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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DEMETA REYES, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

EXPERIAN INFORMATION  
SOLUTIONS, INC.,

Defendant.

Case No. 8:16-cv-563-AG-AFMx

Hon. Andrew J. Guilford

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT  
OF PLAINTIFF’S MOTION FOR  
CLASS CERTIFICATION**

Date: April 24, 2017

Time: 10:00 a.m.

Courtroom: 10D

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1 **I. INTRODUCTION.<sup>1</sup>**

2 For nearly four years, Experian provided essential services, including access to  
3 consumers' credit reports and data reporting services, to enable its clients in the  
4 online loan industry – Western Sky Financial, LLC, CashCall, Inc., and Delbert  
5 Services, Inc. – to carry out the notorious Western Sky online lending scheme. At the  
6 height of the scheme, Experian was earning more than \$2 million annually from these  
7 clients. By the end of 2013, at least 19 state and federal enforcement agencies had  
8 taken legal action against Experian's clients. Experian was aware of the lending  
9 scheme, aware of the extensive legal proceedings taken against the companies, and  
10 ultimately made the decision to delete all accounts originated from the scheme.

11 Despite making the decision to delete, and commencing the deletion in  
12 December 2014, Experian failed to delete more than 125,000 accounts that remained  
13 on consumers' reports. Experian again failed to delete those accounts when the  
14 furnisher of the information, Delbert Services, went out of business and could no  
15 longer verify the accuracy of the data, contrary to Experian's own policy. Experian  
16 was made aware of the problem on multiple occasions, but either ignored it or failed  
17 to follow its own procedures to ensure the deletion had been properly executed.

18 Plaintiff asserts that Experian willfully violated the Fair Credit Reporting Act  
19 ("FCRA"), 15 U.S.C. § 1681e(b) by failing to use reasonable procedures to assure  
20 maximum possible accuracy, and seeks certification of a class consisting of at least  
21 102,824 individuals whose Experian reports contained a negative Delbert account  
22 after Experian intended to delete those accounts and Experian's policies mandated the  
23 accounts should have been deleted when Delbert went out of business.

24 \_\_\_\_\_  
25 <sup>1</sup> As set forth in her accompanying motion, Plaintiff respectfully requests that the  
26 Court grant this motion and direct notice to the class prior to ruling on Plaintiff's  
27 forthcoming motion for summary judgment. This will alleviate any concerns  
28 regarding so-called "one-way intervention." See *Brown v. Hain Celestial Grp., Inc.*,  
No. C 11-03082 LB, 2014 WL 6483216, at \*7-8 (N.D. Cal. Nov. 18, 2014)  
(discussing one-way intervention and the reasons for avoiding pre-certification merits  
rulings).

1 **II. STATEMENT OF FACTS.<sup>2</sup>**

2 **A. Experian's history with Western Sky, CashCall and Delbert.**

3 Experian is a national consumer reporting agency as defined in Section  
4 1681a(f) of the FCRA. Experian generates and sells consumer reports (often referred  
5 to as "credit reports" or "reports"). To compile credit reports, Experian collects  
6 information from companies known as "data furnishers." *See* Deposition of Peter  
7 Henke, Doc. 57-2 at 21:14-17. In order to furnish data to Experian, companies must  
8 submit a new client application and be approved by Experian's membership  
9 department. *See* Doc. 57-2 at 21:11-13. Experian refers to this process as  
10 "onboarding." *See* Doc. 57-2 at 14:13-16. Once approved, Experian assigns the data  
11 furnisher a unique "Vendor ID" and data reporting "subcode." *See* Henke Decl., Doc.  
12 52-25, ¶ 2. Consumers' credit reports can be accessed by "subscribers" that purchase  
13 the reports in order to make lending decisions or for other purposes permitted under  
14 the FCRA. *See* Doc. 57-2 at 22:10-18, 23:2-3, 23:10.

15 In 2003, Experian approved California-based consumer lending company  
16 CashCall as a data furnisher and approved it to access consumers' credit reports as a  
17 subscriber. *See* Henke Dec., Doc. 52-25, ¶ 2. CashCall's membership application  
18 listed the president of the company as John Paul Reddam. Doc. 57-7. Since 2003,  
19 Experian's account manager for CashCall was Richard "Rick" Hills, a member of  
20 Experian's sales department. *See* Deposition of Rick Hills, Doc. 57-3 at 42:8-11,  
21 46:10-12, 46:21-23. Starting in 2006, Mary Cheatham, a senior sales associate within  
22 Experian, worked with Rick Hills managing the account. *See* Deposition of Mary  
23 Cheatham, Doc. 57-4 at 34:11-19. In late 2009, Experian learned that CashCall was  
24 changing its business practices in order to expand its consumer lending business

25 <sup>2</sup> "A district court reviewing a motion for class certification 'is required to consider  
26 the nature and range of proof necessary to establish [the] allegations' of the  
27 complaint, even as it 'is bound to take the substantive allegations of the complaint as  
28 true.'" *Bee, Denning, Inc. v. Capital All. Grp.*, 310 F.R.D. 614, 623 (S.D. Cal. 2015)  
(citing *In re Coordinated Pretrial Proceedings in Petroleum Prod. Antitrust Litig.*,  
691 F.2d 1335 (9th Cir. 1982)). Because the record in this case has already been fully  
developed, Plaintiff has included herein relevant citations to the record.

1 nationwide. Doc. 57-3 at 66:23-67:6; Doc. 57-4 at 38:11-23. To do this, CashCall  
2 partnered with a newly-formed company, Western Sky Financial, LLC, that  
3 purported to be associated with an American Indian tribe. Doc. 57-3 at 67:2-15; Doc.  
4 57-4 at 38:11-23, 39:23-40:10. The purpose of this arrangement was to allow  
5 CashCall to fund high-interest loans under Western Sky's name while avoiding state  
6 licensing and usury laws through tribal sovereign immunity. Doc. 57-3 at 129:23-  
7 130:19, 130:24-131:4. CashCall would then purchase the loans back from Western  
8 Sky three days later and take over collection on the accounts. Doc. 57-4 at 40:17-23.  
9 Western Sky needed access to consumers' credit reports to make lending decisions,  
10 so on January 19, 2010, Western Sky submitted a membership application with  
11 Experian, seeking such access. Docs. 57-3 at 67:7-22; Doc. 57-4 at 38:24-39:9; Doc.  
12 57-8. Mary Cheatham prepared the new client documentation on behalf of Western  
13 Sky and Experian approved Western Sky as a new client. Doc. 57-4 at 38:24-39:9.

14 In 2010, Experian also "onboarded" Delbert as a collection agency. *See* Henke  
15 Dec., Doc. 52-25, ¶ 3. Delbert's membership application listed Reddam as the owner  
16 and CashCall as its parent company. *See* Doc. 57-9. From 2010-2013, CashCall  
17 funded hundreds of thousands of loans through Western Sky generating \$2 million  
18 for Experian annually. Doc. 57-3 at 68:18-22. By early 2013, however, a number of  
19 state and federal agencies had filed lawsuits against Western Sky, CashCall, John  
20 Paul Reddam, and/or their affiliated companies relating to violations of state lending  
21 laws and abusive debt collection practices. Doc. 57-10. Experian was aware of the  
22 extensive litigation surrounding its clients related to these loans. Doc. 57-2 at 219:22-  
23 220:2; Doc. 57-3 at 122:7-20; Doc. 57-4 at 79:15-80:2; Doc. 57-12.

24 In April 2013, Experian conducted a membership review on CashCall which  
25 included copies of consumer complaints against CashCall and a number of articles  
26 discussing multi-million dollar settlements between CashCall and various states. Doc.  
27 57-11 at 28-32. Under the comments section of the review, Experian wrote: "There  
28 are many complaints and law suits [sic] against CashCall but nothing definitive [sic]



1 showing CashCall has broken any laws has been found.” *Id.* at 2. On August 20,  
2 2013, Experian’s membership department performed another membership review on  
3 CashCall. This review acknowledged even more of the extensive litigation, with the  
4 file including annotated copies of multiple legal actions taken against Western Sky  
5 and/or CashCall. Doc. 57-13 at 15-49. On the same date, August 20, 2013, Rick Hills  
6 sent an email to senior members within Experian acknowledging allegations  
7 describing CashCall and Western Sky’s relationship as a “rent-a-tribe” scheme were  
8 “essentially correct.” Doc. 57-14; Doc. 57-3 at 135:17-23. On August 29, 2013,  
9 members of Experian’s sales department were informed via a *Wall Street Journal*  
10 article that Western Sky was ceasing offering loans amid “interference by state and  
11 government regulators.” *See* Doc. 57-15; Doc. 57-3 at 136:14-137:3.

12 Rick Hills professed “shock” at the news and estimated that Western Sky’s  
13 decision would cost Experian \$1.2 million in revenue for the year 2014. *Id.* During  
14 this period, Experian approved Delbert for a new function, to become a loan servicer  
15 and agent of CashCall. *See* Henke Dec., Doc. 52-25, ¶ 3. This would allow Delbert,  
16 along with CashCall, to report data to Experian relating to Western Sky loans. *See*  
17 Doc. 57-16. At the time Delbert’s request was being processed, Experian’s  
18 membership department was aware of a number of pending lawsuits, court orders,  
19 and judgments against CashCall and Delbert relating to the Western Sky scheme. *See*  
20 Doc. 57-2 at 219:22-220:2. Delbert was assigned a unique data reporting subcode  
21 under CashCall’s company ID. *See* Cheatham Decl., Doc. 52-23, ¶ 5. In December  
22 2013, three months after Western Sky stopped offering loans, Delbert began reporting  
23 a portfolio of 125,746 accounts relating to outstanding Western Sky loans, all of  
24 which were previously reported by CashCall. *See* Doc. 57-18. This meant consumers’  
25 reports would contain two accounts relating to their Western Sky loan, one from  
26 CashCall and one from Delbert. *See* Deposition of Kimberly Cave, Doc. 57-5 at  
27 111:15-112:23. In its internal database, Experian uses “industry codes” that reflect  
28 the status of the accounts it reports. Doc. 57-5 at 13:9-18, 19:6-20.

1 At least 102,824 accounts reported by Delbert were reporting as “type 93” —  
2 which means seriously past due and/or assigned to internal or external collections.  
3 *See* Doc. 57-18 at 3; Doc. 57-61 at 18; Doc. 57-5, at 113:5-12. Consequently,  
4 Experian would display these accounts as a “negative credit item” on consumer  
5 reports. *See* Doc. 57-18 at 3; Doc. 57-4 at 51:22-52:4.

6 **B. Experian’s decision to delete all Western Sky accounts.**

7 In January 2014, Western Sky entered into a \$1.5 million settlement agreement  
8 with the State of New York that invalidated more than 18,000 loans. *See* Doc. 57-19.  
9 As a condition of the settlement, Sean Bennett, a representative from CashCall,  
10 requested that Experian delete all Western Sky accounts associated with New York  
11 borrowers. *See* Doc. 57-20 at 6; Doc. 57-4 at 112:2-9. To capture all borrowers with  
12 Western Sky loans, Experian had to delete files reported by both CashCall and  
13 Delbert. *See* Doc. 57-21 at 2-3. Experian later did the same with borrowers from  
14 Connecticut, Vermont, and Pennsylvania. *See* Doc. 57-4 at 162:5-11; Docs. 57-22;  
15 57-23; 57-24; 57-25. In early 2014, Experian employee Carmen Hearn was informed  
16 by David Proctor, an Experian senior vice president, that Experian management was  
17 considering deleting all data relating to Western Sky loans and requested that she  
18 review the situation. *See* Deposition of Carmen Hearn, Doc. 57-6 at 21:3-8; 25:3-13.  
19 At the same time, Experian adopted a new policy for “reinvestigating” consumer  
20 disputes relating to CashCall and Delbert. *See* Docs. 57-26; 57-27; 57-28; 57-29.  
21 Rather than let CashCall and Delbert decide whether a dispute was valid, as was  
22 standard procedure, Experian would instead immediately delete the account. *See* Doc.  
23 57-6 at 116:24-117:11. As part of the review process, Mary Cheatham confirmed that  
24 Western Sky loans were being reported by two companies under two separate  
25 subcodes, CashCall and Delbert, both reporting under CashCall’s company ID. *See*  
26 Doc. 57-30. Because CashCall also reported its own portfolio of accounts in addition  
27 to the Western Sky portfolio, Experian’s management requested that CashCall assist  
28 in “re-subcoding” CashCall’s portfolio in order to segregate (and ultimately delete)

1 the Western Sky-originated accounts. *See* Cheatham Dec., Doc. 52-23, ¶ 4.

2 A re-subcode was unnecessary for the Delbert subcode because it only reported  
3 Western Sky accounts. *See* Doc. 57-22; Doc. 57-3 at 168:23-169:6. On May 30,  
4 2014, Experian's data development department confirmed that the re-subcode was  
5 completed and CashCall's portfolio of 359,371 Western Sky accounts would report  
6 under the new subcode 2292030. *See* Doc. 57-31; Doc. 57-4 at 183:10-17. That same  
7 month, Experian learned that Western Sky accounts associated with New York  
8 borrowers were still reporting on consumers' reports. *See* Docs. 57-32; 57-33; Doc.  
9 57-4 at 175:18-176:5. Around this period in May 2014, Experian made the decision  
10 to delete all Western Sky accounts. *See* Proctor Decl., Doc. 52-28, ¶ 13.

11 **C. Experian fails to delete the Delbert accounts in December 2014.**

12 On November 24, 2014, Carmen Hearn sent an e-mail outlining assignments to  
13 various individuals and departments within Experian to facilitate the deletion of all  
14 Western Sky-originated accounts (the "mass deletion"). Doc. 57-37 at 3-4. Carmen  
15 Hearn assigned Mary Cheatham and Rick Hills the task of submitting a Master File  
16 Maintenance Report (MFMR), which would "start [the deletion] process internally"  
17 by instructing Experian's data development department to delete the necessary data  
18 reporting subcodes. *Id.* Experian maintains procedures for completing a MFMR,  
19 which explain the purpose and process for facilitating the deletion of a subcode:

20 Purpose of MFMR's: An MFMR completes the cancellation process.  
21 The form is sent to the data organization to address data reporting and  
22 then is forward [sic] to subcode maintenance for the status of the account  
to be changed in Customer Master from "H" to "D" or "P." (Doc. 57-38)

23 The procedures state that a subcode status should be changed to "D" for delete when  
24 "the account has no data on file or the company is out of business[.]" *Id.*

25 Mary Cheatham was in charge of submitting the MFMR form necessary to  
26 commence the deletions with Rick Hills overseeing the process. *See* Doc. 57-3 at  
27 203:15-204:4; Doc. 57-4 at 207:8-17. On December 15, 2014, Debbie Stout, a  
28 member of Experian's data development department, acknowledged receipt of the

1 MFMR for the CashCall subcode. Doc. 57-39 at 2. Debbie Stout then sent a “Data  
2 Development Notification of Key Action” to at least 15 individuals and two listservs  
3 within Experian informing them that “356,902 records reporting under subcode  
4 2292030, vendor ID DAPNU [CashCall]” were set to delete. Doc. 57-40.

5 On December 23, 2014, Ingrid Kenneth, Experian’s data manager director, sent  
6 an email to Carmen Hearn and Mary Cheatham confirming that deletion of CashCall  
7 subcode 2292030 had been completed the previous day. Doc. 57-41 at 3. This  
8 confirmation was relayed to members of Experian’s management and CashCall. *See*  
9 Docs. 57-41; 57-42. Despite claiming an intent to delete all Western Sky accounts at  
10 that time, Experian failed to submit a deletion request for the more than 125,000  
11 Western Sky accounts being reported by Delbert under subcode 2245140. *See* Doc.  
12 57-4 at 214:19-22, 252:8-11; *see also* Cave Decl., Doc. 52-23, ¶¶ 8, 9.

13 **D. Experian fails to delete the Delbert accounts in January 2015 after**  
14 **Delbert went out of business.**

15 Experian’s internal guidance to furnishers provides that: “If [reported] accounts  
16 cannot be verified on your system then they should be deleted.” *See* Doc. 57-21 at 2-  
17 3; Doc. 57-4 at 153:18-20. As such, when an entity furnishing to Experian goes out of  
18 business, Experian’s policy is to delete all data being reported by that furnisher  
19 because it can no longer be verified. Experian’s corporate representative Kimberly  
20 Cave testified (Doc. 57-5 at 102:3-13):

21 [If a furnisher is] not an active reporter then I would expect there not to  
22 be data on file because that’s going to be handled by data development.  
23 So if you go out of business and no longer meet requirements for  
24 membership we can’t keep your data on file. If there’s no longer  
25 someone responsive to your data I can’t keep it on file because in the  
26 interest of the consumer I can’t verify it at that point.

25 On January 14, 2015, a Delbert representative informed Ms. Cheatham that effective  
26 January 1, 2015, Delbert was no longer in business and wanted to “discontinue use of  
27 any and all services provided by Experian” including data reporting. *See* Doc. 57-43.  
28

1 Ms. Cheatham responded: “I will take care of this today. We will turn off all existing  
2 subscriber codes.” *See* Doc. 57-44. Ms. Cheatham then listed four subcodes under the  
3 Delbert company ID and confirmed their cancellation as of January 21, 2015. *Id.* But  
4 she failed to include subcode 2245140, the Delbert subcode reporting Western Sky  
5 loans under CashCall’s company ID. *See* Doc. 57-4 at 220:24-221:10.

6 **E. Experian fails to correct the mistake after being explicitly notified.**

7 On June 1, 2015, Sean Bennett from CashCall informed Ms. Cheatham that  
8 Western Sky-originated accounts were still reporting, providing a “bullseye”<sup>3</sup> with  
9 eight examples. *See* Doc. 57-45. Ms. Cheatham requested that Debbie Stout review  
10 the examples to identify the problem. *See* Docs. 57-4 at 223:9-15; 57-46. On June 4,  
11 2015, Debbie Stout responded to Ms. Cheatham and Mr. Hills identifying two  
12 problems: First, some of the re-subcoded CashCall accounts started to re-report; and  
13 second, Delbert subcode 2245140 was still reporting because nobody had submitted a  
14 MFMR instructing data development to delete the subcode, even though Delbert was  
15 listed as “inactive pending” in Experian’s systems. *See* Doc. 57-47. Ms. Cheatham  
16 acknowledged this was a serious “reporting error” and “high priority” issue because  
17 of the potential impact on consumers and the client. *See* Doc. 57-4 at 225:9-23.

18 **F. Experian waits four months to take any action and then fails to**  
19 **delete the Delbert accounts on three more occasions.**

20 Despite being explicitly informed that the Delbert data was still reporting,  
21 neither Ms. Cheatham nor Mr. Hills took any immediate corrective action. *See* Doc.  
22 57-3 at 218:11-219:8; Doc. 57-4 at 229:4-12. Ms. Cheatham acknowledged that  
23 Experian had no justification for the delay (Doc. 57-4 at 230:3-11):

24 Q. . . . isn’t this the type of issue that would typically become a  
25 high priority that needs to get addressed and fixed?

26 A. Yes.

27 Q. Immediately?

28 <sup>3</sup> A bullseye allows the furnisher to see how data is being displayed on consumers’ reports. *See* Doc. 57-4 at 184:23-185:6.

1           **A. Yes.**

2           Q. Do you know why it didn't happen in this instance?

3           **A. Because I dropped the ball.**

4           Over the next several months, Sean Bennett of CashCall followed up with  
5 Mary Cheatham on at least three occasions asking for confirmation that Western Sky  
6 accounts had been deleted, but Ms. Cheatham did not respond. *See* Doc. 57-4 at  
7 236:14-23; Docs. 57-48; 57-49, 57-50. On September 30, 2015, Experian's data  
8 department wrote Mary Cheatham an e-mail marked high priority stating: "I was  
9 assigned to work the accounts for Western Sky - please let me know which subcode  
10 or subcodes require maintenance to delete the accounts." Doc. 57-51. Again, Ms.  
11 Cheatham did not respond. On October 15, 2015, Mary Cheatham acknowledged that  
12 the Delbert subcode needed to be deleted (Docs. 57-52; 57-53); and the data  
13 department confirmed that Delbert subcode 2245140 had 125,746 accounts on file  
14 and informed Ms. Cheatham that they would "need an MFMR request to delete those  
15 trades." Doc. 57-17 at 3. Despite all parties recognizing this was the correct subcode,  
16 Ms. Cheatham again instructed data development to delete the wrong subcodes. *Id.*

17           On January 8, 2016, Sean Bennett from CashCall again informed Mary  
18 Cheatham and Experian employees that Western Sky data was still reporting, now  
19 pleading with Experian: "How can we be assured these loans have been deleted?" *See*  
20 Doc. 57-54. Experian responded: "By tomorrow, 01/15/16, there will no longer be  
21 any Western Sky originated accounts on the Experian credit file." *Id.* But the issue  
22 surfaced again on March 4, 2016, when Sean Bennett again wrote Experian to say  
23 Western Sky accounts were reporting under Delbert's subcode. *See* Doc. 57-55 at 5.  
24 Making the same mistake for a third time, Experian instructed that the wrong Delbert  
25 subcodes be deleted. *Id.* at 4. In 2015 and 2016, Experian's disputes department  
26 received 1,925 disputes from consumers relating to Delbert accounts. *See* Doc. 57-56.  
27 Nobody from Experian's disputes department inquired as to why disputes were being  
28 received on accounts that should have been deleted years prior. *See* Doc. 57-5 at

179:21-180:11. The deletion of Delbert accounts did not actually take place until April 2016, almost two years after Experian made the decision to delete and nearly two months after this action was filed. *See* Doc. 57-4 at 251:11-24.

**G. Plaintiff's credit reports.**

On or about November 27, 2012, Plaintiff took out an online loan from Western Sky in the amount of \$2,525. *See* Decl. of Demeta Reyes in Opp. to Summ. Judg., Doc. 57-62, ¶ 1. Under the terms of the agreement, the disclosed annual interest rate on the loan was 138.91% and the finance charge was \$11,353.62. *Id.*, ¶ 3; Doc. 57-57. From January 2013 through March 2014, Plaintiff made 16 payments to CashCall and Delbert totaling \$4,809.85. *Id.*, ¶ 3; Doc. 57-58. On October 29, 2014, Experian generated a credit report (Doc. 57-59) (that Plaintiff did not receive *see* Doc. 52-4 at 60:13-61:6) containing a positive CashCall account reflecting Plaintiff's payment history on the WS loan from Dec. 2012 through July 2013:

■ Credit items						
	Date opened	Type	Credit limit or original amount	Recent balance	Responsibility	
<b>CASHCALL INC</b>	Ncv 2012	Unsecured	Not reported	Not reported	Individual	
1 CITY BLVD W	First reported	Terms	\$2,600		Status	
ORANGE CA 92868	Dec 2012	47 Months	High balance		Closed/Never late.	
No phone number available	Date of status	Monthly	Not reported		This account is scheduled to continue on record until Aug 2023.	
Partial account number	Aug 2013	payment			Comment:	
2347....		Not reported			Purchased by another lender.	
Address identification number						
0410236994						
Sold to: CONSUMER LOAN TRUST						
Payment history						
2013						2012
AUG JUL JUN MAY APR MAR FEB JAN DEC						
CLS OK OK OK OK OK OK OK OK						

It also included a negative Delbert account reflecting Plaintiff's payment history on the same WS loan from December 2013 through September 2014 (*See* Doc. 57-59):

	Date opened	Type	Credit limit or original amount	Recent balance	Responsibility				
<b>DELBERT SERVICES/CONSUME</b>	Aug 2013	Unsecured	\$1,512 as of Sep 2014		Individual				
RODNEY SQUARE N 1100 N MKTST	First reported	Terms	\$2,600		Status				
WILMINGTON DE 18901	Dec 2013	47 Months	High balance		Account charged off. \$1,512 written off. \$1,588 past due as of Sep 2014.				
No phone number available	Date of status	Monthly	Not reported		This account is scheduled to continue on record until Feb 2021.				
Partial account number	Sep 2014	payment							
2347....		Not reported							
Address identification number									
0549096576									
Purchased from CASHCALL INC									
Your accounts that may be considered negative (continued)									
Payment history									
2014						2013			
SEP AUG JUL JUN MAY APR MAR FEB JAN DEC									
CO 120 90 60 30 OK OK OK OK OK									
Account history - If your creditor reported your account balances to us, we list them in this section as additional information about your account. Your balance history may also include your credit limit and high balance or the original loan amount for an installment loan. This section also includes the scheduled payment amounts, amounts actually paid and the dates those payments were made. ND: No Data.									
AB = Account balance (\$) DPR = Date payment received SPA = Scheduled payment amount (\$) AAP = Actual amount paid (\$)									
AB	Aug14	Jul14	Jun14	May14	Apr14	Mar14	Feb14	Jan14	Dec13
DPR	Mar15	Mar15	Mar15	Mar15	Mar15	Feb15	Dec15	Dec15	Nov30
SPA	294	294	294	294	294	294	294	294	294
AAP	ND	ND	ND	ND	ND	ND	167	ND	293
▶ The original amount of this account was \$2,600									

After Experian's mass deletion in December 2014, the positive CashCall

1 account was deleted from Plaintiff's report, but the negative Delbert account showing  
2 the Western Sky loan as "past due" remained. This was reflected on Plaintiff's  
3 December 10, 2015 report, which contained only the delinquent Delbert account. *See*  
4 *Doc. 57-60*. Plaintiff's expert Dean Binder concluded that under the FICO scoring  
5 model, both the deletion of the positive CashCall account and the presence of the  
6 delinquent Delbert account had negative scoring impacts on Plaintiff's FICO credit  
7 score. *See Doc. 57-61 at 27-30*.

### 8 **III. PLAINTIFF'S CLAIM AND PROPOSED CLASS DEFINITIONS.**

9 Plaintiff asserts a one-count claim against Experian for willfully violating §  
10 1681e(b) of the FCRA, which provides that: "Whenever a consumer reporting agency  
11 prepares a consumer report it shall follow reasonable procedures to assure maximum  
12 possible accuracy of the information concerning the individual about whom the report  
13 relates." 15 U.S.C. § 1681e(b). If a willful violation is established, Plaintiff and  
14 members of the class will be entitled to statutory damages of \$100 to \$1,000 for each  
15 such violation. *See* 15 U.S.C. § 1681n(a)(1)(A). Plaintiff seeks only statutory  
16 damages for Experian's willful non-compliance with the FCRA.

17 Plaintiff seeks to certify the following class pursuant to Rule 23(b)(3):

18 All persons whose Experian consumer report contained an account from  
19 Delbert Services Corp. reflecting delinquency on a loan originated by  
20 Western Sky Financial, LLC after January 21, 2015 (the "Class").<sup>4</sup>

21 In the alternative, Plaintiff seeks to certify the following class pursuant to Rule  
22 23(b)(3):

23 All persons whose Experian consumer report included:

- 24 1. Prior to December 21, 2014, an account in good standing from  
25 CashCall, Inc. on a loan originated by Western Sky Financial, LLC and  
26 an account from Delbert Services Corp. reflecting delinquency on the  
27 same loan; and

28 <sup>4</sup> For purposes of this class definition, "delinquency" means accounts that have been charged off, sent to collection, and/or reflect past due or late payments (Plaintiff refers to these as "negative accounts" or accounts in "negative standing" herein).



1 2. After January 21, 2015, an account from Delbert Services Corp.  
2 reflecting delinquency on a loan originated by Western Sky Financial,  
3 LLC without a corresponding account in good standing from CashCall,  
4 Inc. reflecting payments made on the same loan (the “Selective  
5 Reporting Class”).<sup>5</sup>

6 Excluded from the proposed classes are Experian’s officers, directors,  
7 affiliates, legal representatives, employees, successors, subsidiaries, and assigns. Also  
8 excluded from the proposed classes is any judge, justice or judicial officer presiding  
9 over this matter and the members of their immediate families and judicial staff.

10 **IV. LEGAL STANDARD.**

11 Rule 23 of the Federal Rules of Civil Procedure governs class actions. To  
12 obtain class certification, plaintiffs bear the burden of demonstrating that they have  
13 satisfied Rule 23(a)’s requirements. *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d  
14 1180, 1186 (9th Cir. 2001). Rule 23(a) provides that a district court may certify a  
15 class only if: “(1) the class is so numerous that joinder of all members is  
16 impracticable; (2) there are questions of law or fact common to the class; (3) the  
17 claims or defenses of the representative parties are typical of the claims or defenses of  
18 the class; and (4) the representative parties will fairly and adequately protect the  
19 interests of the class.” Fed. R. Civ. P. 23(a). If all four prerequisites of Rule 23(a) are  
20 satisfied, a court must also find that plaintiffs “satisfy through evidentiary proof” at  
21 least one of the three subsections of Rule 23(b). *Comcast Corp. v. Behrend*, 133 S.  
22 Ct. 1426, 1432 (2013). Certification under Rule 23(b)(3) requires the additional  
23 finding “that the questions of law or fact common to class members predominate over  
24 any questions affecting only individual members, and that a class action is superior to  
25 other available methods for fairly and efficiently adjudicating the controversy.” Fed.  
26 R. Civ. P. 23(b)(3). The Rule “requires a showing that *questions* common to the class  
27 predominate, not that those questions will be answered, on the merits, in favor of the  
28

<sup>5</sup> An account in “good standing” as defined by Experian is one showing the consumer has “satisfactorily met the terms” of her agreement with the creditor. *See Doc. 57-59 at 3* (“items display in [good standing] section when your creditor reports that you have satisfactorily met the terms of your agreements with them.”).

1 class.” *Amgen Inc. v. Conn. Ret. Plans*, 133 S. Ct. 1184, 1191 (2013).

2 **V. ARGUMENT.**

3 **A. Numerosity and Ascertainability.**

4 A putative class satisfies the numerosity requirement if “the class is so  
5 numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1).  
6 There is no dispute that the proposed classes satisfy this standard. The Class has at  
7 least 102,824 class members and the Selective Reporting Class has likely thousands  
8 of members Experian can identify with further research. While an “administrative  
9 feasibility prerequisite” (commonly referred to as “ascertainability”) to identify class  
10 members is not a precursor to class certification in the Ninth Circuit, (*see Briseno v.*  
11 *ConAgra Foods, Inc.*, 844 F.3d 1121, 1122 (9th Cir. 2017)), Experian has confirmed  
12 that members of the proposed classes are identifiable and has agreed not to oppose  
13 this motion on “numerosity” or “ascertainability” grounds. *See* Declaration of  
14 Norman E. Siegel in Support of Class Certification (Siegel Dec.), ¶ 5, attached hereto.

15 **B. Commonality.**

16 In order to satisfy the commonality requirement, the Court must find that  
17 “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2).  
18 “The commonality requirement is construed liberally, and the existence of some  
19 common legal and factual issues is sufficient.” *In re Toys “R” Us-Delaware, Inc.–*  
20 *Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 300 F.R.D. 347, 368 (C.D.  
21 Cal. 2013). “The named plaintiff need not show that each class member’s factual and  
22 legal issues are identical: . . . the existence of shared legal issues with divergent  
23 factual predicates is sufficient, as is a common core of salient facts[.]” *Patel v. Trans*  
24 *Union, LLC*, 308 F.R.D. 292, 304 (N.D. Cal. 2015) (quoting *Parra v. Bashas’ Inc.*,  
25 536 F.3d 975, 978 (9th Cir. 2008)). “The plaintiff must demonstrate the capacity of  
26 classwide proceedings to generate common answers to common questions of law or  
27 fact that are apt to drive the resolution of the litigation.” *Wal-Mart Stores, Inc. v.*  
28 *Dukes*, 131 S.Ct. 2541, 2551 (2011) (internal citation omitted).

1 Every issue pertinent to this litigation presents a common question that can be  
2 determined on a classwide basis. These issues include: (1) whether class members’  
3 reports are “inaccurate” within the meaning of § 1681e(b); (2) whether Experian  
4 followed reasonable procedures to assure maximum possible accuracy as required by  
5 § 1681e(b); and (3) whether Experian’s conduct was “willful” under § 1681n.

6 **1. Common Questions as to Inaccuracies.**

7 “In order to make out a prima facie violation under § 1681e(b), a consumer  
8 must present evidence tending to show that a credit reporting agency prepared a  
9 report containing inaccurate information.” *Guimond v. Trans Union Credit Info., Co.*,  
10 45 F.3d 1329, 1333 (9th Cir. 1995). Once established, the plaintiff must demonstrate  
11 that the reporting agency did not follow reasonable procedures to assure maximum  
12 possible accuracy of consumers’ reports. *See id.* A credit report is “inaccurate” within  
13 the meaning of § 1681e(b) if it is “patently incorrect or materially misleading.”  
14 *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 890-91 (9th Cir. 2010); *accord*  
15 *Grigoryan v. Experian Info. Sols., Inc.*, 84 F. Supp. 3d 1044, 1066-67 (C.D. Cal.  
16 2014) (“Courts have applied the ‘patently incorrect or materially misleading’ standard  
17 indiscriminately to claims arising under provisions of the FCRA [involving] the  
18 accuracy of information.”). Information on a credit report is “materially misleading”  
19 if it is “misleading in such a way and to such an extent that it can be expected to  
20 adversely affect credit decisions.” *Carvalho*, 629 F.3d at 890 (quoting *Gorman v.*  
21 *Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1163 (9th Cir. 2009)).

22 **a. Inaccuracy on behalf of the Class.**

23 On behalf of herself and the Class, Plaintiff asserts her December 10, 2015  
24 Experian report was “materially misleading” so as to be “inaccurate” within the  
25 meaning of § 1681e(b) in three independent ways: (1) Plaintiff’s report contained an  
26 account that Experian made the decision to delete but Experian failed to properly  
27 execute the deletion; (2) Plaintiff’s report contained an account that Experian’s  
28 policies mandate should have been deleted when Delbert went out of business – and

1 Delbert instructed Experian to cancel all services – but Experian failed to properly  
2 execute the deletion; (3) Plaintiff’s report contained an account that Experian made  
3 the decision to delete *and* Experian’s policies mandate should have been deleted  
4 when Delbert went out of business but Experian failed to properly execute the  
5 deletions. The Class consists of at least 102,824 members who had a Delbert account  
6 reflecting delinquency on their consumer report after Experian intended to delete the  
7 accounts and Experian’s policies mandate the accounts should have been deleted  
8 when Delbert went out of business. Whether the presence of this negative account  
9 creates a “materially misleading” report that would “be expected to adversely affect  
10 credit decisions” is a common question that will generate the common answer of  
11 whether an “inaccuracy” has been established under § 1681e(b) on behalf of the  
12 Class. Indeed, individualized proof will not be necessary because members of the  
13 Class can all demonstrate an inaccuracy by simply establishing their report contained  
14 a Delbert account in negative standing after January 21, 2015. *See Soutter v. Equifax*  
15 *Info. Servs., LLC*, 307 F.R.D. 183, 201 (E.D. Va. 2015) (“the Plaintiff has shown that  
16 individualized proof will not be necessary, because the members of the class can all  
17 demonstrate the inaccuracy of their reports by reference to common evidence”).

18 **b. Inaccuracy on behalf of the Selective Reporting Class.<sup>6</sup>**

19 On behalf of the Selective Reporting Class, Plaintiff contends her December  
20 10, 2015 Experian report was “materially misleading” so as to be “inaccurate” within  
21 the meaning of § 1681e(b) because Experian selectively reported only the delinquent  
22 portion of Plaintiff’s loan in a manner that could be expected to adversely affect  
23 credit decisions. For example, Plaintiff’s October 29, 2014 Experian report contains  
24 two accounts relating to her Western Sky loan: (1) a “good standing” account from  
25 CashCall that includes Plaintiff’s timely payment history on the Western Sky loan  
26 from December 2012 to July 2013 (listing the account as closed and sold in August

27 <sup>6</sup> The Class includes all members of the alternative Selective Reporting Class. If the  
28 Court certifies the Class, therefore, it need not reach the question of whether the  
Selective Reporting Class is certifiable.

1 2013); and (2) a “negative standing” Delbert account documenting Plaintiff’s timely  
2 and delinquent payment history on the same loan from December 2013 through  
3 September 2014. In December 2014, Experian intended to delete all accounts  
4 originating from Western Sky reported by both CashCall and Delbert. But Experian  
5 deleted only the CashCall accounts, and failed to delete the Delbert accounts. The  
6 following month, Delbert informed Experian that effective January 1, 2015, it was no  
7 longer in business and instructed Experian to “discontinue use of any and all services  
8 provided by Experian.” Experian violated its own policy by again failing to delete the  
9 Delbert subcode reporting Western Sky loans. As a result, when Plaintiff’s report was  
10 generated on December 10, 2015, it included *only* the negative standing Delbert  
11 account, and omitted the positive CashCall account relating to the same loan.

12 As above, whether the presence of a delinquent Delbert account considered in  
13 conjunction with the omission of a positive CashCall account relating to the same  
14 loan creates a “materially misleading” report that would “be expected to adversely  
15 affect credit decisions” is a common question that will generate the common answer  
16 of whether an “inaccuracy” has been established under § 1681e(b).

## 17 **2. Common Questions as to Reasonableness of Procedures.**

18 To meet the second element of a § 1681e(b) claim, the plaintiff must  
19 demonstrate that the reporting agency did not follow reasonable procedures to assure  
20 maximum possible accuracy. *See Guimond*, 45 F.3d at 1333. “The reasonableness of  
21 the procedures and whether the agency followed them will be jury questions in the  
22 overwhelming majority of cases.” *Id.*

23 Here, the conduct underlying possible § 1681e(b) liability is premised on the  
24 same common core of facts and whether Experian used reasonable procedures to  
25 assure maximum possible accuracy of Plaintiff’s report. Specifically, whether  
26 Experian used reasonable procedures when it:

- 27 • Failed to submit the form necessary to delete the Delbert accounts in December  
28 2014 after Experian made the decision to delete those accounts;

- 1 • Failed to follow its own internal policies requiring deletion of accounts  
2 reported by a furnisher that goes out of business when Delbert went out of  
3 business in January 2015;
- 4 • Failed to delete the Delbert accounts in June 2015 after Experian’s data  
5 development department was provided examples of Delbert accounts still  
6 reporting and expressly informed Experian’s sales staff of the reporting error;
- 7 • Failed to delete the Delbert accounts in October 2015 after Experian’s  
8 employees identified the correct subcode that needed to be deleted and  
9 confirmed that more than 125,000 Delbert accounts were still reporting but  
10 Experian employees submitted the wrong subcodes for deletion;
- 11 • Failed to delete the Delbert accounts in January and March 2016 after Experian  
12 employees received more examples of Delbert accounts reporting and Experian  
13 assured them it had been deleted and again failed to correct the error; and
- 14 • Failed to delete the Delbert accounts after Experian’s disputes department  
15 received nearly 2,000 disputes regarding Delbert accounts in 2015 and 2016  
16 and did not alert other departments within Experian.

17 Additionally, there are common questions as to whether Experian had  
18 reasonable procedures in place to (a) train employees on how to properly delete  
19 subcodes; (b) verify that subcodes Experian made the decision to delete or are subject  
20 to deletion pursuant to Experian’s policies are actually deleted; (c) monitor for the  
21 presence of subcodes that Experian made the decision to delete or are subject to  
22 deletion pursuant to Experian’s policies; and (d) communicate between departments  
23 when Experian receives disputes relating to a subcode that Experian made the  
24 decision to delete or is subject to deletion pursuant to Experian’s policies.

25 Courts regularly hold that common questions regarding the sufficiency of a  
26 CRA’s procedures under § 1681e(b) satisfy the commonality requirement of Rule  
27 23(a)(2). *See, e.g., Ramirez v. Trans Union, LLC*, 301 F.R.D. 408, 418 (N.D. Cal.  
28 2014) (“Here, the question of whether using the name-only matching logic assures  
maximum accuracy is [a common] question.”) (citing *Acosta v. Trans Union LLC*,  
243 F.R.D. 377, 384 (C.D. Cal. 2007) (common question of whether defendants  
maintained reasonable procedures to assure maximum accuracy satisfied  
commonality prerequisite)). Here, whether Experian had reasonable procedures in

1 place to assure the maximum possible accuracy of consumer reports containing  
2 negative Delbert accounts after January 21, 2015 is another such question.

### 3                   **3. Common Questions as to Willfulness.**

4                   Another common question is whether Experian’s conduct was “willful” under  
5 the FCRA. The Supreme Court has interpreted the phrase “willfully fails to comply,”  
6 in 15 U.S.C. § 1681n(a), to reach both knowing and reckless violations of the FCRA.  
7 *See Safeco Ins. Co. v. Burr*, 551 U.S. 47, 57, 71 (2007). A “reckless” violation is one  
8 that entails “an unjustifiably high risk of harm that is either known or so obvious that  
9 it should be known.” *Id.* at 68. Again, whether Experian’s conduct created an  
10 “unjustifiably high risk of harm” raises common questions surrounding the same  
11 common core of salient facts. For example, a reasonable jury could conclude that  
12 Experian created an “unjustifiably high risk of harm” by:

- 13                   • Making the decision to delete all Western Sky-originated accounts but failing  
14 to follow its own procedures to properly delete the Delbert subcode;
- 15                   • Failing to delete the Delbert accounts once Delbert informed Experian it was  
16 no longer in business and instructed Experian to discontinue all services in  
17 violation of Experian’s own policy;
- 18                   • Receiving examples of Western Sky accounts still reporting in June 2015 and  
19 taking no action whatsoever for more than four months;
- 20                   • Submitting the wrong subcodes for deletion in October 2015 despite Experian  
21 employees acknowledging the correct subcode that needed to be deleted;
- 22                   • Receiving examples of Western Sky accounts still reporting in January 2016  
23 and again failing to properly correct the error;
- 24                   • Receiving examples of Western Sky accounts still reporting in March 2016 and  
25 again submitting the wrong subcodes for deletion;
- 26                   • Receiving nearly 2,000 disputes regarding Delbert accounts after they were  
27 supposed to be deleted indicating that Experian’s processes for communicating  
28 between departments was infrequent or non-existent; and
- Not actually commencing the deletion until after Plaintiff filed suit, indicating  
Experian’s processes for monitoring “deleted” subcodes created an

1 unjustifiably high risk of harm.<sup>7</sup>

2 Because the evidence summarized above is common to all class members, there are  
3 common questions of law and fact as to whether Experian's conduct was willful  
4 under the FCRA. *See Soutter*, 307 F.R.D. at 207 ("common evidence applicable  
5 across all class members regarding willfulness will resolve a common contention and  
6 drive the litigation forward by common answers.").

7 **C. Typicality.**

8 Rule 23(a)(3) requires that "the claims or defenses of the class representatives  
9 [be] typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "Under  
10 the rule's permissive standards, representative claims are 'typical' if they are  
11 reasonably co-extensive with those of absent class members; they need not be  
12 substantially identical." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1011 (9th Cir.  
13 1998)). "A plaintiff's claim meets this requirement if it arises from the same event or  
14 course of conduct that gives rise to claims of other class members and the claims are  
15 based on the same legal theory." *Schwartz v. Harp*, 108 F.R.D. 279, 282 (C.D. Cal.  
16 1985). "Typicality, like commonality, is a permissive standard." *In re Toys "R" Us*,  
17 300 F.R.D. at 368 (citing *Hanlon*, 150 F.3d at 1020). In practice, the commonality  
18 and typicality requirements of Rule 23(a) tend to merge. *See id.*

19 Typicality is easily satisfied in this case. First, the inaccuracy on Plaintiff's  
20 report is typical of other class members. Plaintiff's December 2015 report contained a  
21 negative Delbert account. Plaintiff is seeking to represent a class of individuals who  
22 likewise had a Delbert account reflecting delinquency on their report after Experian  
23 made the decision to delete the Delbert accounts and Delbert went out of business and  
24 instructed Experian to cancel all services no later than January 21, 2015. Thus, the  
25 inaccuracy upon which Plaintiff's claim is based is typical of other members of the

26 <sup>7</sup> *See Edwards v. Toys "R" Us*, 527 F. Supp. 2d 1197, 1215 (C.D. Cal. 2007) ("a  
27 reasonable jury could conclude that the fact that [defendant] did not discover the  
28 violation until suit was filed indicates that its monitoring processes (or lack thereof)  
created an 'unjustifiable risk' that it would violate the statute.").



1 Class. On behalf of the Selective Reporting Class, Plaintiff’s inaccuracy is also  
2 typical because she is seeking to represent a class of individuals whose consumer  
3 reports, like hers, included only a negative standing Delbert account, and omitted the  
4 positive CashCall account relating to the same loan.

5 Second, proving Plaintiff’s case will require her to demonstrate that Experian  
6 “did not follow reasonable procedures to assure maximum possible accuracy” when it  
7 failed to delete the Delbert accounts on multiple occasions. To show willfulness,  
8 Plaintiff must show that Experian’s “processes in place (or lack thereof)” created an  
9 “unjustifiably high risk” that defendant would violate the FCRA. *Edwards*, 527 F.  
10 Supp. 2d at 1214 (citing *Safeco*, 551 U.S. at 68). As described above, Plaintiff’s  
11 claims are typical because “the questions that Plaintiff aims to resolve are common to  
12 the class, and the proof upon which Plaintiff relies will advance her own claim as  
13 well as those of the class members.” *Soutter*, 307 F.R.D. at 209.

14 Finally, Plaintiff’s injury of receiving a report that was not prepared using  
15 reasonable procedures to assure maximum possible is typical of that of the class.  
16 Plaintiff is seeking only statutory damages in relation to Experian’s violation of §  
17 1681e(b), which “does not require a showing of actual harm when a plaintiff sues for  
18 willful violations.” *Robins v. Spokeo, Inc.*, 742 F.3d 409, 413 (9th Cir. 2014), *vacated*  
19 *and remanded on other grounds*, 136 S. Ct. 1540 (2016). A plaintiff’s claim for  
20 “statutory rather than actual damages, is sufficient to establish typicality.” *In re Toys*  
21 *“R” Us*, 300 F.R.D. at 370 (collecting cases).

22 **D. Adequacy.**

23 Rule 23(a)(4) requires that “the representative parties will fairly and adequately  
24 protect the interests of the class.” Courts consider two factors when determining  
25 adequacy: (1) whether plaintiffs and their counsel have any conflicts of interest with  
26 other class members; and (2) whether plaintiffs and their counsel will prosecute the  
27 action vigorously on behalf of the class. *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th  
28 Cir. 2003). “Adequate representation is usually presumed in the absence of contrary

1 evidence.” *Californians for Disability Rights, Inc. v. California Dept. of Transp.*, 249  
2 F.R.D. 334, 349 (N.D. Cal. 2008).

3 Plaintiff adequately represents the interests of the proposed classes. Plaintiff  
4 has actively participated in these proceedings from the outset of litigation, including  
5 participating in discovery, sitting for a deposition and submitting declarations in  
6 support of various motions. *See* Declaration of Demeta Reyes in Support of Class  
7 Certification (Reyes Dec.), ¶¶ 2-3, attached hereto. Plaintiff has no known conflicts  
8 with other class members and will continue to participate in the proceedings to  
9 represent the interests of absent class members. *Id.*, ¶ 4; *see also Patel*, 308 F.R.D. at  
10 304 (adequacy satisfied where “named plaintiff’s claims share core common issues  
11 with those of the unnamed class, and there are no ‘conflicts of interest’ between the  
12 named plaintiff and the absent claimants whom they would represent.”). Likewise,  
13 Plaintiff’s counsel is qualified, experienced, and able to conduct this litigation. *See*  
14 *generally* Siegel Dec. Plaintiff’s counsel has vast experience litigating consumer class  
15 actions, and has been approved by this Court and others as class counsel in numerous  
16 cases. *See id.*, ¶¶ 3-4. Plaintiff’s counsel will continue to diligently prosecute this  
17 litigation on behalf of the Class and meets all the criteria to be appointed class  
18 counsel under Fed. R. Civ. P. 23(g). As such, the adequacy requirement is satisfied.

19 **E. Predominance.**

20 To meet the predominance requirement of Rule 23(b)(3), “the common  
21 questions must be a significant aspect of the case that can be resolved for all members  
22 of the class in a single adjudication.” *Berger v. Home Depot USA, Inc.*, 741 F.3d  
23 1061, 1068 (9th Cir. 2014) (internal quotation marks and alterations omitted). The  
24 predominance inquiry involves weighing and evaluating the common and individual  
25 issues in the case. *Patel*, 308 F.R.D. at 304 (citing *Dukes*, 131 S.Ct. at 2556). “It  
26 involves the same principles that guide the Rule 23(a)(2) commonality analysis, but it  
27 ‘is even more demanding than Rule 23(a).’” *Id.* (citing *Comcast*, 133 S.Ct. at 1432).  
28 “The predominance inquiry looks at a suit’s common questions, ‘focuses on the

1 relationship between the common and individual issues’ [and] requires the court to  
2 weigh the common issues against the individual issues.” *Id.* (citing *Hanlon*, 150 F.3d  
3 at 1022 and *Dukes*, 131 S.Ct. at 2556).

4 As explained above, every overriding issue in this litigation is subject to  
5 common proof, including (1) whether there is an inaccuracy within the meaning of §  
6 1681e(b); (2) whether Experian failed to use reasonable procedures to assure  
7 maximum possible accuracy in violation of § 1681e(b); and (3) whether Experian’s  
8 conduct was willful, entitling Plaintiff and the Class to statutory damages.

9 First, Plaintiff’s theory of inaccuracy applies the same to her as it does  
10 members of the classes she seeks to represent. The question of whether the presence  
11 of a Delbert account in negative standing after January 21, 2015 creates a “materially  
12 misleading” report that would “be expected to adversely affect credit decisions” is  
13 one that will generate a common answer on behalf of all class members. As noted by  
14 the *Soutter* court considering a § 1681e(b) claim: “Where, as here, the evaluation  
15 regards a single variable that is inaccurate, in a common manner across the class and  
16 is easily verifiable and objectively determinable, any alleged ‘individualization’  
17 would rest only lightly upon the scales.” *Soutter*, 307 F.R.D. at 215-16. Here, the  
18 presence of a negative Delbert account after January 21, 2015 is a “single variable”  
19 that is “easily verifiable and objectively determinable.”

20 Moreover, no individual inquiries need to be made to determine which Delbert  
21 accounts reflected a delinquency. Because Experian uses “industry codes” reflecting  
22 the status of the accounts it reports (for example, accounts designated as “type 93”  
23 mean accounts that are seriously past due or in collection), Experian can discern from  
24 its database which of the more than 125,000 accounts reported by Delbert as recently  
25 as April 2016 were designated with “industry codes” reflecting a delinquency,  
26 obviating any need to make individual inquiries regarding which Delbert accounts  
27 would be considered “materially misleading” under Plaintiff’s theory of liability.

28 Second, the reasonableness of Experian’s procedures in place to assure

1 maximum possible accuracy is a common issue across the class. As set forth above, a  
2 jury could find that Experian procedures were not reasonable in any number of  
3 different ways to permit Delbert accounts to continue reporting for nearly two years  
4 after Experian made the decision to delete those accounts. Likewise, whether  
5 Experian's conduct rises to the level of willfulness is subject to common proof  
6 applicable to the entire class because a jury will assess whether Experian's actions or  
7 inactions described above created "an unjustifiably high risk of harm that is either  
8 known or so obvious that it should be known." *Safeco*, 551 U.S. at 68. Again, the  
9 core legal and factual issues relevant to this issue do not require individualized  
10 determination and can be resolved through common proof applicable to the class.

11 Next, because Plaintiff is seeking only statutory damages on behalf of herself  
12 and the Class, there is no need to assess "actual harm" to class members on an  
13 individualized basis. It is well-established in this circuit and others that "the potential  
14 need to assess actual harm on an individualized basis is irrelevant to predominance  
15 because actual harm is not an element of a claim for statutory damages under 15  
16 U.S.C. § 1681n(a)." *Larson v. Trans Union, LLC*, No. 12-CV-05726-WHO, 2015 WL  
17 3945052, at \*13 (N.D. Cal. June 26, 2015). *See also Ramirez*, 301 F.R.D. at 422  
18 (question of whether a class member was actually injured is not "a question that  
19 predominates because it is not an element of the [FCRA] claims or statutory damages.  
20 Under the law of the Ninth Circuit, an FCRA claim for statutory damages 'does not  
21 require a showing of actual harm when a plaintiff sues for willful violations.'")  
22 (citing *Robins*, 742 F.3d at 412); *In re Toys "R" Us*, 300 F.R.D. at 377 ("A finding of  
23 predominance is also supported by the fact that no class member seeks actual  
24 damages. Courts have been more willing to find predominance where, as here, the  
25 class seeks only statutory damages."). As noted by the *Soutter* court, statutory  
26 damages are "minimally influential in the predominance analysis" because  
27 "individualized statutory damages questions [are] both 'simple and straightforward.'" *Soutter*,  
28 307 F.R.D. at 216 (citing *Stillmock v. Weis Markets, Inc.*, 385 Fed. Appx.

1 267, 273 (4th Cir. 2010)). Indeed, “[u]nlike individualized, subjective determinations  
2 of damages, which could spawn a series of mini-trials, this is simply a matter of  
3 counting heads and data points.” *Id.* See also *Leyva v. Medline Indus. Inc.*, 716 F.3d  
4 510, 514 (9th Cir. 2013) (“the Supreme Court clarified in *Dukes* that . . . the presence  
5 of individualized damages cannot, by itself, defeat class certification under Rule  
6 23(b)(3).”); *Ramirez*, 301 F.R.D. at 422 (citing *Stillmock* for proposition that  
7 “individual statutory damages issues are insufficient to defeat class certification under  
8 Rule 23(b)(3).”); *Dreher v. Experian Info. Sols., Inc.*, No. 3:11-CV-00624-JAG, 2014  
9 WL 2800766, at \*3 (E.D. Va. June 19, 2014) (“Because the common issue of liability  
10 predominates over the question of how to best apportion statutory damages,  
11 [plaintiff’s] proposed class satisfies Rule 23(b)(3)’s predominance requirement.”).

12 Because the most significant issues in this case pertain to uniform conduct by  
13 Experian, there is basis to argue individual statutory damage issues will predominate.

#### 14 **F. Superiority.**

15 Certification under Rule 23(b)(3) requires a showing that class treatment is  
16 “superior to other available methods for fairly and efficiently adjudicating the  
17 controversy.” Fed. R. Civ. P. 23(b)(3). “This determination necessarily involves a  
18 comparative evaluation of alternative mechanisms of dispute resolution.” *Hanlon*,  
19 150 F.3d at 1023. Factors relevant to this determination include: (1) the interest in  
20 controlling individual prosecutions; (2) the existence of other related litigation; (3)  
21 the desirability of concentrating the litigation in the forum; and (4) manageability.  
22 See Fed. R. Civ. P. 23(b)(3). A class action is the superior method for adjudication.

23 First, in cases involving claims for statutory damages under the FCRA, “class  
24 members will have little interest in pursuing individual claims due to the small  
25 potential recovery, and class-wide resolution will save time and resources.” *In re*  
26 *Toys “R” Us*, 300 F.R.D. at 364-65 (collecting cases). Thus, “even if each class  
27 member were to bring a separate suit, the costs and fees of each separate action would  
28 exceed those of a class action. It is more efficient to adjudicate the claims as a class

1 action rather than thousands of individual actions.” *Ramirez*, 301 F.R.D. at 424; *see*  
2 *also Bee, Denning, Inc.*, 310 F.R.D. at 629 (“The average consumer considering  
3 whether to bring an individual action alleging a TCPA violation confronts a classic  
4 negative-value suit scenario: the cost of litigating an individual claim outweighs the  
5 potential gain”); *Soutter*, 307 F.R.D. at 218 (“there is a strong presumption in favor of  
6 a finding of superiority where, as here, the alternative to a class action is likely to be  
7 no action at all for the majority of class members”) (citations and marks omitted).

8 Moreover, there is no litigation underway elsewhere that weighs against  
9 proceeding in this Court and this is an appropriate forum for the action given  
10 Experian is headquartered in this district. Finally, given the significant number of  
11 core common issues that exist in this case, there are no apparent difficulties that are  
12 likely to arise in managing the case as a class action. *See, e.g., Johnson v. General*  
13 *Mills, Inc.*, 275 F.R.D. 282, 289–90 (C.D. Cal. 2011) (“the likely difficulties of  
14 managing this suit on a classwide basis are manageable and should be undertaken in  
15 light of the significant common issues that exist and predominate over individual  
16 issues.”); *In re Toys “R” Us*, 300 F.R.D. at 368 (“any difficulties that this court . . .  
17 may encounter managing the proceedings are outweighed by the common issues that  
18 predominate, and the preservation of time and resources that class-wide resolution  
19 will yield.”). For the foregoing reasons, class adjudication will promote efficiency,  
20 facilitate judicial economy, and preserve valuable judicial resources by eliminating  
21 multiple duplicative litigations entailing the same evidence and claims.

## 22 **VI. CONCLUSION.**

23 As set forth herein, Plaintiff has satisfied the four prerequisites of Rule 23(a)  
24 and the predominance and superiority requirements of Rule 23(b)(3). Accordingly,  
25 Plaintiff respectfully requests that the Court grant her motion for class certification,  
26 appoint Plaintiff Demeta Reyes as Class Representative for the Class, and appoint  
27 Stueve Siegel Hanson LLP as Class Counsel pursuant to Fed. R. Civ. P. 23(g).

1 Dated: February 24, 2017

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