

# Appendix I

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA  
PHILADELPHIA DIVISION

MICHAEL KELLY,  
on behalf of himself and  
all others similarly situated,

Plaintiff,

v.

Case No. : 2:15-cv-06668

BUSINESS INFORMATION GROUP, INC.,

Defendant.

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**STIPULATION AND SETTLEMENT AGREEMENT BETWEEN PLAINTIFF AND  
BUSINESS INFORMATION GROUP, INC.**

This Settlement Agreement (“Agreement”) is made and entered into this 14th day of May, 2018 by and between Plaintiff Michael Kelly (“**Plaintiff**”), on behalf of himself and the Settlement Classes defined below and described herein, and Defendant Business Information Group, Inc. (hereinafter referred to as “Defendant” or “**BIG**”) related to claims in *Kelly v. Business Information Group, Inc.*, No. 2:15-cv-06668 (E.D. Pa.) (the “**Action**”). Plaintiff and BIG are collectively referred to herein as the “**Parties**.” This Stipulation 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. This Settlement Agreement is intended by the Parties, as represented by Counsel, to settle the class action claims as follows:

**I. THE FAIR CREDIT REPORTING ACT CLAIMS**

On December 17, 2015, Plaintiff filed a Complaint in the United States District Court for the Eastern District of Pennsylvania. (Doc. 1.) On January 17, 2017, Plaintiff filed a First Amended Complaint. (Doc. 58.) The Action alleges that BIG violated section 1681k(a) of the Fair

Credit Reporting Act, 15 U.S.C. §§ 1681a–1681x (“FCRA”), on behalf of a class of individuals and section 1681e(b) on behalf of Plaintiff individually in connection with providing background reports for employment purposes. The Action is filed on behalf of the Named Plaintiff, individually, as well as on behalf of consumers residing in the United States who applied for employment subject to a background check prepared by BIG, which is referred to as a “consumer report” under the FCRA. BIG is a consumer reporting agency within the meaning of the FCRA and provided consumer reports about the Named Plaintiff and the Settlement Class Members as defined herein for employment purposes.

Plaintiff alleges that BIG violated the FCRA because BIG allegedly provided Plaintiff’s potential employers with consumer reports containing information likely to adversely affect Plaintiff’s ability to obtain employment without providing Plaintiff with notice that it was reporting public record information about Plaintiff at the time it provided those reports. Plaintiff further alleges that BIG does not employ strict procedures to ensure the information it reports about consumers for employment purposes is complete and up-to-date in violation 15 U.S.C. § 1681k(a). Plaintiff contends that BIG committed materially the same violations of the FCRA as to the Settlement Class Members. BIG denies Plaintiff’s allegations and denies that it committed any violation of the FCRA.

The Action seeks to recover statutory damages, punitive damages, and attorneys’ fees and costs. The Named Plaintiff and Settlement Class Members in the Action are represented by James A. Francis, John Soumilas and Lauren KW Brennan of Francis & Mailman, P.C.; Leonard A. Bennett and Matthew J. Erausquin of Consumer Litigation Associates, P.C.; and Kristi Kelly of Kelly and Crandall, P.C. (“Class Counsel”). BIG is represented by William J. Simmons, Rod

Fliegel and Chad Kaldor of Littler Mendelson and Daniel Shanahan of Williams & Connolly (“Defense Counsel”).

Following the filing of the Action, the Parties engaged in motion practice and comprehensive discovery through which Class Counsel was provided with information concerning the consumer reports provided by BIG to Plaintiff’s potential employers that included public record information Plaintiff contends was likely to adversely affect Plaintiff’s ability to obtain employment, information regarding whether BIG provided notice to consumers at the time the reports were provided to their prospective employers, and information regarding the procedures maintained by BIG to ensure the public record information reported about consumers for employment purposes was complete and up-to-date. The Parties also participated in a mediation and numerous and frequent informal negotiations, which resulted in this Settlement.

**II. DEFENDANT’S DENIAL OF WRONGDOING AND LIABILITY**

BIG denies 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 believes it has multiple legal and factual defenses to the Released Claims asserted by the Plaintiff and the Settlement Class Members in this Action. BIG believes that were it to proceed with this lawsuit, class certification would be denied and it would prevail on motion for summary judgment and/or at trial. BIG, however, has agreed to settle this Action to avoid further fees and expenses and to bring closure to this litigation. This Settlement Agreement 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 claim 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 they 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 BIG 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 Settlement Classes and is fair, reasonable, and adequate, and in the best interests of Plaintiff and the Settlement 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 *Kelly v. Business Information Group, Inc.*, currently pending in United States District Court for the Eastern District of Pennsylvania, Docket No. 2:15-cv-06668 (E.D. Pa.).

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 section 4.10 below.

1.4. “Class Counsel” means James A. Francis, John Soumilas and Lauren KW Brennan of Francis & Mailman, P.C.; Leonard A. Bennett and Matthew J. Erausquin of Consumer Litigation Associates, P.C.; and Kristi Kelly of Kelly and Crandall, P.C.

**1.5.** “Settlement Class Member” means any member of the Settlement Classes or Subgroups, as set forth in section 2.2(a)-(c) below.

**1.6.** “Class Period” means December 17, 2010 through the date the order for preliminary approval of the settlement is entered by the Court for the Injunctive Relief Class, and December 17, 2013 through June 27, 2016 for the Rule 23(b)(3) Settlement Subgroup Class and the Automatic Payment Settlement Class.

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

**1.8.** “Defense Counsel” means William J. Simmons, Rod Fliegel and Chad Kaldor of Littler Mendelson and Daniel Shanahan of Williams & Connolly.

**1.9.** “Effective Date” is the date on which this Court’s entry of the Final Approval Order and this Court’s order regarding attorneys’ fees have all become final because the following has occurred: (i) the expiration of three (3) business days after the time to file a motion to alter or amend the Final Approval Order under Federal Rule of Civil Procedure 59(e) has passed without any such motion having been filed; (ii) the expiration of three (3) business days after the time in which to appeal the Final Approval Order has passed without any appeal having been filed (which date shall be deemed to be thirty-three (33) days following the entry of the Final Approval Order, unless the date to take such an appeal shall have been extended by Court order or otherwise, or unless the thirty-third (33rd) day falls on a weekend or a Court holiday, in which case the date for purposes of this Settlement shall be deemed to be the next business day after such thirty-third (33rd) day); and (iii) if such motion to alter or amend is filed, or if an appeal is taken, three (3) business days after a determination of any such motion or appeal that permits the consummation of the Settlement. For purposes of this definition, the term “appeal” includes all writ proceedings.

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

**1.11.** “Final Approval Hearing” means the hearing scheduled to consider final approval of the Settlement and awards to the Class Representative and Class Counsel.

**1.12.** “Final Approval Order” or “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, in the form attached hereto as Exhibit A.

**1.13.** “Plaintiff” or “Class Representative” means Michael Kelly.

**1.14.** “Notice” means the form of notice to be provided to the Settlement Class after preliminary approval of this Settlement by the Court, as further described in section 4.

**1.15.** “Opt-Out” applies only to the Rule 23(b)(2) Subgroup Settlement Class and the Automatic Payment Settlement Class and means to timely request exclusion from the Settlement pursuant to Federal Rule Civil Procedure 23(c)(2)(B) and the procedure set forth in section 4.8.

**1.16.** “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.

**1.17.** “Injunctive Relief Settlement Class Members” are those persons as described in section 2.2(a).

**1.18.** “Rule 23(b)(2) Subgroup Settlement Class Members” are those persons described in section 2.2(b).

**1.19.** “Automatic Payment Settlement Class Members” are those persons described in section 2.2(c).

**1.20.** “Preliminary Approval Order” means the order proposed and submitted by the Parties as set forth in section 4.1, in the form attached hereto as Exhibit B.

**1.21.** “Released Claims” means those claims described with specificity in Section 3.

**1.22.** “Defendant” or “BIG” means Business Information Group, Inc. and its corporate affiliates, including predecessors, successors, assigns, current and former employees, shareholders, officers, directors, members, managers, agents, subcontractors, attorneys, insurers, subsidiaries, divisions, parent companies, holding companies or affiliated corporations, partnerships, limited liability companies or other organizations, and all persons acting by, through, under or in concert with them, specifically including the Vertical Screen family of companies. “Defendant” does not include any employer, user or subscriber of BIG’s consumer information, or any reseller of such information from BIG or any provider of such information to BIG unless such person is also affiliated by common ownership.

**1.23.** “Released Persons” means Defendant, as defined in section 1.22, and also expressly includes BIG’s insurers and reinsurers.

**1.24.** “Service Award” means the one-time payment to Plaintiff for the time and resources he has put into representing the Settlement Class Members, as set forth in section 7.2.

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

**1.26.** “Settlement Classes” have the meaning set forth in section 2 below.

**1.27.** “Settlement Fund” means the amounts set forth in section 2.6.

**1.28.** “Settlement Hearing” means the hearing described in section 5.



1.29. “Settling Parties” means Plaintiff and BIG as described in sections 1.15 and 1.23.

1.30. “Terminating Events” shall have the meaning set forth in section 8 below.

1.31. “Termination Notice” shall have the meaning set forth in section 8 below.

2. **The Settlement Class Members And Consideration**

2.1. For the purposes of effectuating the Settlement only, Plaintiff, Settlement Class Members and BIG agree jointly to request that the Court certify the Settlement Classes as set forth herein.

2.2. (a) The “**Injunctive Relief Settlement Class**” (also “Settlement Class Members”) consists of: All natural persons residing in the United States (including all territories and other political subdivisions of the United States) (i) who were subject to at least one BIG consumer report sourced from Trans Union from December 17, 2010 to the date of the order for preliminary approval of the Settlement is entered by the Court, (ii) whose report contained a public record.

Excluded from the class definition are any employees, officers, or directors of the BIG, any attorney appearing in this case, and any judge assigned to hear this action, together with their immediate family members and any persons employed by him or her.

The Parties believe that the Settlement Class Members consist of approximately 276,000 individual members.

All Settlement Class Members will receive non-monetary injunctive relief, which is valuable consideration to which they would not otherwise be entitled in the form of BIG agreeing to provide, pursuant to 15 U.S.C. § 1681k(a)(1), same time notice to each consumer who is the subject of a consumer report containing public records (defined for the purposes herein as bankruptcies, liens and civil court judgments) sourced only from Trans Union. BIG shall provide

the same time notices to consumers for a period of five (5) years from the date the Order for Final Approval becomes effective. The specific procedures that the Parties have agreed that BIG will follow are detailed further in the Consent Injunctive Relief Order attached as Exhibit 2 to the proposed Final Approval Order (Exhibit A hereto).

(b) The “**Rule 23(b)(2) Subgroup Settlement Class**” consists of: All Injunctive Relief Settlement Class Members, (i) who were subject to at least one BIG consumer report dated December 17, 2013 to June 27, 2016, (ii) where the consumer report contained a public record, other than a bankruptcy, sourced from Trans Union, (iii) where BIG’s records do not reflect the Settlement Class Member filed any dispute with BIG with respect to the above-referenced report.

Excluded from the class definition are any employees, officers, or directors of the BIG, any attorney appearing in this case, and any judge assigned to hear this action, together with their immediate family members and any persons employed by him or her.

The Rule 23(b)(2) Subgroup Settlement Class consists of 88,041 Settlement Class Members. In the event that the number of Rule 23(b)(2) Subgroup Class exceeds 88,041, then the Settlement Fund shall increase proportionally to account for the larger potential class size.

(c) The “**Automatic Payment Settlement Class**” consists of: All natural persons residing in the United States (including territories and other political subdivisions of the United States) (i) who were subject to at least one BIG consumer report dated December 17, 2013 to June 27, 2016, (ii) where the consumer report contained a public record sourced from Trans Union, and (iii) where BIG’s records reflect that the Settlement Class Member filed a dispute with BIG with respect to the above-referenced report. As Plaintiff filed a lawsuit concerning his allegations that BIG generated a consumer report for his employer that was inaccurate, incomplete

and outdated, the Parties agree that Plaintiff qualifies as an Automatic Payment Settlement Class Member.

Excluded from the class definition are any employees, officers, or directors of the BIG, any attorney appearing in this case, and any judge assigned to hear this action, together with their immediate family members and any persons employed by him or her.

The Parties believe that the Automatic Payment Settlement Class consists of approximately 865 members.

In the event that the number of Automatic Payment Settlement Class Members exceeds 865 by 5% or more, then the portion of the Settlement Fund reserved for Automatic Payment Settlement Class Members shall increase proportionally to account for the larger potential class size.

(d) On the Effective Date, the Settlement Classes set forth in section 2.2 above shall become permanently certified unless the Judgment does not become final.

**2.3.** In the event the Settlement is not preliminarily and finally approved and implemented, or the Judgment does not become final, the Settlement Classes are dissolved without prejudice or inference regarding the appropriateness of class certification and thereafter the issue of class certification will be decided *de novo*, and BIG is not precluded from challenging class certification for any reason and no objections or arguments have been waived by this Settlement Agreement or the proceedings in connection therewith.

**2.4.** BIG agrees to pay a total of Three Million, Three Hundred Thousand Dollars (\$3,300,000.00) to settle the claims set forth by the Settlement Classes (the "Settlement Fund").

**2.4.1.** The Settlement Fund shall be disbursed as follows: (a) \$500,000.00 to the Rule 23(b)(2) Subgroup Settlement Class Members to be distributed equally on a *pro rata* basis;

(b) \$1,500,000.00 to be distributed on a *pro rata* basis to Automatic Payment Settlement Class Members, as set forth in section 2.4.2; (c) subject to reduction for attorneys' fees and costs not in excess of thirty-three percent (33%) of the Settlement Fund, as awarded by the Court; (d) the Service Award to Plaintiff in the amount of Fifteen Thousand Dollars (\$15,000.00), subject to court approval; and (e) the costs of notice and settlement administration in the maximum amount of Two Hundred Fifty Thousand Dollars (\$250,000.00). In the event that the Court does not grant approval of the full amount for which Plaintiff or Class Counsel petitions for the Service Award, attorneys' fees, or costs, the un-approved portion of the Settlement Fund allocated to same herein shall be allocated 25% to the Rule 23(b)(2) Subgroup Settlement Class Members and 75% to the Automatic Payment Settlement Class Members. In no event shall BIG be obligated to pay more than \$3,300,000 in full and complete settlement.

**2.4.2.** The portion of the Settlement Fund allocated to the Automatic Payment Settlement Class shall be distributed on a *pro rata* basis to Automatic Payment Settlement Class Members on a point awarded system as follows, based on the number of points earned:

a) Each member of the Automatic Payment Settlement Class receives 1 point by virtue of their inclusion within the Class;

b) Each Automatic Payment Settlement Class Member that (i) returns a claim form that specifically identifies the public record or records included within their BIG report and (ii) attests to the inaccuracy of those records as the records relate to that Class Member shall be awarded an additional 9 points; and,

c) Each Automatic Payment Settlement Class Member that submits documentary evidence demonstrating that the Class Member has suffered damages as a result of the publication of the public record(s) at issue shall be awarded an additional 10 points.

**2.4.3.** In order to receive a payment from the Settlement Fund, Automatic Payment Settlement Class Members do not need to do anything. Each may receive a share of the Settlement Fund as outlined in Section 2.4.2. In order to receive additional pro rata shares, as outlined in Section 2.4.2, Automatic Payment Settlement Class Members must return a claim form which is included with the Notice attached hereto as **Exhibit C** and/or submit documentary evidence, no later than sixty (60) days from the mailing of the Notice. In order to receive a payment from the Settlement Fund, Rule 23(b)(2) Subgroup Settlement Class Members must submit a claim form which is included with the Notice attached hereto as **Exhibit D**, no later than sixty (60) days from the mailing of the Notice.

**2.4.4** Any amounts paid from the Settlement Fund that are not distributed or collected, including uncashed checks, shall first be used to pay any additional expenses for costs of notice and administration that exceed the \$250,000 maximum allotment, by the agreement of the Parties, with the remainder to be distributed to a mutually agreeable *cy pres* recipient, subject to Court approval.

**2.5.** BIG shall deposit or arrange to deposit the Settlement Fund into an interest-bearing account with the financial institution designated by Class Counsel, subject to reasonable approval by BIG. BIG shall complete deposit of the \$3,300,000.00 by fourteen (14) days after the Effective Date.

**2.6.** The amounts payable from the Settlement Fund for the court-approved Service Award and for Class Counsel's attorneys' fees and costs shall be payable within seventeen (17) days after the Effective Date.

**2.7.** Within 30 days after the Effective Date, the Settlement Administrator shall mail checks to Automatic Payment Settlement Class Members and to Rule 23(b)(2) Subgroup

Settlement Class Members who have not opted out of the Settlement and who have submitted valid claim forms, which checks shall become void 60 days after issuance.

**2.8.** All checks paid pursuant to this Settlement shall become stale and void after sixty (60) days of mailing. Upon receipt of any undelivered check, the Settlement Administrator shall take commercially reasonable efforts to identify mailing addresses and re-mail any checks returned as undeliverable. The Settlement Administrator shall not mail checks to addresses it has already confirmed are incorrect or to whom a class member's notice was undeliverable. All funds not disbursed because the checks were not cashed within the sixty (60) day period shall be used for any additional and reasonable notice and administration costs pursuant to sections 2.4.4, and then, subject to court approval, to the Parties' agreed-upon *cy pres* recipient.

**2.9.** All taxes on the income of the Settlement Fund and tax-related expenses incurred in connection with the taxation of the Settlement Fund, if any, shall be paid out of the Settlement Fund.

**2.11.** Settlement Class Members 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.

**2.12.** Any costs and/or fees that are necessary for the Settlement Administrator to prepare and/or deliver or otherwise administer forms W-9 and 1099 as may be required for any Settlement Class Member shall be included in the costs of notice and administration as allocated by the Settlement Fund.

**3. Release**

**3.1** Upon the Effective Date, all Settlement Class Members release the right or ability to bring or participate in a class action, mass action, representative or other similar joint or

collective claims against BIG and/or the other Released Persons under the FCRA and/or similar state and local laws (the “Settlement Class Member Release”). The Settlement Class Member Release does not release claims brought by an individual consumer for himself or herself, alone, for actual, statutory or punitive damages and attorneys’ fees and costs.

**3.2** Rule 23(b)(2) Subgroup Settlement Class Members release all 15 U.S.C. § 1681k claims, including claims for actual damages, claims for statutory damages, and claims arising under state and local laws similar in substance to § 1681k, against BIG and the other Released Persons in addition to, not in lieu of, the Settlement Class Member Release. Rule 23(b)(2) Subgroup Settlement Class Members do not release claims for alleged violations of any other provision of the FCRA, or similar state and local claims, including, but not limited to claims under 15 U.S.C. § 1681e(b).

**3.3** Automatic Payment Settlement Class Members release all claims under the FCRA and similar state and local laws, including claims for statutory damages, actual damages, punitive damages and attorneys’ fees and costs, against BIG and the other Released Persons in addition to, not in lieu of, the Settlement Class Member Release.

**3.4** In exchange for his Service Award of \$15,000, for being a member of the Automatic Payment Settlement Class, Plaintiff Michael Kelly shall provide BIG with a general release of all claims, known and unknown, in favor of BIG and the other Released Persons.

**4. Notice of Order and Settlement Hearing**

**4.1** On execution of this Settlement, Plaintiff shall apply to the Court for preliminary approval of the Settlement set forth in this Settlement Agreement with BIG’s consent. It is contemplated that the consent motion for preliminary approval will be filed contemporaneously with the filing of this Settlement Agreement. The Parties shall submit to the Court the Settlement

Agreement, together with its Exhibits, and shall apply for entry of this Preliminary Approval Order, substantially in the form and content of **Exhibit B** hereto, requesting, *inter alia*, (a) preliminary approval of the Settlement; (b) preliminary certification of the Settlement Classes; (c) approval for the distribution of the Notices substantially in the form and content of Exhibits C, D and E hereto; and (d) a time and date for the Final Approval Hearing.

**4.2** No later than thirty (30) calendar days after entry of the Preliminary Approval Order, BIG shall provide to the Settlement Administrator, in a mutually agreeable electronic format, the three separate lists of names and addresses of the individuals that comprise the Injunctive Relief Class, the Rule 23(b)(2) Subgroup Settlement Class, and the Automatic Payment Settlement Class (the “Class Lists”). The Settlement Administrator will have three (3) business days to note any objections to the content or format of the Class Lists, which will otherwise be deemed acceptable and approved for use by the Settlement Administrator.

**4.3** The Settlement Administrator shall mail to each member of the Settlement Classes the appropriate Notice within thirty (30) days after receiving the Class Lists in substantially similar form as the Notices attached hereto as Exhibits C, D and E. The Notices attached hereto as Exhibits C and D shall notify each Automatic Payment Class Member or Rule 23(b)(2) Subgroup Class Member of his or her right to participate in the Settlement or to object to or opt out of the Settlement. The Notice attached as Exhibit E shall notify members of the Injunctive Relief Class of the injunctive relief obtained under the Settlement and their right to object to the Settlement.

**4.4** All Automatic Payment Settlement Class Members who do not opt out within sixty (60) days from the date of mailing the Notices, as described in the Notices, shall be considered Automatic Payment Settlement Class Members and shall be bound by the terms of the Settlement.



4.5 The Notices will be sent to the last known address that can be contemporaneously verified by the Settlement Administrator using commercially reasonable means.

4.6 Members of the Automatic Payment Settlement Class shall be informed in the Notice, Exhibit C, that they are entitled to the cash funds without the need to submit a claim to receive payment, and must only submit a timely and valid claim form, to be enclosed with the Notice, in order to be entitled to additional cash funds, as set forth in section 2.4. In order to be eligible for additional payment, claim forms must be postmarked within sixty (60) days of mailing of the notice.

4.7 Rule 23(b)(2) Subgroup Settlement Class Members shall be informed in the Notice, Exhibit D, that they must submit a timely and valid claim form, to be enclosed with the Notice, in order to be entitled to the cash funds, as set forth in section 2.4. In order to be eligible for payment, claim forms must be received within sixty (60) days of the mailing of the notice.

4.8 **Procedure to Opt-Out of the Settlement:** An Automatic Payment Settlement Class Member or Rule 23(b)(2) Subgroup Settlement Class Member may request to be excluded from the Settlement Class by sending a written request for exclusion to the Clerk of Court at the address provided in the Notice. The Settlement 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 Settlement Class. 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 Settlement 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 a request to opt out, the Settlement Administrator shall

provide Class Counsel and Defense Counsel with a complete list of all persons who have properly Opted Out of the Settlement together with copies of the opt-out requests. Individuals who Opt Out of the Automatic Payment Settlement Class or the Rule 23(b)(2) Subgroup Settlement Class will remain members of the Injunctive Relief Settlement Class. The Settlement Administrator's judgment as to whether an Opt-Out is valid shall control and be binding.

**4.9 Procedure to Object to the Settlement**

**4.9.1.** Any Settlement 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 the Clerk of Court, and serving on Class Counsel and Defense Counsel, 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), along with any papers in support of their position. Objections must be mailed so that they are postmarked no later than the deadline set by the Court in the Preliminary Approval Order. Objections to Settlement 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 Approval Hearing. Any attorney who intends to appear the Final Approval 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.

**4.10** BIG shall cause notice of the proposed 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 no later than ten (10) days after the filing of this Settlement with the Court ("CAFA Notice").

**5. Final Approval Hearing Judgment and Notice**

**5.1** The Final Approval Hearing, as established in the Preliminary Approval Order, shall be for the purpose of consideration of final approval of the Settlement set forth in this Settlement Agreement.

**5.2** No later than ten (10) calendar days before the Final Approval Hearing, the Settlement Administrator will certify to the Court that it has fully complied with the notice provisions set forth herein, and BIG shall certify to the Court that it has fully complied with the CAFA notice requirements.

**6. Administration and Supervision of the Settlement Fund**

**6.1.** A Settlement Administrator will be selected by Class Counsel unless BIG has grounds for reasonable objection, in which case the Parties will mutually agree upon the Settlement Administrator. The Settlement Administrator shall serve as a neutral third party to provide notice to the Class and class administration services. The Settlement Administrator will be approved by and responsible to the Court, and shall directly administer the Notice of the Settlement, the claims process and shall control the Settlement Fund, subject to court approval. The Settlement Administrator shall administer and oversee the mailing of the court-approved Notices and distribution of funds from the Settlement Fund only with mutual approval of both BIG and Class Counsel. All funds shall be maintained in a bank account unless the Parties jointly agree otherwise. Costs of settlement administration shall be paid from the Settlement Fund before the distribution to Class Members. On completion of the administration of the Settlement, the Settlement Administrator shall provide or cause to be provided to the Court a final report on its administration of the Settlement. The Settlement Administrator shall have and shall provide to Class Counsel and Defense Counsel 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. The Settlement Administrator shall hold all documents and information received regarding Settlement Class Members and potential Settlement Class Members in confidence, and not use such information for any purpose apart from administering the settlement. Notwithstanding the foregoing, absent express written permission of Defense Counsel, the Settlement Administrator shall not share any personally identifying information of Settlement Class Members or potential Settlement Class Members with Plaintiff or Class Counsel.

**6.2.** No person shall have any claim against the Settlement Administrator, Plaintiff, Class Counsel, Defense Counsel and/or BIG based on the monetary payments made substantially in accordance with this Settlement Agreement, or further order(s) of the Court or stipulations of the Parties on the record.

**7. Plaintiff's Counsel's Attorneys' Fees and Reimbursement of Expenses**

**7.1.** Class Counsel shall make an application to the Court for an award from the Settlement Fund for attorneys' fees, costs, and other expenses in an amount not to exceed thirty-three percent (33%) of the Settlement Fund. BIG shall not oppose or object to this application provided that the request for an award of fees and costs is consistent with this Settlement. The Court's award of fees and costs shall be payable from the Settlement Fund within seventeen (17) days after the Effective Date.

**7.2.** Plaintiff shall apply to the Court for the Service Award which shall be in addition to any other sum he may receive as a Settlement Class Member. BIG shall not oppose or object to this application provided that the request for the Service Award is consistent with this Settlement. The court-approved Service Award shall be payable from the Settlement Fund within

seventeen (17) days after the Effective Date or after the Settlement Fund is deposited in accordance with sections 2.4 and 2.5, whichever is later.

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

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

(a) the Court’s refusal to preliminarily or permanently approve this Settlement 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 BIG to pay attorneys’ fees and costs with respect to the Action greater than as provided herein;

(d) the Court orders BIG to pay any Service Award with respect to the Action greater than as provided herein

(e) the Court orders BIG to pay, with respect to the Action, any amount above \$3,300,000.00 required to establish the Settlement Fund, as provided herein;

(f) the Court declines to enter the Judgment in any material respect;

(g) the potential members of the Rule 23(b)(2) Subgroup Settlement Class or the Automatic Payment Settlement Class exceeds, by more than 5%, the class size numbers stated in section 2.2 of this Settlement Agreement, unless BIG agrees to increase the Settlement Fund in an amount proportional to the excess number;

(h) BIG can void settlement at its election if more than five percent (5%) of either the Automatic Payment Settlement Class Members or Rule 23(b)(2) Subgroup Settlement Class Members Opt Out of the Settlement.

(i) the Judgment is reversed, vacated or modified in any material respect by the Third Circuit Court of Appeals, the United States Supreme Court, 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 or for the Service Award shall not be grounds for Plaintiff, the Settlement Class Members, or Class Counsel to terminate this Settlement.

**8.3.** If any Party exercises its respective rights to terminate this Settlement and Settlement Agreement pursuant to section 8.1 herein, the Party shall terminate the Settlement, including dissolving the Settlement Classes, by delivering written notice of the election to terminate ("Termination Notice") to all other parties and their counsel hereto within thirty (30) days of the Terminating Event. In the event that a Termination Notice is so provided, then the Settlement shall be canceled and terminated unless and until Class Counsel and Defense Counsel mutually agree in writing to proceed with the Settlement.

**8.4.** In the event that the Settlement is terminated as provided for herein, then (a) this Settlement shall be null and void and of no further force and effect, including voiding the Settlement Classes; (b) the Settling Parties shall be restored to their respective positions in the Action immediately prior to the mediation of this Action, including without waiver of any objections, defenses, or arguments; (c) any portion of the Settlement Fund not used to fund notice and administration as of the time of the Terminating Event shall be returned to BIG; (d) this Settlement 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 Stipulation shall be treated as vacated, *nunc pro tunc*.

**8.5.** Upon the filing of the proposed Settlement 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 Settlement or to comply with or effectuate the terms of this Settlement 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 Settlement, and directing its implementation pursuant to its terms and provisions;
- (b) ruling on Class Counsel's application for attorneys' fees, costs and other expenses, and Plaintiff's request for a Service Award;
- (c) discharging and releasing BIG from the Released Claims as defined herein;
- (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 Settlement and the Final Judgment.

BIG may also petition the Court for a consent order that BIG's Section 1681k notice process as to be implemented for the non-monetary consideration is compliant with the FCRA and corresponding state laws. Notice to BIG and a reasonable opportunity to cure will be a precondition to any action for an alleged breach. Plaintiff agrees not to oppose entry of such order and support it with averments as to the compliance of BIG's Section 1681k notice process. The consent order will be included with the Parties' motion for final approval of the settlement.

**10. Miscellaneous Provisions**

- 10.1.** The Parties (a) acknowledge that it is their intent to consummate this agreement; (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and

conditions of this Settlement; and (c) agree to exercise their best efforts to accomplish the foregoing terms and conditions of this Settlement.

**10.2.** Class Counsel, Plaintiff, Defense Counsel and BIG shall make no media or press statements with regard to the Action or the Settlement Agreement and the settlement proceedings except that they may place on their law firm websites general anonymous information about their handling of the case no earlier than sixty (60) days after the Court enters the Final Approval Order in the Action.

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

**10.4.** 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.** Before entry of the Final Approval Order, 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, or by stipulations made on the record. Following entry of the Final Approval Order, 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.** Class Counsel hereby confirms that as of the date they sign this Agreement, there are no individuals who (1) have signed retention or engagement agreements with Class Counsel and (2) who Class Counsel know or in good faith believe intend to assert claims against BIG or any of the other Released Persons.



**10.7.** The provisions of this Settlement Agreement 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.

**10.8.** This Settlement binds and inures to the benefit of the Parties, their assigns, affiliates, heirs, administrators, executors, and successors.

**10.9.** Except as otherwise expressly stated herein, the Settlement is not intended to confer any benefits upon any non-party. For avoidance of doubt, the Released Persons other than BIG are intended third-party beneficiaries.

**10.10.** This Settlement Agreement 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 document.

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

**10.12.** 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:

**10.13. For the Class:**

James A. Francis  
Francis & Mailman, P.C.  
100 S. Broad Street  
Suite 1902  
Philadelphia, PA 19110

**10.14. For Defendant:**

Rod M. Fliegel  
Littler Mendelson, P.C.  
333 Bush Street  
34th Floor  
San Francisco, CA 94104


**10.15.** This Settlement Agreement is made under the laws of Pennsylvania without regard to otherwise applicable principles of conflicts of laws, whether of the Commonwealth of Pennsylvania or any other jurisdiction.

**10.16.** The Parties agree that a copy of this Settlement Agreement is binding and valid just as the signed original would be binding and valid.

**10.17.** 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.


**AGREED:**

**MICHAEL KELLY, Plaintiff**



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Michael Kelly



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James A. Francis

John Soumilas

Lauren KW Brennan

**FRANCIS & MAILMAN PC**

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***Counsel for Plaintiff***

**BUSINESS INFORMATION GROUP, INC., Defendant**

By: \_\_\_\_\_

Its: \_\_\_\_\_

  
  
  
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