



## AlaFile E-Notice

01-CV-2023-903893.00

Judge: ELISABETH A. FRENCH

To: MANN JONATHAN STEPHEN  
jonm@pittmandutton.com

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# NOTICE OF COURT ACTION

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IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

DANIEL SULLEN ET AL V. VIVINT INC  
01-CV-2023-903893.00

A court action was entered in the above case on 4/25/2024 12:08:47 PM

ORDER

[Filer: ]

Disposition: GRANTED  
Judge: EAF  
Notice Date: 4/25/2024 12:08:47 PM

JACQUELINE ANDERSON SMITH  
CIRCUIT COURT CLERK  
JEFFERSON COUNTY, ALABAMA  
JEFFERSON COUNTY, ALABAMA  
716 N. RICHARD ARRINGTON BLVD.  
BIRMINGHAM, AL, 35203

205-325-5355  
jackie.smith@alacourt.gov



4. The Court has read and considered the papers filed in support of this Motion, including the Settlement Agreement and exhibits thereto and supporting declarations.

5. The Court held a Final Approval Hearing on April 23, 2024, at which time the Parties and all other interested persons were afforded the opportunity to be heard in support of and in opposition to the Settlement.

6. Based on the documents filed with the Court and the representations made to the Court by the Parties at the Final Approval Hearing, the Court now gives final approval to the Settlement and finds that the Settlement Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Classes. The complex legal and factual posture of the Litigation, and the fact that the Settlement Agreement is the result of arms-length negotiations presided over by a neutral mediator further support this finding.

7. Pursuant to Alabama Rule of Civil Procedure 23, the Court finally certifies, for settlement purposes only, the following Settlement Classes:

(1) Damages Settlement Class

All natural Persons in the United States for whom Vivint accessed consumer report information without authorization and used his or her information to create a Vivint account between January 1, 2016, and the date the Court enters the Preliminary Approval Order of the Settlement and who have been subjected to collection efforts by Vivint. Excluded from the term “Damages Settlement Class” are: (1) any parent, subsidiary, affiliate, or controlled persons of Defendant, as well as the officers, directors, agents, servants, or employees of Defendant; (2) governmental agencies, entities, or judicial officers; and (3) any person or entity which properly executes and submits a timely request for exclusion from the Settlement Class; and

(2) Injunctive Settlement Class

All natural Persons in the United States for whom Vivint accessed consumer report information without authorization between January 1, 2016, and the date the Court enters the Preliminary Approval Order of the Settlement and who have not been subjected to collection efforts by Vivint. Excluded from the term “Injunctive Settlement Class” are: (1) any parent, subsidiary, affiliate, or controlled persons of Defendant, as well as the officers, directors, agents, servants, or employees of Defendant and the immediate family members

of such persons; (2) governmental agencies, entities, or judicial officers; and (3) any person or entity which properly executes and submits a timely request for exclusion from the Settlement Class.

8. There were no timely and valid objections or requests for exclusion. Therefore, all members of the Settlement Classes are bound by this Final Order and Judgment.

9. For settlement purposes only, the Court confirms the appointment of Plaintiffs Daniel Sullen and Joshua Renfroe as Class Representatives of the Settlement Class.

10. For settlement purposes only, the Court confirms the appointment of the following counsel as Class Counsel, and finds they are experienced in class litigation and have adequately represented the Settlement Class:

Tom Dutton  
Michael C. Bradley  
Jonathan S. Mann  
Austin B. Whitten  
Pittman, Dutton, Hellums, Bradley & Mann, P.C.  
2001 Park Place North, Suite 1100  
Birmingham, AL 35203

11. With respect to the Settlement Classes, this Court finds, for settlement purposes only, that: (a) the Settlement Classes defined above are so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the Settlement Classes, and those common questions predominate over any questions affecting only individual members; (c) the Class Representatives and Class Counsel have fairly and adequately protected, and will continue to fairly and adequately protect, the interests of the Settlement Classes; and (d) certification of the Settlement Classes is an appropriate method for the fair and efficient adjudication of this controversy.

12. The Court has determined that the Class Notice given to the Settlement Class Members, in accordance with the Preliminary Approval Order, fully and accurately informed Settlement Class Members of all material elements of the Settlement and constituted the best notice

practicable under the circumstances, and fully satisfied the requirements of Alabama Rule of Civil Procedure 23(c)(2) and 23(e), applicable law, and the Due Process Clauses of the U.S. Constitution and Alabama Constitution.

13. The Court orders the Parties to the Settlement Agreement to perform their obligations thereunder. The terms of the Settlement Agreement shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an order of this Court.

14. The Court dismisses the Litigation with prejudice and without costs (except as otherwise provided herein and in the Settlement Agreement) as to Plaintiffs' and all Settlement Class Members' claims against Vivint. The Court adjudges that the Released Claims and all of the claims described in the Settlement Agreement are forever released, relinquished, and discharged against the Released Parties.

15. The Court adjudges that the Plaintiffs and all Settlement Class Members who have not opted out of the Settlement Classes shall be deemed to have fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, as defined under the Settlement Agreement.

16. Without limiting any provision of this Order, including Paragraphs 14 and 15, the Released Claims specifically extend to claims that Plaintiffs and Settlement Class Members do not know or suspect to exist in their favor at the time that the Settlement Agreement, and the releases contained therein, become effective. The Court finds that Plaintiffs have and the Settlement Class Members are deemed to have knowingly waived the protections of California Civil Code § 1542 and any other applicable federal or state statute, case law, rule or regulation relating to limitations on releases.

17. The Court further adjudges that, upon entry of this Order, the Settlement Agreement and the above-described release of the Released Claims will be binding on, and have *res judicata* preclusive effect in, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and all other Settlement Class Members, and their respective affiliates, assigns, heirs, executors, administrators, successors, and agents, as set forth in the Settlement Agreement. The Released Parties may file the Settlement Agreement and/or this Final Order and Judgment in any action or proceeding that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

18. Plaintiffs and Settlement Class Members who did not validly and timely request exclusion from the Settlement are permanently barred and enjoined from asserting, commencing, prosecuting, or continuing any of the Released Claims or any of the claims described in the Settlement Agreement against any of the Released Parties.

19. The Court approves payment of attorneys' fees to Class Counsel in the amount of Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000.00). This amount shall be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement. The Court also approves payment or reimbursement of costs and expenses in the amount of One Hundred Sixty-One Thousand Dollars and Thirty-Six Cents (\$161,000.36). The Court, having considered the materials submitted by Class Counsel in support of final approval of the Settlement and their request for attorneys' fees, costs and expenses, finds the award of attorneys' fees, costs and expenses appropriate and reasonable for the following reasons: first, the Court finds that the Settlement provides substantial benefits to the Settlement Classes. Second, the Court finds the

payment fair and reasonable in light of the substantial work performed by Class Counsel. Third, the Court concludes that the Settlement was negotiated at arms-length without collusion with the aid of an impartial, experienced mediator, and that the negotiation of the attorneys' fees only followed agreement on the settlement benefits for the Settlement Class Members. Finally, the Court notes that the Class Notice specifically and clearly advised the Settlement Class that Class Counsel would seek an award in the amount sought.

20. The Court approves service awards in the amount of Fifteen Thousand Dollars (\$15,000.00) for each of the two Class Representatives, Daniel Sullen and Joshua Renfroe, and specifically finds such amount to be reasonable in light of the services performed by Plaintiffs for the Settlement Classes, including taking on the risks of litigation and helping achieve the results to be made available to the Settlement Classes. This amount shall be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement.

21. Neither this Final Order and Judgment, nor the Settlement Agreement, nor the payment of any consideration in connection with the Settlement shall be construed or used as an admission or concession by or against Vivint or any of the Released Parties of any fault, omission, liability, or wrongdoing, or of the validity of any of the Released Claims. This Final Order and Judgment is not a finding of the validity or invalidity of any claims in this Litigation or a determination of any wrongdoing by Vivint or any of the Released Parties. The final approval of the Settlement Agreement does not constitute any position, opinion, or determination of this Court, one way or another, as to the merits of the claims or defenses of Plaintiffs, the Settlement Class Members, or Vivint.

22. No objections to the Settlement Agreement have been submitted and all objections have therefore been waived. The Court finds that no reason exists for delay in entering this Final

Order and Judgment. Accordingly, the Clerk is hereby directed forthwith to enter this Final Order and Judgment.

23. The Parties, without further approval from the Court, are hereby permitted to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all exhibits to the Settlement Agreement) so long as they are consistent in all material respects with the Final Order and Judgment and do not limit the rights of the Settlement Class Members.

24. All costs are taxed as paid.

DONE and ORDERED this 25<sup>th</sup> day of April, 2024.

/s/ ELISABETH A FRENCH  
CIRCUIT JUDGE

EAF/bw  
cc: all parties