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11  
12 **NATIONAL ARBITRATION AND MEDIATION**

13  
14 TERESA MEDINA AND MORGAN THOMSON,  
15 Claimants,  
16 v.  
17 SPENCER GIFTS D/B/A SPIRIT HALLOWEEN,  
18 Respondent.

NAM ID No. 238718

**ORDER GRANTING PRELIMINARY  
APPROVAL OF SETTLEMENT**

Arbitrator David B. Van Etten

1 **Order**

2 Plaintiffs Teresa Medina and Morgan Thomson’s (“Plaintiffs”) motion for an order  
3 (1) granting preliminary approval of the proposed class action settlement, (2) conditionally  
4 certifying the Settlement Class, (3) appointing Outten & Golden as Class Counsel, (4)  
5 approving the proposed Notice and Claim Form, (4) setting the deadlines for submitting  
6 Claim Forms, written exclusions, or objections to the Settlement, and (6) scheduling a  
7 hearing on the final approval of the Settlement on February 16, 2023, came on for hearing  
8 on September 29, 2022, before Arbitrator David B. Van Etten. Christopher M. McNerney  
9 appeared for Plaintiffs. Joel P. Kelly appeared for Defendants.

10 The Arbitrator, having considered Plaintiffs’ Motion for Preliminary Approval of  
11 Settlement, the Memorandum of Points and Authorities in support thereof and supporting  
12 evidence, and Defendants’ non-opposition to the Motion for Preliminary Approval of  
13 Settlement, hereby ORDERS, ADJUDGES and DECREES as follows:

14 **I. NATURE OF ACTION**

15 Plaintiffs allege that the form that Defendant provided to employment applicants to  
16 inform them that they it intends to obtain a background check violates the federal Fair  
17 Credit Reporting Act and the California Investigative Reporting Agencies Act.

18 Defendant disputes and denies all of Plaintiffs’ claims. Defendant contends that it  
19 has fully complied with all applicable laws at issue in this matter.

20 **II. CONDITIONAL CERTIFICATION OF RULE 23 SETTLEMENT CLASS**

21 For settlement purposes only, the Parties have proposed conditional certification of  
22 the following classes, defined as:

- 23 (1) The “National FCRA Class” is defined as all individuals who applied for  
24 employment to Spencer nationwide between January 29, 2019, to August 15,  
25 2020.

1 (2) The “California ICRAA Class” is defined as all individuals who applied to  
2 Spencer for employment in California between January 29, 2019, to August 15,  
3 2020.

4 The Arbitrator hereby finds and concludes that for purposes of the Settlement only,  
5 the National FCRA Class and California FCRAA Class satisfy all of the requirements for  
6 certification under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure.

7 1. The Settlement Classes are sufficiently numerous that joinder is  
8 impracticable.

9 2. Settlement Class Members share common issues of fact and law. There is  
10 a central common issue as to whether the Disclosure Form complies with the FCRA and  
11 the ICRAA’s “clear and conspicuous” and “standalone” requirements.

12 3. The Named Plaintiffs’ claims are typical of those of the Settlement Classes  
13 they propose to represent, because they were subject to the same Disclosure Form as all  
14 Settlement Class Members and as California applicants, possess the relevant claims under  
15 both the FCRA and the ICRAA.

16 4. The Named Plaintiffs are adequate representatives of the Settlement  
17 Classes they propose to represent, because their interests are co-extensive with those of  
18 the Settlement Class Members, and they have retained experienced counsel to represent  
19 them and the Settlement Class Members.

20 5. Questions of law or fact common to the Settlement Classes predominate  
21 over individualized issues, and a class action is superior to other available methods for the  
22 fair and efficient adjudication of this controversy.

23 6. Because certification of the Settlement Classes is proposed in the context of  
24 a settlement, the Arbitrator need not inquire whether the case, if tried as a class action,  
25 would present intractable management problems.

26 7. Accordingly, for settlement purposes, the Arbitrator hereby certifies the  
27 Settlement Classes under Rule 23(a) and (b)(3).  
28

1 **III. APPOINTMENT OF CLASS COUNSEL**

2 The Arbitrator finds and concludes that Outten & Golden LLP has extensive  
3 experience and expertise in prosecuting class actions and background check cases,  
4 including under the FCRA and ICRAA. The Arbitrator appoints Outten & Golden LLP as  
5 Class Counsel.

6 **IV. PRELIMINARY APPROVAL OF SETTLEMENT**

7 The Arbitrator has reviewed the terms of the Settlement, including the plan of  
8 allocation and the release of claims. The Arbitrator has also read and considered the  
9 declaration of Jahan C. Sagafi in support of preliminary approval. Based on review of  
10 those papers and the Arbitrator's familiarity with this case, the Arbitrator finds and  
11 concludes that the Settlement appears to be fair, adequate, and reasonable to the class, falls  
12 within the range of reasonableness, and appears to be presumptively valid, subject to any  
13 objections that may be raised at the final approval hearing. Moreover, the Arbitrator finds  
14 and concludes that the Settlement is the result of arms-length negotiations between the  
15 Parties conducted after Class Counsel had adequately investigated Plaintiffs' claims and  
16 become familiar with their strengths and weaknesses. The assistance of an experienced  
17 mediator in the settlement process supports the finding that the Settlement is non-  
18 collusive. Based on all of these factors, the Arbitrator concludes that the proposed  
19 Settlement meets the criteria for preliminary settlement approval. Accordingly, the  
20 Settlement is hereby preliminarily approved.

21 **V. APPROVAL OF THE NOTICE PLAN**

22 Plaintiffs have also submitted for the Arbitrator's approval a proposed class Notice  
23 and Claim Form. *See* Exhibits 2 and 3 to the Declaration of Jahan C. Sagafi. After  
24 carefully reviewing these documents, the Arbitrator finds and concludes as follows:

25 **A. Best Notice Practicable**

26 The Notice is the best notice practicable under the circumstances and allows the  
27 Settlement Class Members a full and fair opportunity to consider the Settlement.

28 The Notice fairly, plainly, accurately, and reasonably informs the Settlement Class

1 Members of appropriate information about: (1) the nature of this action, the definition of  
2 the Settlement Class, the identity of Class Counsel, and the essential terms of the  
3 Settlement, including the plan of allocation, and including the address for a website  
4 maintained by the Settlement Administrator that has links to the notice, motions for  
5 approval and for attorneys' fees and any other important documents in the case; (2)  
6 Plaintiffs' forthcoming application for the Named Plaintiffs' Service Awards and the Class  
7 Counsel attorneys' fees and costs; (3) how settlement shares will be calculated; (4)  
8 procedures for final approval of the Settlement, and Settlement Class Members' right to  
9 object and appear at the Fairness Hearing; (5) how to submit a Claim Form, object to or  
10 opt out of the Settlement, if a Settlement Class Member wishes to do so; (6) how to obtain  
11 additional information regarding this action and the Settlement; and (7) the date of the  
12 Fairness Hearing, and that Settlement Class Members may check the settlement website to  
13 confirm where the hearing will take place.

14         The proposed plan for distributing the Notice likewise is a reasonable method  
15 calculated to reach all individuals who would be bound by the Settlement. Under this  
16 plan, the Settlement Administrator will distribute the Notice to all Settlement Class  
17 Members by first-class mail to their last known mailing address, and by email and text  
18 messages, to the extent that personal e-mail addresses and phone number are available in  
19 Defendant's records. There is no additional method of distribution that is cost-effective  
20 and would be reasonably likely to notify Settlement Class Members who may not receive  
21 notice pursuant to the proposed distribution plan. In addition, the Settlement  
22 Administrator will send reminder notices by mail, email, or text message to those who  
23 have failed to opt out or submit all required or optional forms by the time the response  
24 deadline approaches.

25         **B.     Approval**

26         Accordingly, the Arbitrator finds and concludes that the proposed plan for  
27 distributing the Notice will provide the best notice practicable, satisfies the notice  
28 requirements of Rule 23(e), and satisfies all other legal and due process requirements.

1 Accordingly, the Arbitrator hereby orders as follows:

2 1. The Notice, Claim Form, and Reminder Notice are approved.

3 2. The manner of distributing the Notice to Settlement Class Members is  
4 approved.

5 3. Promptly following the entry of this order, the Settlement Administrator  
6 will prepare final versions of the Notice, incorporating into them the relevant dates and  
7 deadlines set forth in this order:

8 4. The deadline for Defendants to provide class list to Settlement  
9 Administrator is 10 days after Preliminary Approval Order.

10 5. The deadline for the Settlement Administrator to mail, e-mail, and text the  
11 Notice and Claim Form to Settlement Class Members is 14 days after receiving class list.

12 6. The deadline for Settlement Class Members to opt-out or object is 45 days  
13 after notice date.

14 7. The deadline for Settlement Class Members to Submit Claim Form is 60  
15 days after the notice date.

16 8. The Settlement Administrator will perform skip-traces on returned mail and  
17 re-mail the Notice and Claim Form to an updated address (if any) as soon as possible upon  
18 return of the undeliverable Notice.

19 9. The Settlement Administrator will send the Reminder (Exhibit 3 to  
20 Declaration of Jahan C. Sagafi) via e-mail, First Class United States Mail postcard, and  
21 text message to each Class Members who has not returned a Claim Form or opted out after  
22 30 days. The Reminder will include a scannable QR code that links to the settlement  
23 website.

24 10. Plaintiffs will file with their motion for final approval, an affidavit from the  
25 Settlement Administrator of due diligence and proof of mailing with regard to the mailing  
26 of the Notice and Claim Form.

27 11. The Settlement Administrator will take all other actions in furtherance of  
28 settlement administration as are specified in the Settlement.

1 **VI. PROCEDURES FOR APPROVING THE SETTLEMENT**

2 **A. Final Approval Hearing**

3 The Arbitrator hereby schedules a hearing to determine whether to grant final  
4 approval of the Settlement (the “Final Approval Hearing”) for February 16, 2023 at  
5 11:00 a.m. Pacific time via Zoom videoconference. The date of the hearing may be  
6 changed without further notice to Settlement Class Members. However, Plaintiffs are  
7 responsible for promptly updating the case website with information about any such  
8 change.

**B. Deadline to Submit Claim Forms**

9 All Settlement Class Members who wish to submit Claim Forms must do so within  
10 sixty (60) calendar days from the date of the initial mailing, or, for Class Members for  
11 whom the Notice and Claim Form was re-mailed, the later of the time remaining in the  
12 Claims Period or thirty (30) days from re-mailing. For mailed submissions, any item  
13 mailed by the deadline, as evidenced by a postmark, shall be deemed to be timely.  
14 Submissions may be filed by mail, email, fax, or online website submission.

15 **C. Deadline to Opt-Out of the Settlement**

16 **1. Form of Opt-Out Request**

17 Any Settlement Class Member may opt out of participating in the Settlement by  
18 submitting a signed letter via First Class United States Mail to the Settlement  
19 Administrator stating that he or she wishes to be excluded from the Settlement (“Opt-Out  
20 Statement”). The letter must include the Settlement Class Member’s name, address, email  
21 address, telephone number, and signature. It must also contain the statement “I opt out of  
22 the Spencer settlement.”

23 **2. Deadline for Submitting Opt-Out Request**

24 Any Settlement Class Member sent a Notice and Claim Form that is not returned  
25 as undeliverable shall have 45 days from the date of mailing by the Settlement  
26 Administrator to opt out. Any Settlement Class Members to whom the Notice and Claim  
27 Form was re-mailed shall have the later of the time remaining in the Opt-Out Period or  
28 thirty 30 days from the re-mailing to opt out of the Agreement. Only those Settlement

1 Class Members who submit their Opt-Out Statement within the time and by the manner  
2 set forth in this Order will be excluded from the Settlement. Pursuant to Federal Rule of  
3 Civil Procedure 23(b)(3) and (c)(2), the Settlement will have no binding effect on any  
4 Settlement Class Member who properly opts out of the Settlement in the manner required  
5 by this Order.

6 **D. Deadline for Filing Comments on or Objections to Settlement**

7 Any Settlement Class Member who wishes to comment on or object to the  
8 fairness, reasonableness, or adequacy of the Settlement must do so in writing as provided  
9 in the Notice. Settlement Class Members who have timely commented on or objected to  
10 the Settlement in writing may also appear at the Final Approval Hearing, in person or  
11 through counsel, but only if they have given written notice of their intent to appear at the  
12 hearing as provided in the Notice. To be considered, any comment on or objection to the  
13 final approval of the Settlement must (a) include the Settlement Class Member's name,  
14 address, email, telephone number, and signature; (b) include a statement of the Settlement  
15 Class Member's intent to object, reasons for objecting, and any supporting documentation;  
16 and (c) be submitted to the Settlement Administrator by First Class Mail.

17 **E. Deadline for Mailing and Cashing Settlement Share Checks**

18 Each Settlement Class Member who submits a Claim Form ("Participating  
19 Settlement Class Members") will be eligible to receive his or her share of the Settlement.  
20 After the Final Approval Order, and absent any appeal of the Final Approval Order, the  
21 day after the expiration of time to appeal the Final Approval Order will be considered the  
22 "Effective Date" of the Settlement Agreement. No later than ten (10) days after the  
23 Effective Date, Defendants will issue the Total Settlement Amount to the Settlement  
24 Administrator, who will act as an escrow agent. The Settlement Administrator will  
25 distribute the funds from the Total Settlement Amount pursuant to the terms of the  
26 Settlement Agreement, including mailing settlement checks to Claimants, making  
27 attorneys' fees and cost payments, and making the Service Award payment. Claimants  
28 will have ninety (90) calendar days from the date of issuance written on the check to cash



1 their Settlement checks, after which time the checks will expire. The amount of any  
2 uncashed checks shall be distributed to the cy pres, Bet Tzedek.

3 **F. Deadline for Submitting Motion for Attorneys’ Fees and Motion for**  
4 **Service Awards**

5 Fourteen days before the deadline for Class Members to object or opt-out of the  
6 Settlement, Class Counsel will file a Motion for Attorneys’ Fees and a Motion for  
7 Approval of Service Awards, in accordance with the schedule set by the Arbitrator in the  
8 Preliminary Approval Order.

9 **G. Deadline for Submitting Motion Seeking Final Approval**

10 After the deadline to submit Claim Forms has passed, Class Counsel will file a  
11 motion seeking Final Approval of the Settlement, in accordance with the schedule set by  
12 the Arbitrator in the Preliminary Approval Order.

13 **VII. PLAINTIFFS’ AND SETTLEMENT CLASS MEMBERS’ RELEASE**

14 If, at the Final Approval Hearing, the Arbitrator grants final approval to the  
15 Settlement, every Settlement Class Member who does not opt out will, pursuant to the  
16 Settlement, be adjudicated to have granted the release of “Released Claims” as set forth in  
17 the Settlement Agreement. The Named Plaintiffs must sign the General Release set forth  
18 in the Settlement Agreement to receive a Service Award.

19 **VII. APPOINTMENT OF SETTLEMENT ADMINISTRATOR**

20 Phoenix Settlement Administrators is hereby appointed Settlement Administrator  
21 to carry out the duties set forth in this Preliminary Approval Order and the Settlement.

22 **VIII. SCHEDULING ORDER**

23 The below schedule sets the sequence of relevant dates and deadlines based on the  
24 preliminary approval of the Settlement on September 29, 2022:

Event	Deadline
Plaintiffs to file Motion for Preliminary Approval	<i>Settlement Agreement execution + 20 days</i>
Defendant to provide Settlement Administrator with class list	<i>Preliminary Approval Order + 10 days</i>

1	Settlement Administrator to distribute Notice and Claim Form to Class Members via U.S. Mail and email	<i>Preliminary Approval Order + 24 days</i>
2	Settlement Administrator to send Reminder via U.S. Mail and email	<i>Preliminary Approval Order + 54 days</i>
3	Plaintiffs to File Motions for Attorneys' Fees and Service Awards	<i>Preliminary Approval Order + 55 days</i>
4	Deadline to Object or Opt-Out	<i>Preliminary Approval Order + 69 days</i>
5	Initial Mailing Bar Date	<i>Preliminary Approval Order + 84 days</i>
6	Plaintiffs to File Motion for Final Approval	<i>February 2, 2023</i>
7	Defendant to fund Settlement	<i>Effective Date + 10 days</i>
8	Settlement Administrator to send Arbitrator-approved Service Awards to Named Plaintiffs	<i>Effective Date + 14 days</i>
9	Settlement Administrator to send Arbitrator-approved Arbitration Award to Named Plaintiff Teresa Medina	<i>Effective Date + 14 days</i>
10	Settlement Administrator to send Arbitrator-approved Award to Plaintiff Kyle Barrett	<i>Effective Date + 14 days</i>
11	Settlement Administrator to transfer Arbitrator-approved attorneys' fees and costs to Plaintiffs' Counsel	<i>Effective Date + 14 days</i>
12	Settlement Administrator to mail settlement checks to Participating Class Members	<i>Effective Date + 30 days</i>
13	Settlement Administrator to send check cashing reminder via U.S. mail and email	<i>Effective Date + 90 days</i>
14	Settlement check expiration date	<i>Effective Date + 120 days</i>
15	Redistribution date	<i>Effective Date + 127 days</i>

16  
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19  
20 **IT IS SO ORDERED.**

21 Dated: 10/4/2022



22 Arbitrator David B. Van Etten