

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

**If You Authorized e-Verifile.com, Inc. to Obtain Your Consumer Report To Access Railroad Properties, You May Be Eligible for a Payment from a Class Action Settlement.**

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

- A Settlement has been reached in a class action lawsuit about Fair Credit Reporting Act compliance involving BNSF Railway Company, Norfolk Southern Railway Company and Railroad Controls, LP and the manner in which they obtained, relied upon and/or used background reports furnished by e-Verifile.com, Inc. in deciding whether to grant access to their property or the property of their corporate affiliates. The lawsuit, *Steven D. Gunn v. e-Verifile.com, Inc., et al.*, is pending in the United States District Court for the Southern District of Mississippi. The lawsuit alleges the railroads' use of background consumer report through the e-RAILSAFE program for employment purposes and, on that premise, challenges e-Verifile.com, Inc.'s notification procedures to applicants regarding adverse public record information on their consumer reports and the accuracy of those records. However, to avoid the costs and risks of protracted litigation, the Parties have agreed to a settlement.

- You are a member of the Settlement Class, and you may be eligible for a payment under the Settlement, if you reside in the United States, authorized e-Verifile to obtain a consumer report for employment purposes between February 1, 2017 and November 30, 2018 and (a) such consumer report included at least one criterion for denial of access to any property of one or more Railroads or their respective corporate affiliates; (b) any Defendant relying on such consumer report, in whole or in part, took adverse action against such person and/or denied access to one or more properties of the Railroads; and (c) any Defendant did not provide such person with a copy of their e-Verifile consumer report and a description in writing of the rights of such person under 1681g(c)(3) before taking such adverse action and/or denying such access to one or more properties of the Railroads.

- Defendants have agreed to contribute Settlement Funds totaling \$610,000 from which payments to members of the Settlement Class will be made. Each Settlement Class member is entitled to an automatic cash payment from which the Settlement Administrator shall deduct any attorney fees and costs, service payment and cost of Notice and Administration approved by the Court.

<b>Summary Of Your Legal Rights And Options In This Settlement</b>	
<b>Get A Payment</b>	If you are a Class Member, you may be eligible for a Settlement Payment. You will receive your Settlement Payment automatically. No claim form submission needed.
<b>Exclude Yourself</b>	Exclude yourself from the Settlement. If you exclude yourself from the Settlement, you will receive no benefits from the Settlement. This is the only option that allows you to participate in any other lawsuit against Defendants about the claims in this case. Deadline to opt-out is August 4, 2020.
<b>Object</b>	Write to the Court if you do not like the Settlement. You may object to the Settlement and still receive a Settlement Payment if the Settlement is approved by the Court. Deadline to object is August 4, 2020.
<b>Go to a Hearing</b>	Ask to speak in Court about the fairness of the Settlement.
<b>Do Nothing</b>	You will receive a payment to which you may be entitled. You will give up your right to participate in further litigation against Defendants about the claims in this case.

- Your legal rights are affected whether or not you act. Please read this notice carefully.
- These rights and options, and the deadlines to exercise them, are explained in this notice.
- The Court still has to decide whether to approve the Settlement. If it does, and any appeals are resolved, benefits will be distributed to those who qualify. Please be patient.

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## BASIC INFORMATION

### 1. **Why is there a notice?**

This is a notice of a proposed Settlement of a class action lawsuit. Judge Tom S. Lee of the United States District Court for the Southern District of Mississippi is overseeing the lawsuit. The case is known as *Steven D. Gunn, On behalf of himself and all others similarly situated v. E-Verifile.com, Inc., et al*, No. 3:19-CV-00176 (S.D. MS). The person who sued, Steven D. Gunn, is called the "Plaintiff." E-Verifile.com, Inc., BNSF Railway Company, Norfolk Southern Railway Company, and Railroad Controls, LP are the "Defendants".

The Court authorized this notice because you have a right to know about the proposed Settlement and about all of your options before the Court decides whether to give final approval to the Settlement. This notice explains the lawsuit, the Settlement, and your legal rights.

### 2. **What is this litigation about?**

The lawsuit alleges that Defendants failed to comply with the notification procedures required by the FCRA, specifically 15 U.S.C. §1681k(a)(1), 15 U.S.C. § 1681b(b)(3) and follow reasonable procedures to assure maximum possible accuracy as established in 15 U.S.C. § 1681e(b). The amended complaint in the lawsuit is posted on the Settlement website, [www.gunnfcrasettlement.com](http://www.gunnfcrasettlement.com).

Defendants deny any liability or wrongdoing but have agreed to settle the case to avoid the costs and risks of litigation.

### 3. **Why is this a class action?**

In a class action, a person called a "Class Representative" sues on behalf of himself and other people with similar claims. In this case, the Class Representative is the Plaintiff, Steven D. Gunn, an individual who applied for employment with Railroad Controls, LP who was denied employment based upon public information in a background consumer report obtained through the e-RAILSAFE program. Together, all the people with similar claims (except those who exclude themselves) are members of a "Settlement Class" also called "Settlement Class Members".

### 4. **Why is there a Settlement?**

The Court has not decided in favor of the Plaintiff or Defendants as to the merits of the case or if class certification is suited for this case. Instead, both sides have agreed to a Settlement. By agreeing to the Settlement, the Parties avoid the costs and uncertainty of a trial, and Settlement Class Members receive the benefits described in this notice. The proposed Settlement does not mean that any law was broken or that Defendants did anything wrong. Defendants deny all legal claims in this case. The Class Representative and his lawyers think the proposed Settlement is best for everyone who is affected.

## WHO IS PART OF THE SETTLEMENT?

If you received this notice of the Settlement addressed to you, then Defendants' records show that you are a Settlement Class Member and part of the **Successful Appeal Subclass**, as described below.

### 1. **Who is included in the Settlement Class?**

You are a member of the Settlement Class if you reside in the United States (including all territories and other political subdivisions of the United States) who authorized e-Verifile to obtain a consumer report for employment purposes between February 1, 2017 and November 30, 2018 and (a) such consumer report included at least one criterion for denial of access to any property of one or more Railroads or their respective corporate affiliates; (b) any Defendant relying on such consumer report, in whole or in part, took adverse action against such person and/or denied access to one or more properties of the Railroads; and (c) any Defendant did not provide such person with a copy of their e-Verifile consumer report and a description in writing of the rights of such person under 1681g(c)(3) before taking such adverse action and/or denying such access to one or more properties of the Railroads.

### 2. **Who is included in the Subclasses:**

<b>No Appeal Subclass</b>	<b>Unsuccessful Appeal Subclass</b>	<b>Successful Appeal Subclass</b>	<b>RC Subclass</b>
You are a member of this Subclass if you are a member of the Settlement Class who did not appeal Defendants' decision to deny them access to their property or the property of their corporate affiliates.	You are a member of this Subclass if you unsuccessfully appealed Defendants' decision to deny them access to its property or the property of its corporate affiliates.	You are a member of this Subclass if you successfully appealed Defendants' decision to deny them access to their property or the property of their corporate affiliates.	You are a member of this Subclass if you were denied access to RC's property or the property of its corporate affiliates.

## **You have been identified as a Successful Appeal Subclass Member**

### **3. What if I am not sure whether I am included in the Settlement?**

If you are not sure whether you are in the Settlement Class and/or **Successful Appeal Subclass**, or have any other questions about the Settlement, visit the Settlement website at [www.gunnfcraSettlement.com](http://www.gunnfcraSettlement.com) or call the toll-free number, 1-800-687-0142. You may also send questions to the Settlement Administrator at *Gunn FCRA Settlement, PO Box 23459, Jacksonville, FL 32241-3459*.

## **THE SETTLEMENT BENEFITS**

### **1. What does the Settlement provide?**

If the Settlement is approved and becomes final, it will provide benefits to Settlement Class Members. Defendants will pay, collectively, up to a total of \$610,000 to members of the Settlement Class that includes an award of attorneys' fees, costs, and expenses, plus a special service payment to the Class Representative who initiated the lawsuit, in a total amount to be determined by the Court but not to exceed \$203,333.00 and the costs associated with administering the Settlement.

### **2. How much will my payment be?**

Each Successful Appeal Subclass Member is entitled to an automatic cash payment from which the Settlement Administrator shall deduct any attorney fees and costs, service payment and cost of Notice and Administration approved by the Court.

### **3. When will I receive my payment?**

Successful Appeal Subclass Members will receive their payments by check issued by the Settlement Administrator, only after the Court grants final approval of the Settlement and after any appeals are resolved (*see* "The Final Approval Hearing" below). If there are appeals, resolving them can take time. Please be patient.

### **4. What am I giving up to stay in the Settlement Class?**

Unless you exclude yourself from the Settlement, you cannot sue, or bring a claim against Defendants about the issues in this case. Unless you exclude yourself, all of the decisions by the Court will bind you. The Settlement Agreement is available at [www.gunnfcraSettlement.com](http://www.gunnfcraSettlement.com) and describes the claims that you give up if you remain in the Settlement.

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you do not want benefits from the Settlement, and you want to keep the right to sue Defendants about the legal issues in this case, then you must take steps to get out of the Settlement. This is called excluding yourself. It is also sometimes called "opting out" of the Settlement Class.

### **1. How do I get out of the Settlement?**

To exclude yourself from the Settlement, you must send a letter or other written document by mail to the Settlement Administrator. Your request must include:

- Your name, address, telephone number, and account number;
- A statement that you want to be excluded from the settlement in *Steven D. Gunn v. E-Verify.com, Inc., et al.*, No. 3:19-CV-00176 (S.D. MS); and
- Your signature.

You must mail your exclusion request, postmarked no later than August 4, 2020, to *Gunn FCRA Settlement, PO Box 23459, Jacksonville, FL 32241-3459*. You cannot ask to be excluded on the phone, by email, or at the website.

### **2. If I do not exclude myself, can I sue Defendants for the same thing later?**

No. Unless you exclude yourself, you give up the right to sue or bring an arbitration against Defendants for the claims that the Settlement resolves. You must exclude yourself from the Settlement Class in order to try to maintain your own lawsuit or arbitration.

### **3. If I exclude myself, can I still get a payment?**

No. You will not get a Settlement Payment if you exclude yourself from the Settlement.

## THE LAWYERS REPRESENTING THE SETTLEMENT CLASS

### 1. Do I have a lawyer in the case?

The Court has appointed lawyers from the law firm O'Toole McLaughlin Dooley & Pecora, Co LPA., Law Offices of John Bazaz, PLC and Consumer Litigation Associates, PC. to represent all Settlement Class Members as "Settlement Class Counsel". They are:

Matthew A. Dooley, Ryan M. Gembala, Stephen M. Bosak, Jr. <b>O'Toole McLaughlin Dooley &amp; Pecora Co LPA</b> 5455 Detroit Road Sheffield Village, OH 44054	John C. Bazaz <b>Law Offices of John C. Bazaz, PLC</b> 4000 Legato Road, Suite 1100 Fairfax, VA 22033	Leonard A. Bennett, Craig Marchiando, Elizabeth Hanes <b>Consumer Litigation Associates, PC</b> 763 J. Clyde Morris Blvd. Suite 1-A Newport News, VA 23601
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You will not be charged for contacting these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

### 2. How will the lawyers be paid?

Class Counsel intend to request up to \$203,333.00 for attorneys' fees and reimbursement of the costs and expenses of prosecuting the class action. Class Counsel will also seek a special service award to be paid to the Class Representative in the amount of \$2,000.00. The fees and expenses awarded by the Court will be paid by out of the Settlement Funds. The Court will decide the amount to award.

## OBJECTING TO THE SETTLEMENT

### 1. How do I tell the Court if I do not like the Settlement?

If you are a member of the Settlement Class, you can object to any part of the Settlement, the Settlement as a whole, Class Counsel's requests for fees and expenses, and/or the special service payment to the Class Representative. To object, you must submit a letter that includes the following:

- Your name, address, and telephone number;
- A statement saying that you object to the Settlement in *Steven D. Gunn v. E-Verifile.com, Inc., et al.*, No. 3:19-CV-00176 (S.D. MS);
- The reasons you object to the Settlement, along with any supporting materials; and
- Your signature.

You must mail your objection to the Clerk of Court for the Southern District of Mississippi and class counsel at the following address, and your objection must be postmarked by August 4, 2020:

United States District Court Thad Cochran United States Courthouse Attention: Clerk of Courts 501 E. Court Street Suite 2.500 Jackson, MS 39201	O'Toole McLaughlin Dooley & Pecora Co LPA Attention: Matthew A. Dooley 5455 Detroit Road Sheffield Village, OH 44054
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### 2. What is the difference between objecting and asking to be excluded?

Objecting is simply telling the Court that you do not like the terms of the Settlement. You can object to the Settlement only if you do not exclude yourself. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object to the Settlement because it no longer affects you.

## THE FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the Settlement and any requests for fees and expenses. You may attend and you may ask to speak, but you don't have to do so.

### 1. When and where will the Court decide whether to approve the Settlement?

The Court has scheduled a telephonic Final Approval Hearing on August 11, 2020 at 10:00AM at the United States District Court for Southern District of Mississippi, located at Thad Cochran U.S. Court House, 501 E. Court Street, Jackson, MS 39201. A toll-free telephone number and passcode will be provided upon request to the Settlement Administrator. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check the settlement website for updates. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider the request by Class Counsel for attorneys' fees, expenses, and a service payment to the Class Representative. If there are objections, the Court will consider them at that time. After the hearing, the Court will decide whether to approve the

Settlement. We do not know how long these decisions will take.

2. **Do I have to attend the hearing?**

No. Settlement Class Counsel will answer questions the Court may have. But you are welcome to attend the hearing at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you submitted your written objection on time, to the proper address, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

3. **May I speak at the hearing?**

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must send a letter saying that you intend to appear and wish to be heard. Your Notice of Intention to Appear must include the following:

- Your name, address and telephone number;
- A statement that this is your " Notice of Intention to Appear " at the Final Approval Hearing for the Settlement in *Steven D. Gunn v. E-Verifile.com, Inc., et al.*, No. 3:19-CV-00176 (S.D. MS);
- The reasons you want to be heard;
- Copies of any papers, exhibits, or other evidence or information that you will present to the Court; and
- Your signature.

You must send copies of your Notice of Intention to Appear, postmarked by August 4, 2020, to:

United States District Court  
Thad Cochran United States Courthouse  
Attention: Clerk of Courts  
501 E. Court Street Suite 2.500  
Jackson, MS 39201

You cannot speak at the hearing if you exclude yourself from the Settlement.

**GETTING MORE INFORMATION**

1. **How do I get more information?**

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. For a complete, definitive statement of the Settlement terms, refer to the Settlement Agreement at [www.gunnfcraSettlement.com](http://www.gunnfcraSettlement.com). You also may write with questions to the Settlement Administrator at *Gunn FCRA Settlement, PO Box 23459, Jacksonville, FL 32241-3459* or call the toll-free number, 1-800-687-0142, or contact Class Counsel.