

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
GEORGE BOSKIE, HADEL TOMA, and)
TERRY KELLER,)
Plaintiffs,)
v.)
BACKGROUNDCHECKS.COM, LLC)
Defendant.)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
CASE NO. 2019CP3200824
PRELIMINARY APPROVAL ORDER

The Court, having considered Plaintiff’s Unopposed Motion for Final Approval of the Proposed Class Action Settlement between Plaintiffs George Boskie, Hadel Toma, and Terry Keller (“Named Plaintiffs” or “Class Representatives”) and Defendant backgroundchecks.com LLC (“Defendant”) in the above-captioned matter, the Settlement Agreement entered into between the Parties (the “Settlement Agreement”), and for good cause shown therein, IT IS HEREBY ORDERED:

1. Unless defined herein, for purposes of this Preliminary Approval Order, all capitalized terms in this Order shall have the same meanings as set forth in the Settlement Agreement.
2. This Court has jurisdiction over the subject matter of this action and over the settling parties hereto.
3. For settlement purposes only, the Court preliminarily finds that the settlement of the Litigation, on terms and conditions set forth in the Settlement Agreement, including all Exhibits thereto, is fair, reasonable, adequate, and in the best interests of the Settlement Class Members and is within the range of reasonableness for preliminary settlement approval. The Court finds that: (a) the Settlement Agreement resulted from arm’s length negotiations; and (b)

the Settlement Agreement is sufficiently reasonable to warrant notice of the settlement to persons in the Settlement Classes and a full hearing on the approval of the settlement. The Settlement Agreement, including its Exhibits, and the definition of words and terms contained therein, are incorporated by Reference in this Order.

4. Pursuant to South Carolina Rule of Civil Procedure 23, the Court certifies the Litigation, for settlement purposes only, as a class action on behalf of the following two Classes (together the “Settlement Classes”) with respect to the claims asserted against Defendant in the Litigation:

“Injunctive Relief Class” means all natural persons residing in the United States or the District of Columbia about whom either (a) information existed in Defendant’s public records database or (b) Defendant provided a report to a third party, in either case from September 8, 2014 to the date when the Court enters its order of Preliminary Approval. Excluded from the settlement class are any Released Person, any person who has previously released his or her claims against Defendant, and the judge overseeing the Litigation.

“HomeAdvisor Class” means all natural persons residing in the United States or the District of Columbia who were the subject of one or more reports that Defendant prepared and furnished directly to HomeAdvisor, Inc. during the period from September 8, 2014 to the date when the Court enters its order of Preliminary Approval, which report or reports contained one or more criminal records where the reported disposition in the incident (a) was either blank or something other than a conviction of a crime; and (b) antedates the date of the report by more than seven years. Excluded from the settlement class are any Released Person, any person who has previously released his or her claims against Defendant, any person who validly opts out of the settlement pursuant to Section 4.6, and the judge overseeing the Litigation.

13. For settlement purposes only, the Court finds that the Litigation satisfies the applicable prerequisites for class action treatment under South Carolina Rule of Civil Procedure 23, namely:

- The Settlement Classes are so numerous that joinder of all members is impracticable;

- There are questions of law and fact common to the members of the Settlement Classes;
- The claims of the Class Representatives are typical of the claims of the Settlement Class Members;
- The Class Representatives and Class Counsel have fairly and adequately represented and protected the interests of all of the members of the Settlement Classes;
- Common questions of law and fact predominate over questions affecting only individual members of the Settlement Classes; and
- Class treatment of these claims will be efficient and manageable, thereby achieving an appreciable measure of judicial economy, and a class action is superior to other available methods for a fair and efficient adjudication of this controversy.

5. Pursuant to South Carolina Rule of Civil Procedure 23, for settlement purposes only, the Court certifies Named Plaintiff George Boskie as the Class Representative for the HomeAdvisor Class, Plaintiffs George Boskie, Hadel Toma and Terry Keller as Class Representatives for the Injunctive Relief Class and appoints Berger Montague PC and Willig, Williams & Davidson as Class Counsel.

6. Defendant has expressly waived the provisions of S.C. Code Ann. § 15-5-150 and this Court therefore is free to exercise its jurisdiction to adjudicate the claims on residents of states outside of South Carolina.

7. Class Counsel and Defendant will hire a third-party administrator (the “Settlement Administrator”) to assist in the administration of the settlement and the notification to the members of the Settlement Classes. The Court appoints JND Legal Administration as Settlement Administrator. The costs and expenses shall be paid subject to the terms of the Settlement Agreement. The Settlement Administrator will be responsible for carrying out the tasks set forth in the Settlement Agreement.

8. The Court approves the notice plans for the HomeAdvisor Class and the Injunctive Relief Class and as set forth in the declaration of the JND Legal Administration. The Court finds that class notice fully satisfies the requirements of due process, the South Carolina Rules of Civil Procedure. The notice plan for the HomeAdvisor Class and Injunctive Relief Class constitutes the best notice practicable under the circumstances of each Class. The Settlement Administrator is authorized to take all reasonable steps to effectuate the notice plans that are not inconsistent with the Settlement Agreement or the notice plans.

9. All members of the Settlement Class have the right to object to the settlement pursuant to the procedures and schedule set forth in the Settlement Agreement. HomeAdvisor Class Members have the right to opt out of the settlement pursuant to the procedures and schedule set forth in the Settlement Agreement. Injunctive Relief Class Members do not have the right to opt out.

10. The statutory and punitive damage claims released by Injunctive Relief Class Members are incidental to the meaningful and valuable injunctive relief provided by the settlement. *Berry v. Schulman*, 807 F.3d 600, 609 (4th Cir. 2015).

11. A Final Approval Hearing shall take place before the Honorable J. Walton McLeod on **October 25, 2019, at 9:00 a.m. at the Lexington County Court of Common Pleas, 205 East Main Street, Lexington, 29072**, to determine whether the proposed settlement of the Litigation on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate, and should be approved; whether the Final Approval Order, as provided for in the Settlement Agreement should be entered; whether the Order for Injunctive Relief should be entered; the amount of any fees and costs that may be awarded to Class Counsel; and the amount of any service award that may be awarded to the Named Plaintiffs as

provided for in the Settlement Agreement. The Final Approval Hearing may be postponed, adjourned, or rescheduled by order of the Court without further notice to the Settlement Class Members.

12. Objections by members of the Settlement Classes to the Settlement Agreement shall be heard by the Court at the Final Approval Hearing. For an objection to be effective, a notice of intent to object to this settlement agreement must be (a) filed with the Clerk of the State Court not later than 96 days after the Notice Date; (b) in compliance with all applicable laws and rules; and (c) sent to the Settlement Administrator by U.S. mail, postmarked no later than 96 days after the Notice Date. To be effective, an objection must contain: (a) the objecting Injunctive Relief Class Member's full name, address, date of birth, and telephone number; (b) the name of this Litigation and the case number; (c) a statement of each objection; (d) a statement of whether the objecting Injunctive Relief Class Member intends to appear at the Final Fairness Hearing; and (e) a written specification of the basis for each objection, including any legal and factual support that the objecting Injunctive Relief Class Member wishes to bring to the Court's attention and any evidence the objecting Injunctive Relief Class Member wishes to introduce in support of the objection.

13. Any member of the Settlement Classes who fails to object in the manner prescribed herein shall be deemed to have waived his or her objections and shall be foreclosed from making any objections, whether by appeal or otherwise, to the settlement.

14. Class Counsel shall file any application for an award of attorneys' fees and costs, Named Plaintiff service awards no later than fourteen (14) days prior to the deadline for members of the Settlement Classes to object.

15. All proceedings in the Litigation 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.

16. If the Settlement Agreement is terminated or is not consummated for any reason whatsoever, or if final approval of the settlement is not obtained (or if such approval is reversed, vacated, or modified in any material respect by this or any other court), the certification order, including the preliminary certification of the Settlement Classes and appointment of the Class Representatives and Class Counsel shall be void and/or vacated, and this action shall proceed as if the Settlement Classes had never been conditionally certified (including Defendant's right to oppose any subsequent motion for class certification), and no reference to the Settlement Class, the Settlement Agreement, or any documents, communications, or negotiations related in any way thereto shall be made for any purpose.

17. Counsel for the Parties and the Settlement Administrator are hereby authorized to utilize all reasonable procedures in connection with the administration of the settlement that are not materially inconsistent either with the Order or the Settlement Agreement.

18. This Court retains jurisdiction to consider all further applications arising out of or connected with the Settlement Agreement.

SO ORDERED.

Date: 5-17-2019



Walton J. McLeod, IV
Circuit Court Judge
Eleventh Judicial Circuit