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17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 JOHN S. WHITE,)
on behalf of himself and those)
20 similarly situated,)
21 Plaintiff,)

CASE NO.: C-05-02080 SI

CLASS ACTION

22 v.)

23 E-LOAN, INC., and)
24 DOES 1 through 10, inclusive,)

25 Defendants.)
26)

27 **[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT,**
PROVISIONALLY APPROVING CLASS FOR SETTLEMENT PURPOSES,
28 **AND WITH RESPECT TO CLASS NOTICE,**
COURT APPROVAL HEARING AND ADMINISTRATION

1 These matters having come before the Court upon the Motion of Plaintiff, John S. White,
2 individually and on behalf of a class of persons, for preliminary approval of a settlement reached between
3 the Parties, and upon consideration of the Parties' Settlement Agreement dated on or before November
4 17, 2006 (the "Settlement Agreement"), and the exhibits thereto, IT IS HEREBY ORDERED AS
5 FOLLOWS:

6 1. The Settlement Agreement is hereby incorporated by reference in this Order as if fully set
7 forth herein. Capitalized terms in this Order shall, unless otherwise defined herein, have the same
8 meaning as in the Settlement Agreement.

9 2. Solely for the purpose of settlement in accordance with the Settlement Agreement, and
10 pursuant to Fed. R. Civ. P. 23(a) and (b)(3), this Court hereby provisionally approves the following
11 settlement class ("Settlement Class"):
12

13 All individuals throughout the United States whose credit report information was
14 obtained or used by E-Loan, Inc. ("E-Loan"), in connection with a credit transaction not
15 initiated by them, and who received a mailer from E-Loan designated as the S501-A
16 mailing or as the S501-B mailing.

17 If, for any reason, the Settlement is not approved or does not become effective, this provisional approval
18 shall be null and void, and shall not be used or referred to for any purpose in this Action or any other
19 action or proceeding.

20 3. For settlement purposes only, and subject to further consideration at the Court Approval
21 Hearing described in paragraph 12 below, the Settlement Class is found to meet the relevant requirements
22 of Fed. R. Civ. P. 23(a) and (b)(3).

23 4. For settlement purposes only, and after considering the relevant factors in Fed. R. Civ. P.
24 23, the Representative Plaintiff is conditionally designated as the representative of the Settlement Class
25 and Class Counsel are conditionally appointed as counsel for the Settlement Class. The law firms and
26 attorneys conditionally representing the Settlement Class are:
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14 5. Pursuant to Fed R. Civ. P. 23, the terms of the Settlement Agreement, and the Settlement
15 provided for therein, are preliminarily approved as (a) fair, reasonable, and adequate in light of the
16 relevant factual, legal, practical, and procedural considerations of the Action, (b) free of collusion to the
17 detriment of Class Members, and (c) within the range of possible final judicial approval, subject to further
18 consideration thereof at the Court Approval Hearing described at paragraph 12 of this Order.
19 Accordingly, the Settlement Agreement and the Settlement are sufficient to warrant notice thereof, as set
20 forth below, and a full hearing on the Settlement.

21 6. Pursuant to the terms of the Settlement Agreement, Defendant is hereby directed to
22 prepare the Class Member List within ten (10) business days after the (a) Preliminary Approval Date or
23 (b) November 20, 2006, whichever comes later. Within twenty (20) business days after the completion of
24 the Class Member List, and pursuant to the procedures detailed in the Settlement Agreement, Defendant
25 shall provide notice of the Settlement and of the Court Approval Hearing to each Class Member on the
26 Class Member List by mailing to the address for the Class Member on the Class Member List, as updated
27 through the NCOA database, a copy of the Class Notice, substantially in the form attached to the
28 Settlement Agreement as Exhibit B, together with a copy of the Claim Form, substantially in the form
attached to the Settlement Agreement as Exhibit C. Class Counsel and Counsel for the Defendant shall
revise the Class Notice and Claim Form to make the Class Notice and Claim Form consistent with this

1 Order. The Settlement Administrator shall have discretion to format the Class Notice, Claim Form, and
2 Class Brochure before mailing, with the consent of Class Counsel.

3 7. If any Class Notice mailed pursuant to the Settlement Agreement and paragraph 6 above
4 is returned by the United States Postal Service as undeliverable, then Defendant shall re-mail the Class
5 Notice, together with the Claim Form, to the forwarding address, if any, provided on the face of the
6 returned mail. If the returned mail does not reflect a forwarding address, then Defendant shall have no
7 other obligation to re-mail the Class Notice and Claim Form.

8 8. The Court finds that the Settlement Agreement's plan for class notice is the best notice
9 practicable under the circumstances and satisfies the requirements of due process and Fed. R. Civ. P. 23.
10 That plan is approved and accepted. This Court further finds that the Class Notice and Claim Form
11 comply with Fed. R. Civ. P. 23 and are appropriate as part of the notice plan and the Settlement, and thus
12 they are hereby approved and adopted. This Court further finds that no other notice other than that
13 identified in the Settlement Agreement is reasonably necessary in this Action.
14

15 9. Any Class Member who wishes to be excluded from the Settlement Class and not be
16 bound by the Settlement Agreement must complete and mail a request for exclusion ("**Opt-Out**") to the
17 Settlement Administrator postmarked no later than **February 15, 2007**. For a Class Member's Opt-Out
18 to be valid, it must be timely (as judged by the postmark deadline set forth above) and (a) state the Class
19 Member's full name, address, and telephone number; (b) contain the Class Member's original signature(s)
20 (conformed, reproduced, facsimile, or other non-original signatures are not valid); and (c) unequivocally
21 state the Class Member's intent to be excluded from the Settlement Class, to be excluded from the
22 Settlement, not to participate in the Settlement, and/or to waive all rights to the benefits of the Settlement.
23 Any Class Member who does not submit a timely Opt-Out, and otherwise comply with all requirements
24 for requesting exclusion from the Settlement Class as set forth above and in the Class Notice, shall be
25 bound by the Settlement Agreement, including the Release, as embodied in paragraphs 4.01, 4.02, and
26 4.03 of the Settlement Agreement, and any Final Judgment entered in the Action. Further, any Class
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1 Member who is a Successful Opt-Out will be deemed to have waived any rights or benefits under the
2 Settlement, and will have no standing to object to the Settlement or to seek to intervene in the Action.

3 10. On or before the date of the Court Approval Hearing, Class Counsel and Counsel for the
4 Defendant shall create and file with the Court a comprehensive list of Successful Opt-Outs.

5 11. Any Class Member who is not a Successful Opt-Out and who wishes to object to the
6 Settlement, in whole or in part, must file a written objection to the Settlement or Settlement Agreement
7 (“**Objection**”) with the Court, and contemporaneously serve it upon Class Counsel and Counsel for the
8 Defendant, no later than **February 20, 2007**. To be considered valid, each Objection must be timely (as
9 judged by the filing deadline set forth above) and (a) set forth the Class Member’s full name, current
10 address, and telephone number; (b) contain the Class Member’s original signature (conformed,
11 reproduced, facsimile, or other non-original signatures will not be valid); (c) state that the Class Member
12 objects to the Settlement, in whole or in part; (d) set forth a statement of the legal and factual basis for the
13 Objection; and (e) provide copies of any evidence or documents that the Class Member wishes to submit
14 in support of his/her position. Any Class Member who does not submit a timely and valid Objection in
15 complete accordance with this Order, the Class Notice, and the Settlement Agreement shall not be treated
16 as having filed a valid Objection to the Settlement. Objections that are untimely and/or otherwise invalid
17 will not be considered by this Court.
18

19 12. A hearing (the “**Court Approval Hearing**”) shall be held before the undersigned at
20 9:00 a.m., on **March 2, 2007**, in the United States District Court for the Northern District of California, to
21 determine, among other things, (a) whether the proposed Settlement should be approved as fair,
22 reasonable, and adequate, (b) whether the Action should be dismissed with prejudice pursuant to the
23 terms of the Settlement Agreement, (c) whether Class Members should be bound by the Release set forth
24 in the Settlement Agreement, (d) whether Class Members should be subject to a permanent injunction
25 that, among other things, bars Class Members from filing, commencing, prosecuting, intervening in, or
26 participating in (as class members or otherwise), any lawsuit, claim, demand or proceeding in any
27 jurisdiction that is based on or related to, directly or indirectly, matters within the scope of the Release,
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1 (e) whether the Settlement Class should be finally certified, (f) the amount of attorneys' fees and costs to
2 be awarded to Class Counsel, if any, and (g) the amount of the award to be awarded to Plaintiff for her
3 services as class representative, if any. This hearing may be postponed, adjourned, or continued by order
4 of the Court without further written notice to the Settlement Class.

5 13. Memoranda in support of the Settlement and **applications for an Attorney**
6 **Fee/Litigation Cost Award** shall be filed with the Court no later than **February 2, 2007**. Supplemental
7 memoranda in support of the Settlement and applications for an Attorney Fee/Litigation Cost Award may
8 be filed with the Court no later than **February 26, 2007**.

9 14. Any Class Member who wishes to **appear** at the Court Approval Hearing, whether *pro se*
10 or through counsel, must file a notice of appearance in the Action, and contemporaneously serve the
11 notice on Class Counsel and Counsel for the Defendant, on or before **February 20, 2007**. No Class
12 Member shall be permitted to raise matters at the Court Approval Hearing that the Class Member could
13 have raised in an Objection, but failed to do so. Any Class Member who fails to comply with this Order,
14 the Class Notice, and/or the Settlement Agreement shall be barred from appearing at the Court Approval
15 Hearing.

16 15. Any Class Member who wishes to **intervene** in the Action or seek other relief from the
17 Court must file with the Court, and contemporaneously serve on Class Counsel and Counsel for the
18 Defendant, an appropriate motion or application, together with all supporting pleadings or documentation,
19 on or before **February 20, 2007**.

20 16. The postmark deadline for the submission of **Valid Claim Forms** shall be **April 2, 2007**.
21 The validity of Claim Forms otherwise shall be governed by the terms stated in the Settlement
22 Agreement.

23 17. All other events contemplated by the Settlement Agreement to occur after this Order and
24 before the Court Approval Hearing shall be governed by the Settlement Agreement, to the extent not
25 inconsistent herewith.
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1 18. The Parties are hereby authorized to establish the means necessary to administer the
2 Settlement.

3 19. All proceedings in the Action, other than such as may be necessary to carry out the terms
4 and conditions of the Settlement Agreement or the responsibilities related or incidental thereto, are stayed
5 and suspended until further order of this Court.

6 20. If Final Approval of the Settlement is not achieved, or if the Settlement is terminated for
7 any reason, the Settlement and all proceedings had in connection therewith shall be without prejudice to
8 the *status quo ante* rights of the Parties to the Action, and all Orders issued pursuant to the Settlement
9 shall be vacated. In such an event, the Settlement and all negotiations concerning it shall not be used or
10 referred to in this Action for any purpose whatsoever. This Order shall be of no force or effect if Final
11 Approval does not occur for any reason, and nothing in this Order shall be construed or used as an
12 admission, concession, or declaration by or against Defendant, of any fault, wrongdoing, breach, or
13 liability. Nor shall this Order be construed by or against Representative Plaintiff or the Class Members
14 that their claims lack merit or that the relief requested in this Action is inappropriate, improper, or
15 unavailable, or as a waiver by any Party of any defenses it may have. Nor shall this Order be construed or
16 used to show that certification of one or more classes would or would not be appropriate if this Action
17 was to be litigated rather than settled.

18 21. Neither the Settlement nor the Settlement Agreement constitutes an admission,
19 concession, or indication by the Parties of the validity of any claims or defenses in the Action; or of any
20 wrongdoing, liability, or violation of law by Defendant, which vigorously denies all of the claims and
21 allegations raised in the Action.
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23 22. The Court reserves the right to approve the Settlement with such modifications, if any, as
24 may be agreed to by Class Counsel and Counsel for the Defendant and without future notice to the Class
25 Members.
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27 23. No Class Member, or any other person acting on behalf of or in concert with a Class
28 Member, may exclude any other Class Member from the Settlement Class. All Class Members who have

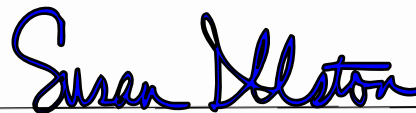
1 not timely and validly excluded themselves from the Settlement Class and all persons acting on behalf of
2 or in concert with any such Class Members are hereby preliminarily enjoined from, directly or indirectly:

3 (i) commencing, prosecuting, participating in (as a class member or otherwise), and/or assisting in any
4 lawsuit or other proceeding against Defendant that asserts or purports to assert claims that (a) were
5 asserted, attempted to be asserted, or could have been asserted in the Action, and/or (b) are within the
6 scope of the Release, as embodied in paragraphs 4.01, 4.02, and 4.03 of the Settlement Agreement; and
7 (ii) organizing or soliciting Class Members or opt-outs into a separate class for purposes of pursuing, as a
8 purported class action, a lawsuit or other proceeding on behalf of Class Members or opt-outs that asserts
9 or purports to assert claims that (a) were asserted, attempted to be asserted, or could have been asserted in
10 the Action, and/or (b) are within the scope of the Release, as embodied in paragraphs 4.01, 4.02, and 4.03
11 of the Settlement Agreement.
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13 24. Except as set forth in this Order and the Settlement Agreement, no person or entity,
14 including but not limited to Plaintiff's Counsel, Counsel for the Defendant, Representative Plaintiff, or
15 Defendant, shall be permitted to initiate communications with Class Members, whether by written
16 correspondence, notices, advertisements, Internet postings, or other media, concerning the Settlement or
17 its terms without prior approval from the Court upon prior notice to Class Counsel and Counsel for the
18 Defendant.

19 25. Except as set forth in this Order and the Settlement Agreement, the Parties (and
20 Plaintiff's Counsel and Counsel for the Defendant) shall not issue any public, mass, or generalized
21 communications about the Settlement (other than disclosures required by law), whether by press release
22 or any other means, without prior approval of the Court and/or the express written consent of the other
23 Party.
24

25 Dated 12/5/06
26 _____
27 San Francisco, CA
28



Hon. Susan Illston
U.S. District Court Judge