA, LLC, UniTek Global Services, Inc. (“Defendants”), through their respective Counsel, have agreed, subject to Court approval following notice to Class Members and a hearing, to settle the above-captioned lawsuit (the “Litigation”) upon the terms and conditions set forth in the Settlement Agreement. The Settlement Agreement has been filed with the Court and the definitions set forth in it are incorporated by reference herein.

Based upon the Settlement Agreement and all of the files, records, and proceedings herein, it appears to the Court that, upon preliminary examination, the proposed settlement is fair, reasonable, and adequate. A hearing will be held on _____, 2017 at 10:00 A.M., after notice to the Class Members to confirm that the proposed settlement is fair, reasonable, and adequate, and to determine whether a Final Approval Order should be entered in the Litigation.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court has jurisdiction over the subject matter of the Litigation and over all Settling Parties hereto.

2. **Classes:** The Court has previously certified two classes in accordance with Fed. R. Civ. P. 23(b)(3):

The Impermissible Use Settlement Class:

All natural persons residing in the United States (including all territories and other political subdivisions of the United States), who applied for an employment position with Defendants or any of their subsidiaries within the two years immediately preceding the filing of the Complaint in this matter on December 11, 2013, and as part of this application process were the subject of a consumer report obtained by Defendants, (a) where the Defendants failed to provide a written disclosure as stated at 15 U.S.C. § 1681b(b)(2)(A)(i) to the applicant that they intended to obtain a consumer report for employment purposes, (b) and where as a result the Defendants failed to obtain a proper written authorization as stated at 15 U.S.C. § 1681b(b)(2)(A)(ii) signed by the applicant prior to obtaining a consumer report.

The Parties estimate there are 7,044 such Settlement Class Members.

The Adverse Action Settlement Class:

All natural persons residing in the United States (including all territories and other political subdivisions of the United States), who applied for an employment position with Defendants or any of their subsidiaries within the two years immediately preceding the filing of the Complaint in this matter on December 11, 2013, and as part of this application process were the subject of a consumer report obtained by Defendants, (a) where the Defendants failed to provide a written disclosure as stated at 15 U.S.C. § 1681b(b)(2)(A)(i) to the applicant that they intended to obtain a consumer report for employment purposes, (b) and where as a result the Defendants failed to obtain a proper written authorization as stated at 15 U.S.C. § 1681b(b)(2)(A)(ii) signed by the applicant prior to obtaining the consumer report, and (c) whom Defendants found ineligible for the position for which the applicant had applied based on the applicant's consumer report; (d) to whom Defendants did not provide a copy of the consumer report as stated at 15 U.S.C. § 1681b(b)(3)(A)(i) at least five business days before the date the adverse employment decision is first noted in Defendants' records, and (e) and to whom Defendants did not provide a written summary of Fair Credit Reporting Act rights as stated at 15 U.S.C. § 1681b(b)(3)(A)(ii) at least five business days before the date the adverse employment decision is first noted in Defendants' records.

The Parties estimate there are 1,209 such Settlement Class Members.

3. **Class Representative Appointment:** Pursuant to Fed. R. Civ. P. 23, the Court has appointed Kelvin Thomas ("Thomas") as the class representative for the Classes (hereinafter, Thomas is referred to as "Class Representative").

4. **Class Counsel Appointment:** Having considered the work that Class Counsel has done in investigating potential claims in this action, counsel's experience in handling class actions and other complex litigation, counsel's experience in handling claims of the type asserted in this action, counsel's knowledge of the applicable law, and the resources counsel has committed to representing the Classes, the Court has previously found as adequate and appointed as class counsel Fed. R. Civ. P 23(g)(1): Leonard A. Bennett, Susan M. Rotkis, and Craig C. Marchiando of Consumer Litigation Associates, P.C., and Christopher C. North and William L. Downing of The Consumer & Employee Rights Law Firm.

5. **Class Action Administration:** RSM US LLC is approved as the Settlement Class Administrator. The Settlement Class Administrator shall oversee the administration of the settlement and the notification to proposed Settlement Class Members as directed in the Stipulation of Settlement and settlement administration costs shall be paid in accordance with the Stipulation of Settlement. The settlement checks shall issue from the Settlement Fund only, and the Settlement Class Administrator will verify that the settlement checks were mailed.

6. **Class Notice:** The Court approves the form and content of the Settlement Notices attached as Exhibits B and C to the Settlement Agreement. The proposed form and method for notifying the Class Members of the Settlement and its terms and conditions meet the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process. The proposed notice constitutes the best notice that is practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled to notice. The Court finds that the proposed notices concisely and clearly states, in plain, easily understood language, the nature of the action; the definition of the classes certified; the class claims, issues, and defenses; that a class member may enter an appearance through counsel if the member so desires; that the Court will exclude from the class any member entitled to exclude him or herself who requests exclusion; the time and manner for requesting

exclusion, if applicable; and the binding effect of a class judgment on Class Members. The plan to mail notice of the Settlement to the Classes, or the Notice Plan, is designed for notice to reach a significant number of Settlement Class Members and is otherwise proper under Rule 23(e)(1).

Based on the foregoing, the Court hereby approves the Notice Plan developed by the Parties and directs that the plan be implemented according to the Settlement Agreement. The Court finds that the Notice Plan directs notice in a reasonable manner under Rule 23(e)(1) and satisfies due process.

7. **Exclusions from the Settlement Class:** The Class Members shall be given the opportunity to opt out of the Settlement and the Classes. All requests by Class Members to be excluded must be in writing, sent to the Settlement Class Administrator and postmarked no later than _____ 2016. To be valid, a request for exclusion must be personally signed and must include: (i) Class Member's original signature; (ii) current postal address; and (iii) a specific statement that the Class Member wants to be excluded from the Class. No persons who purport to opt out of a Class as a group, on an aggregate basis or as a class involving more than one Class Member be considered valid Opt-Outs. Requests for exclusion that do not comply with any of the foregoing requirements are invalid. A Class Member who properly opts out may not also object to the Settlement Agreement.

8. **Objections:** Any Class Member who has not previously opted-out in accordance with the terms of Paragraph 7 above but instead wishes to object to the Settlement or any matters as described in the Notice, may do so by filing with Court a notice of their intention to object (which shall set forth each objection and the basis therefore and containing the objecting Class Member's signature), with any papers in support of their position, and serve copies of all such papers on Class Counsel, Leonard Anthony Bennett, Consumer Litigation Associates, P.C., 763 J. Clyde Morris Boulevard, Suite 1-A, Newport News, VA 23601 and the Defendants' Counsel,

Colin Dougherty, Fox Rothschild LLP, 10 Sentry Parkway, Suite 200, P.O. Box 3001, Blue Bell, PA 19422-3001.

Objections must be filed and served so that they are received no later than _____, 2016. Objections to Class Counsel's application for attorneys' fees may be supplemented up to seven (7) days after the filing of a motion for such fees to address additional information or materials in the motion. The objection and any supplement must indicate whether the Settlement Class Member and/or his attorney(s) intends to appear at the Final Fairness Hearing. Any attorney who intends to appear at the Final Fairness Hearing must enter a written Notice of Appearance of Counsel with the Clerk of Court no later than the deadline set by the Court in the Preliminary Approval Order.

9. **Final Approval:** The Court shall conduct a Final Fairness Hearing on _____, 2017 at 701 East Broad Street, Richmond, VA 23219, commencing at 10:00 A.M., to review and rule upon the following issues:

- a. Whether the proposed settlement is fundamentally fair, reasonable, adequate, and in the best interests of the Settlement Class Members and should be approved by the Court;
- b. Whether the Final Approval Order should be entered, dismissing the Litigation with prejudice and releasing the Released Claims against the Released Parties; and
- c. To discuss and review other issues as the Court deems appropriate.

11. Class Members need not appear at the Final Fairness Hearing or take any other action to indicate their approval of the proposed class action settlement. Class Members wishing to be heard regarding their objection are, however, required to indicate in their written objection whether or not they intend to appear at the Final Fairness Hearing. The Final Fairness Hearing may be postponed, adjourned, transferred, or continued without further notice to the Class Members.

12. An application or applications for attorneys' fees and reimbursement of costs and expenses by Class Counsel, as well as applications for class representative service awards, shall be made in accordance with the Settlement Agreement and shall be filed with the Court no later than thirty (30) days before the Final Fairness Hearing. Further submissions by the Parties, including memoranda in support of the proposed settlement and responses to any objections, shall be filed with the Court no later than ten (10) days prior to the Final Fairness Hearing. The Court will permit the supplementation of any filings by objectors as to attorneys' fees and costs at any date up to seven (7) days after the filing of a motion for such fees to address additional information or materials in the motion. The Parties may respond to this supplementation.

13. All proceedings in this Action as they relate to claims against Defendants are stayed pending final approval of the Settlement, except as may be necessary to implement the Settlement or comply with the terms of the Settlement Agreement.

14. Pending final determination of whether the Settlement should be approved, Plaintiff, all Class Members and any person or entity allegedly acting on behalf of a Class Member, either directly, representatively or in any other capacity, are preliminarily enjoined from commencing or prosecuting against the Released Parties any action or proceeding in any court or tribunal asserting any of the Released Claims; provided, however, that this injunction shall not apply to individual claims of anyone who timely excludes themselves from the Settlement in a manner that complies with Paragraph 8 above. This injunction is necessary to protect and effectuate the Settlement, this Order, and this Court's flexibility and authority to effectuate the Settlement and to enter Judgment when appropriate, and is ordered in aid of this Court's jurisdiction and to protect its judgments pursuant to 28 U.S.C. § 1651(a).

15. If the Settlement Agreement and/or this Order are voided per Section 8 of the Settlement Agreement:

- a. The Settlement Agreement shall have no further force and effect and shall not be offered in evidence or used in the Litigation or in any other proceeding.
- b. Counsel for the Parties shall seek to have any Court orders, filings, or other entries in the Court's file that result from the Settlement Agreement set aside, withdrawn, and stricken from the record;
- c. The Settlement Agreement and all negotiations, proceedings, and documents prepared, and statements made in connection with either of them, shall be without prejudice to any party and shall not be deemed or construed to be an admission or confession by any party of any fact, matter, or proposition of law; and
- d. The Parties shall stand in the same procedural position as if the Settlement Agreement had not been negotiated, made, or filed with the Court.

16. The Settlement Agreement is preliminarily approved as fair, reasonable, and adequate. The Court preliminarily finds that: (a) the proposed Settlement Agreement resulted from arms-length negotiations; (b) the Settlement Agreement was executed only after Class Counsel had conducted appropriate investigation and discovery regarding the strengths and weaknesses of the Class Representative's and Class Members' claims; (c) Class Counsel represent that they have concluded that the Settlement Agreement is fair, reasonable, and adequate; and (d) the proposed Settlement Agreement appears to be in the best interest of the Class Representative and Class Members.

17. The Order is not admissible as evidence for any purpose against Class Representative, Class Members or Defendants in any pending or future litigation. This Order shall not be construed or used as an admission, concession or declaration against either the Class Representative, Class Members, or Defendants with respect to the strengths or weakness of any claim or defense in the Litigation. The Parties' actions in this matter have been taken for settlement

purposes only for the purpose of resolving the claims between the Class Representative, Class Members, and Defendants in this litigation.

18. The Court retains continuing and exclusive jurisdiction over the action to consider all further matters arising out of or connected with the settlement, including the administration and enforcement of the Settlement Agreement.

IT IS SO ORDERED.

Dated: _____

United States District Judge

Exhibit B – Proposed Impermissible Use Notice

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF VIRGINIA
Kelvin Thomas v. FTS USA LLC, et al.
Civil No. 3:13-cv-825

NOTICE OF CLASS ACTION LAWSUIT

You have received this notice because of a settlement in a lawsuit alleging FTS USA, LLC or UniTek Global Services, Inc. obtained your background check on or after December 11, 2011, without first providing you with a legal disclosure under the Fair Credit Reporting Act that it was doing so.

THIS CLASS ACTION SETTLEMENT WILL AFFECT YOUR RIGHTS BECAUSE IT WILL AUTOMATICALLY SEND YOU A CHECK FOR \$50.00, BUT YOU WILL RELEASE YOUR RIGHTS TO SUE THE DEFENDANT.

HERE ARE YOUR OPTIONS:

| | |
|---|---|
| IF YOU DO NOTHING | If the Court approves the Settlement, a \$50 check for your portion of the Settlement Fund will be mailed to you automatically and without you having to do anything. The Final Judgment in this case will be binding on you, meaning you give up all rights to sue FTS USA, LLC (“FTS”) and UniTek Global Services, Inc. (“UniTek”), or their affiliates, separately about the same claims in this lawsuit. |
| IF YOU EXCLUDE YOURSELF | If you ask to be excluded, you will not share in the money provided by the Settlement. But, you keep any rights to sue FTS and UniTek, or their affiliates, separately about the same legal claims in this case. The Court’s judgment will not be binding on you. |
| YOU MAY OBJECT TO THE SETTLEMENT | You can write to the Court and tell it what you do not like about the Settlement. You will remain a part of the Class, and will still share in the Settlement. |

IF YOU WOULD LIKE FURTHER INFORMATION: PLEASE CONTACT THE LAWYERS REPRESENTING PLAINTIFFS AND MEMBERS OF THE CLASS AT

(757) 930-3660 OR www.FTSUniTekClassAction.com

What Is This Case About?

Kelvin Thomas (“Thomas”) applied for a job at FTS. FTS obtained a background check about him from backgroundchecks.com. FTS asked Mr. Thomas to sign a background check disclosure and authorization form. **The court found that the background check disclosure and authorization form violated the Fair Credit Reporting Act, 15 U.S.C. § 1681b(b)(2) because it did not state that FTS would obtain a consumer report.**

The Court entered an Order certifying that this case may proceed as a Class Action. The parties agreed

to settle this case. The Court preliminarily approved the settlement.

Why Did I Get This Notice Package?

FTS' and UniTek's records show that you (a) applied for employment position with Defendants or any of their subsidiaries and (b) as part of the application process were the subject of a consumer report obtained by Defendants on or after December 11, 2011 (c) where Defendants used a form to make its disclosures pursuant to 15 U.S.C. § 1681b(b)(2) that did not state that they intended to use the applicant's consumer report to make a hiring decision.

This means that *you are a member of the "Impermissible Use Class."* In a class action lawsuit, the court resolves the issues for a group of people in the "Class" —except for those people who choose to remove themselves from the Class.

The Court authorized this Notice because you have a right to know that the settlement of this class action lawsuit that may affect your legal rights and the options that you have to protect your legal rights.

What does the Settlement provide?

Defendants have agreed to pay up to \$1,300,000.00 (the "Settlement Fund") for the benefit of the Classes, which funds will be used to make the payments to Class Members described below, to pay Plaintiff's attorneys' fees and litigation expenses, and to pay the costs of administering the Settlement. There are two Classes, the Impermissible Use Class and the Adverse Action Class. You are receiving this Notice because you are a member of the Impermissible Use Class. The Settlement Fund will go to compensate members of both Classes. Also, because there are two Classes, you may receive a second notice detailing the Settlement of Claims for the Adverse Action Class.

If the Court approves the Settlement, a \$50 check for your portion of the Settlement Fund will be mailed to you automatically and without you having to do anything.

The Settlement Administrator will mail you a check automatically about 35 days after the Court grants final approval to the Settlement. The Administrator will mail that check to the same address as this Notice, so **please update the Administrator with your new address if you move.** You can contact the administrator at the address below to let it know your address has changed.

What am I giving up to get a benefit or stay in the Impermissible Use Class?

If you do not exclude yourself from the Impermissible Use Class, you will agree to Release (give up) all claims related to the use of consumer reports FTS USA, LLC and UniTek Global Services, Inc. and their agents, affiliates and other connected persons. The full release language is available at www.FTSUniTekClassAction.com.

How do I exclude myself from the Class?

To be excluded, you must send an "Exclusion Request" in the form attached to this notice or by other letter sent by mail, stating that you want to be excluded from "*Thomas v. FTS USA, LLC, et al.*" You must include your name, address, and signature on the letter. You must mail your Exclusion Request such that it is **postmarked** on or before [REDACTED], 2016, to *Thomas v. FTS USA, LLC, et al.*, Exclusions, c/o Class Administrator, P.O. Box [REDACTED], Blue Bell, PA, 19422.

You must exclude yourself from this Settlement if you want to later sue the Defendants for the claims in this case.

Do I have a lawyer in the case and should I get my own lawyer?

Yes, you have a lawyer in the case. The Court decided that Leonard Bennett and Susan M. Rotkis, of Consumer Litigation Associates, P.C., and Christopher North and William Downing, of the Consumer & Employee Rights Law Firm, are qualified to represent you and all Class Members. Together, the law firms are called “Class Counsel.” They are experienced in handling similar consumer class cases. More information about the law firms, their practices, and their lawyers’ experience is available at www.clalegal.com.

You do not need to hire your own lawyer because Class Counsel is working on your behalf. But, if you want your own lawyer, you will have to “exclude” yourself from the Class and pay that lawyer separately.

How will the lawyers be paid?

Class Counsel will ask the Court for an award of attorneys’ fees, which the Defendants have agreed to pay as part of the Settlement Fund, in an amount up to \$500,000. However, the Court may ultimately award less than this amount. The requested \$500,000 will also include Class Counsel’s costs and expenses incurred by them and by the Class Representative in litigating this matter. The Defendants have paid for the costs of this notice to you and will pay for the other costs of administering the settlement as part of the Settlement Fund.

Is the Class Representative entitled to any additional payment?

In addition to the monetary relief described above, Class Counsel will ask the Court to approve a payment to the Class Representative of an amount not to exceed \$20,000 as an individual service award for his efforts and time expended in prosecuting the Lawsuit. However, the Court may ultimately award less than this amount. Any payment will be made from the Settlement Fund.

How do I tell the Court what I do not like about the Settlement?

If you are a Class Member, you can object to the Settlement if you think any part of the Settlement is not fair, reasonable, or adequate. You can and should explain the detailed reasons why you think that the Court should not approve the Settlement, if this is the case. The Court and Class Counsel will consider your views carefully. To object, you must send a letter stating that you object to the Settlement in *Thomas v. FTS USA, LLC, et al.* Be sure to include: (1) the name of the Lawsuit, *Thomas v. FTS USA, LLC, et al.*, Case No. 3:13cv825-REP; (2) your full name, current address, telephone number; and (3) a detailed explanation of the reasons you object to the settlement and any papers in support of your position. Mail or deliver the foregoing to these three different places so that it is received no later than _____, 2016.

COURT

Clerk of the Court
United States District Court
701 East Broad Street
Richmond, VA 23219

CLASS COUNSEL

Leonard A. Bennett
**CONSUMER LITIGATION
ASSOCIATES, P.C.**
763 J. Clyde Morris Blvd 1A
Newport News, VA 23601

DEFENDANTS' COUNSEL

Colin Dougherty
FOX ROTHSCHILD LLP
10 Sentry Parkway, Suite 200
P.O. Box 3001
Blue Bell, PA 19422-3001

What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you remain in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object to this Settlement because the case no longer affects you.

When and where will the Court decide to approve the Settlement?

The Court will hold a hearing to decide whether to approve the settlement as fair, reasonable, and adequate. The hearing is on _____, 2017, at 10:00 o'clock a.m. in the courtroom of Judge Robert E. Payne of the United States District Court for the Eastern District of Virginia, 701 East Broad Street, Richmond, VA 23219.

You may attend and you may ask to speak, but you do not have to.

Are there more details available?

You may request more information or speak to one of the lawyers representing you by calling the Class Administrator at (888) ###-####, Class Counsel at (757) 930-3660, or visiting www.FTSUniTekClassAction.com to get updates, documents and other information regarding the case.

EXCLUSION Request – Kelvin Thomas v. FTS USA, LLC, et al
Receive No Settlement Benefits

(If you choose this option, you are removing yourself from this settlement, will not receive a settlement check or participate in any other settlement benefits)

To exclude yourself from the settlement, you must complete the attached Exclusion Request, selecting “I am opting out” where indicated, or send a letter stating that you want to be excluded from the settlement of the *Thomas v. FTS USA, LLC., et al.* case. Be sure to include: (1) the name of this lawsuit, *Thomas v. FTS USA, LLC., et al., Case No. 3:13-cv-00825*; (2) your full name, current address; (3) the following statement: “I request to be excluded from the class settlement in *Thomas v. FTS USA, LLC., et al., United States District Court, Eastern District of Virginia, Case No. 3:13-cv-00825*”; and (4) your signature.

You must mail your Exclusion Request so that it is postmarked no later than [redacted], to:

Exclusion Requests – *Thomas v. FTS USA, LLC., et al.* Settlement Administrator
[redacted]

Exclusion Request – *Thomas v. FTS USA, LLC., et al.* Settlement Administrator

FILL OUT AND RETURN THIS FORM **ONLY** IF YOU WISH TO EXCLUDE YOURSELF FROM THE SETTLEMENT. IF YOU WISH TO PARTICIPATE IN THE SETTLEMENT, YOU DO NOT NEED TO RETURN THIS FORM.

____ I am opting out of the Settlement in *Thomas v. FTS USA, LLC., et al., Case No. 3:13-cv-00825*.

Full name: _____

Current address: _____

Signature

Exhibit C – Proposed Adverse Action

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF VIRGINIA
Kelvin Thomas v. FTS USA LLC, et al.
Civil No. 3:13-cv-825

NOTICE OF CLASS ACTION LAWSUIT

You have received this notice as part of a settlement of a lawsuit in which FTS USA, LLC or UniTek Global Services, Inc. or one of their subsidiaries obtained a background check on or after December 11, 2011 and took an adverse-employment action against you without first providing you with a copy of your background report and a legal notice of your rights under the Fair Credit Reporting Act.

THIS CLASS ACTION SETTLEMENT WILL AFFECT YOUR RIGHTS BECAUSE IT WILL AUTOMATICALLY SEND YOU A CHECK FOR \$250.00, BUT YOU WILL RELEASE YOUR RIGHTS TO SUE THE DEFENDANT.

HERE ARE YOUR OPTIONS:

| | |
|---|--|
| IF YOU DO NOTHING | If the Court approves the Settlement, a \$250 check for your portion of the Settlement Fund will be mailed to you automatically and without you having to do anything. The Final Judgment in this case will be binding on you, meaning you give up all rights to sue FTS USA, LLC (“FTS”) and UniTek Global Services, Inc. (“UniTek”), or their affiliates, separately about the same claims in this lawsuit. |
| IF YOU EXCLUDE YOURSELF | If you ask to be excluded, you will not share in the money provided by the Settlement. But, you keep any rights to sue FTS and UniTek, or their affiliates, separately about the same legal claims in this case. The Court’s judgment will not be binding on you. |
| YOU MAY OBJECT TO THE SETTLEMENT | You can write to the Court and tell it what you do not like about the Settlement. You will remain a part of the Class, and will still share in the Settlement. |

IF YOU WOULD LIKE FURTHER INFORMATION: PLEASE CONTACT THE LAWYERS REPRESENTING PLAINTIFFS AND MEMBERS OF THE CLASS AT

(757) 930-3660 OR www.FTSUniTekClassAction.com

What Is This Case About?

Plaintiff, Kelvin Thomas applied for a job at FTS. At the time he applied for a job, FTS and UniTek obtained a background check about him from backgroundchecks.com. FTS denied employment to Mr. Thomas based on the results of his background check. FTS did not provide Mr. Thomas with a copy of his consumer report and other required disclosures at least five business days before denying him employment as a result of his background check. **The court found that FTS’ failure to provide the required notices violated the Fair Credit Reporting Act, 15 U.S.C. § 1681b(b)(3).**

The Court entered an Order certifying that this case may proceed as a Class Action. The parties agreed to settle this case. The Court preliminarily approved the settlement.

Why Did I Get This Notice Package?

FTS' and UniTek's records show that you (a) applied for an employment position with Defendants or any of their subsidiaries, and (b) as part of this application process were the subject of a consumer report obtained by Defendants on or after December 11, 2011 (c) where Defendants' records show that you were denied employment because of the background check (d) and that Defendants did not provide you a copy of the consumer report and other disclosures required by 15 U.S.C. § 1681b(b)(3)(A)(ii) at least five business days before the date the employment decision is first noted in Defendants' records.

This means that ***you are a member of the "Adverse Action Class."*** In a class action lawsuit, the court resolves the issues for a group of people in the "Class" —except for those people who choose to remove themselves from the Class.

The Court authorized this Notice because you have a right to know that the settlement of this class action lawsuit that may affect your legal rights and the options that you have to protect your legal rights.

What does the Settlement provide?

Defendants have agreed to pay up to \$1,300,000 (the "Settlement Fund") for the benefit of the Classes, which funds will be used to make the payments to Class Members described below, to pay Plaintiff's attorneys' fees and litigation expenses, and to pay the costs of administering the Settlement. There are two Classes, the Impermissible Use Class and the Adverse Action Class. You are receiving this Notice because you are a member of the Adverse Action Class. The Settlement Fund will go to compensate members of both Classes. Also, because there are two Classes, you may receive a second notice detailing the Settlement of Claims for the Impermissible Use.

If the Court approves the Settlement, a \$250 check for your portion of the Settlement Fund will be mailed to you automatically and without you having to do anything.

The Settlement Administrator will mail you a check automatically about 35 days after the Court grants final approval to the Settlement. The Administrator will mail that check to the same address as this Notice, so **please update the Administrator with your new address if you move.** You can contact the administrator at the address below to let it know your address has changed.

What am I giving up to get a benefit or stay in the Adverse Action Class?

If you do not exclude yourself from the Adverse Action Class, you will agree to Release (give up) all claims related to the use of consumer reports by FTS USA, LLC and UniTek Global Services, Inc. in their hiring process. You will release FTS USA, LLC and UniTek Global Services, Inc. and their agents, affiliates and other connected persons. The full release language is available at www.FTSUniTekClassAction.com or you may call XXX-XXX-XXX to request that it be mailed to you.

How do I exclude myself from the Class?

To be excluded, you must send an "Exclusion Request" in the form attached to this notice or by letter sent by mail, stating that you want to be excluded from "*Thomas v. FTS USA, LLC, et al.*" You must include your name, address, and signature on the letter. You must mail your Exclusion Request such that it is **postmarked** on or before [REDACTED], 2016, to *Thomas v. FTS USA, LLC, et al.*, Exclusions, c/o Class Administrator, P.O. Box [REDACTED], Blue Bell, PA, 19422.

You must exclude yourself from this Settlement if you want to later sue the Defendants for the claims in this case.

Do I have a lawyer in the case and should I get my own lawyer?

Yes. The Court decided that Leonard Bennett and Susan M. Rotkis, of Consumer Litigation Associates, P.C., and Christopher North and William Downing, of the Consumer & Employee Rights Law Firm, are qualified to represent you and all Class Members. Together, the law firms are called “Class Counsel.” They are experienced in handling similar consumer class cases. More information about the law firms, their practices, and their lawyers’ experience is available at www.clalegal.com.

You do not need to hire your own lawyer because Class Counsel is working on your behalf. But, if you want your own lawyer, you will have to “exclude” yourself from the Class and pay that lawyer separately

How will the lawyers be paid?

Class Counsel will ask the Court for an award of attorneys’ fees, which the Defendants have agreed to pay as part of the Settlement Fund, in an amount of up to \$500,000. However, the Court may ultimately award less than this amount. The requested \$500,000 will also include Class Counsel’s costs and expenses incurred by them and by the Class Representative in litigating this matter. The Defendants have paid for the costs of this notice to you and will pay for the other costs of administering the settlement as part of the Settlement Fund.

Is the Class Representative entitled to any additional payment?

In addition to the monetary relief described above, Class Counsel will ask the Court to approve a payment to the Class Representative of an amount not to exceed \$20,000 as an individual service award for his efforts and time expended in prosecuting the Lawsuit. However, the Court may ultimately award less than this amount. Any payment will be made from the Settlement Fund.

How do I tell the Court what I do not like about the Settlement?

If you are a Class Member, you can object to the Settlement if you do not think any part of the Settlement is fair, reasonable, or adequate. You can and should explain the detailed reasons why you think that the Court should not approve the Settlement, if this is the case. The Court and Class Counsel will consider your views carefully. To object, you must send a letter stating that you object to the Settlement in *Thomas v. FTS USA, LLC, et al.* Be sure to include: (1) the name of the Lawsuit, *Thomas v. FTS USA, LLC, et al.*, Case No. 3:13cv825-REP; (2) your full name, current address, telephone number; and (3) a detailed explanation of the reasons you object to the settlement and any papers in support of your position. Mail or deliver the foregoing to these three different places so that it is received no later than than [REDACTED], 2016:

COURT

Clerk of the Court
United States District Court
701 East Broad Street
Richmond, VA 23219

CLASS COUNSEL

Leonard A. Bennett
**CONSUMER LITIGATION
ASSOCIATES, P.C.**
763 J. Clyde Morris Blvd 1A
Newport News, VA 23601

DEFENDANTS’ COUNSEL

Colin Dougherty
FOX ROTHSCHILD LLP
10 Sentry Parkway, Suite 200
P.O. Box 3001
Blue Bell, PA 19422-3001

What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you remain in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object to this Settlement because the case no longer affects you.

When and where will the Court decide to approve the Settlement?

The Court will hold a hearing to decide whether to approve the settlement as fair, reasonable, and adequate. The hearing is on _____, 2017, at 10:00 o'clock a.m. in the courtroom of Judge Robert E. Payne of the United States District Court for the Eastern District of Virginia, 701 East Broad Street, Richmond, VA 23219.

You may attend and you may ask to speak, but you do not have to.

Are there more details available?

You may request more information or speak to one of the lawyers representing you by calling the Class Administrator at (888) ###-####, Class Counsel at (757) 930-3660, or visiting www.FTSUniTekClassAction.com to get updates, documents and other information regarding the case.

EXCLUSION Request – Kelvin Thomas v. FTS USA, LLC, et al

Receive No Settlement Benefits

(If you choose this option, you are removing yourself from this settlement, will not receive a settlement check or participate in any other settlement benefits)

To exclude yourself from the settlement, you must complete the attached Exclusion Request, selecting “I am opting out” where indicated, or send a letter stating that you want to be excluded from the settlement of the *Thomas v. FTS USA, LLC., et al.* case. Be sure to include: (1) the name of this lawsuit, *Thomas v. FTS USA, LLC., et al., Case No. 3:13-cv-00825*; (2) your full name, current address; (3) the following statement: “I request to be excluded from the class settlement in *Thomas v. FTS USA, LLC., et al., United States District Court, Eastern District of Virginia, Case No. 3:13-cv-00825*”; and (4) your signature.

You must mail your Exclusion Request so that it is postmarked no later than [redacted], to:

Exclusion Requests – *Thomas v. FTS USA, LLC., et al.* Settlement Administrator
[redacted]

Exclusion Request – *Thomas v. FTS USA, LLC., et al.* Settlement Administrator

FILL OUT AND RETURN THIS FORM **ONLY** IF YOU WISH TO EXCLUDE YOURSELF FROM THE SETTLEMENT. IF YOU WISH TO PARTICIPATE IN THE SETTLEMENT, YOU DO NOT NEED TO RETURN THIS FORM.

____ I am opting out of the Settlement in *Thomas v. FTS USA, LLC., et al., Case No. 3:13-cv-00825*.

Full name: _____

Current address: _____

Signature