UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

Norfolk Division

MATTHEW HOWARD,

Plaintiff,

vs.

PLAIN GREEN, LLC and
TRANSUNION, LLC,

Defendants.

Civil No. 2:17-cv-00302-RBS-DEM

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

Defendant Plain Green, LLC ("Plain Green") respectfully submits the following memorandum in support of its Motion to Dismiss the Complaint filed by Plaintiff Matthew Howard with prejudice pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

INTRODUCTION

This Court should dismiss the Complaint in its entirety for lack of subject matter jurisdiction under Rule 12(b)(1) because Plain Green is immune from suit. The Chippewa Cree Indians of the Rocky Boy's Reservation ("Tribe") is a federally-recognized Indian tribe entitled to sovereign immunity from suit, and Plain Green is an entity organized under and operated by the laws of the Tribe. Because the Tribe's immunity extends to its economic arms, Plain Green is protected by the Tribe's sovereign immunity and is therefore is immune from unconsented suit.

Further, Plaintiff fails to state a claim against Plain Green under the Fair Credit Reporting Act ("FCRA"). Plain Green cannot be liable under FCRA if it did not receive adequate and timely notice of Plaintiff's dispute. However, Plaintiff has not alleged notice to Plain Green beyond the speculative level as is required in order to state a claim. As a result, Plaintiff's claims

against Plain Green should be dismissed. Alternatively, even if Plaintiff's claims withstand Rule 12(b)(6) scrutiny, the Court should order preliminary, limited discovery into the question of whether Plain Green received sufficient notice under FCRA and convert Plain Green's Rule 12(b)(6) motion into one for summary judgment.

STATEMENT OF FACTS

The Chippewa Cree Indians of the Rocky Boy's Reservation is a federally recognized Indian tribe with a Reservation in north-central Montana. The Tribe is an independent sovereign nation within the United States with a government that provides social services, jobs, and infrastructure, among other services, to its approximately 2,500 members that live on the Reservation.[1] Although the Tribe's inherent sovereignty long predates the United States, the U.S. government affirmed the Tribe's sovereignty and right to self-government in the Indian Reorganization Act of 1934, ch. 576, 48 Stat. 984 (25 U.S.C. § 461 *et seq.*), and continues to affirm that sovereignty today through federal recognition. *See* 81 Fed. Reg. 26826, 26827 (May 4, 2016) (listing the "Chippewa Cree Indians of the Rocky Boy's Reservation" on the list of "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs").

In 2010, the Tribe's Business Committee chartered Plain Green as an online lending entity pursuant to the Committee's authority to promote the general welfare of the Tribe. Ex. A at 1. Plain Green operates as an economic arm of the Tribe pursuant to the laws of the Tribe. *Id*. In that capacity, Plain Green is designed to increase tribal revenues; to serve the social, economic, educational, and health needs of the Tribe; and to "enhance the Tribe's economic self-sufficiency and self-determination." *Id*. at 13. Because Plain Green is an arm of the Tribe, the

[1] "Chippewa Cree Tribe," Montana Governor's Office of Indian Affairs, https://tribalnations.mt.gov/chippewacree.

Tribe has affirmed that it and its officers share all of the "rights, powers, privileges and federal immunities of the Tribe," *id.* at 3, including sovereign immunity from suit, *id.*, at 5. *See Kiowa Tribe of Okla. v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 760 (1998) (holding that tribal sovereign immunity extends to a tribe's "governmental or commercial activities" regardless of "whether they were made on or off a reservation").

On April 26, 2017, Plaintiff filed his Complaint in the Circuit Court of the State of Virginia, County of Norfolk, against Plain Green and Trans Union, LLC. *See* Trans Union Notice of Removal, Dkt. No.1, Ex A. Plaintiff served Plain Green with the Complaint on June 5. On June 8, Trans Union filed a notice of removal in this Court under 28 U.S.C. § 1446(b) based on the Court's federal-question jurisdiction over Plaintiff's FCRA claim. *See* Trans Union Notice of Removal, Dkt. No.1. Trans Union supplemented its Notice of Removal on June 14 to clarify Plain Green's consent to removal as required by 28 U.S.C. § 1446(b)(2)(A). Trans Union's Notice of Supplementation, Dkt. 6. Plain Green now submits this timely Motion to Dismiss.[2]

LEGAL STANDARD

Plain Green moves to dismiss Plaintiff's claims against it for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted. Plaintiff's claims against Plain Green should be dismissed with prejudice.

Subject-matter jurisdiction is a threshold requirement that must be satisfied in every case. *Jones v. Am. Postal Workers Union*, 192 F.3d 417, 422 (4th Cir.1999). "The burden of alleging facts sufficient to establish such subject-matter jurisdiction lies . . . squarely with the plaintiff." *SunTrust Bank v. Vill. at Fair Oaks Owner, LLC*, 766 F. Supp. 2d 686, 688 (E.D. Va. 2011)

[2] Plain Green's Rule 12 Motion is timely because it was filed within 21 days of service of the Complaint on Plain Green. *See* Fed. R. Civ. P. 81(c)(2).

(citing *Pinkley, Inc. v. City of Frederick, Md.*, 191 F.3d 394, 399 (4th Cir. 1999)). "In determining whether jurisdiction exists, the district court is to regard the pleadings' allegations as mere evidence on the issue, and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment." *Richmond, Fredericksburg & Potomac R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991).

Under Rule 12(b)(6), "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The court accepts well-pleaded factual allegations as true, but should disregard conclusory allegations. *Iqbal*, 556 U.S. at 678. If the plaintiff fails to "raise a right to relief above the speculative level," then Rule 12(b)(6) dismissal is warranted. *Twombly*, 550 U.S. at 555. As a general rule, the court may not consider materials "outside the pleadings" on a motion to dismiss. Fed. R. Civ. P. 12(d). This general rule notwithstanding, "courts may rely on evidence that is extraneous to the complaint without converting the motion to one for summary judgment—provided that the evidence's authenticity is not challenged and the evidence is 'integral to and explicitly relied on in the complaint.'" *Kerr v. Marshall Univ. Bd. of Governors*, 824 F.3d 62, 83 (4th Cir. 2016) (quoting *Am. Chiropractic Ass'n v. Trigon Healthcare, Inc.*, 367 F.3d 212, 234 (4th Cir. 2004) (citation omitted)).

ARGUMENT

I. PLAIN GREEN IS IMMUNE FROM SUIT.

Tribal sovereign immunity is a threshold jurisdictional question that must be addressed before the merits. *See Puyallup Tribe v. Dept. of Game of State of Wash.*, 433 U.S. 165, 172 (1977) (stating that "[a]bsent an effective waiver or consent," a court "may *not exercise jurisdiction* over a recognized Indian tribe" (emphasis added)); *Pan Am. Co. v. Sycuan Band of*

Mission Indians, 884 F.2d 416, 418 (9th Cir. 1989) (explaining that "the issue of tribal sovereign immunity is jurisdictional in nature"); *see also Amerind Risk Mgmt. Corp. v. Malaterre*, 633 F.3d 680, 684-85 (8th Cir. 2011) ("We have held that tribal sovereign immunity is a threshold jurisdictional question."). Despite his burden to prove that subject-matter jurisdiction exists, the Plaintiff fails to mention Plain Green's sovereign immunity, let alone any grounds demonstrating a waiver or abrogation of that immunity. This Court lacks jurisdiction over Plaintiff's claims against Plain Green because Plain Green is immune from suit.

A. The Chippewa Cree Tribe maintains sovereign immunity from suit as a federally recognized Indian tribe.

As a federally recognized Indian tribe, Chippewa Cree Indians possess "inherent sovereign authority." *Okla. Tax Comm'n v. Citizen Band Potawatomi Tribe of Okla.*, 498 U.S. 505, 509 (1991) (citing *Cherokee Nation v. Georgia*, 30 U.S. 1, 17 (1831)). Through its federal recognition, the United States acknowledges the Tribe in a formal government-to-government context as a sovereign body politic with reserved rights that predate the United States Constitution. *Worcester v. Georgia*, 31 U.S. 515, 559 (1832); *see also Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55-59 (1978); *United States v. Wheeler*, 435 U.S. 313, 322-23 (1978).

As part of its inherent sovereignty, the Tribe is protected by sovereign immunity from unconsented suit. *See Michigan v. Bay Mills Indian Cmty.*, 134 S. Ct. 2024, 2030 (2014) (reaffirming that "[a]mong the core aspects of sovereignty that tribes possess—subject [only] to congressional action—is the 'common-law immunity from suit traditionally enjoyed by sovereign powers'" (quoting *Martinez*, 436 U.S. at 58)); *Demontiney v. U.S. ex rel. Dept. of Interior, Bureau of Indian Affairs*, 255 F.3d 801, 813 (9th Cir. 2001) (dismissing plaintiff's claim based on the Chippewa Cree Tribe's sovereign immunity from suit). Indeed, "[t]he rule that a tribe of Indians under the tutelage of the United States is not subject to suit without the consent

of Congress is too well settled to admit of argument." *Haile v. Saunooke*, 246 F.2d 293, 297 (4th Cir. 1957). Further, the Tribe retains its immunity even when it acts in a commercial capacity outside the boundaries of its territory. *See Bay Mills Indian Cmty*, 134 S. Ct. at 2036 (stating that the "doctrine of tribal immunity—without any exceptions for commercial or off-reservation conduct—is settled law and controls"); *Kiowa Tribe of Okla.*, 523 U.S. at 760 (holding that tribal sovereign immunity extends to a tribe's "governmental or commercial activities" regardless of "whether they were made on or off a reservation").

B. Plain Green is immune from suit as an economic arm of the Tribe.

Tribal sovereign immunity extends to businesses that operate as economic arms of the Tribe. *Okla. Tax Comm'n*, 498 U.S. at 510 (holding that tribal sovereign immunity extends to "tribal business ventures"); *Kiowa Tribe of Okla.*, 523 U.S. at 757 (explaining that tribal sovereign immunity is retained even for those tribal businesses that had arguably "become far removed from tribal self-governance and internal affairs"); *see Cook v. AVI Casino Enters.*, 548 F.3d 718, 725 (9th Cir. 2008) (stating that "tribal corporations acting as an arm of the tribe enjoy the same sovereign immunity granted to a tribe itself"); *Pettus v. Servicing Co., LLC*, No. 3:15CV479(HEH), 2016 WL 7234106, at *2 (E.D. Va. Feb. 9, 2016) ("Tribal sovereign immunity extends to an 'arm of the tribe' that engages in economic activities . . . ."). Indeed, upholding tribal sovereign immunity for tribal commercial entities is consistent with a central purpose underlying immunity: "to promote economic development and tribal self-sufficiency." *Kiowa Tribe of Okla.*, 523 U.S. at 757; *see also Am. Indian Agr. Credit Consortium, Inc. v. Standing Rock Sioux Tribe*, 780 F.2d 1374, 1378 (8th Cir. 1985) (emphasizing that immunity is "necessary to promote the federal policies of tribal self-determination, economic development, and cultural autonomy").

Plain Green is an economic arm of the Tribe entitled to immunity. As discussed, Plain Green was incorporated under the laws of the Tribe, operates pursuant to the Tribe's laws, and has a principal place of business on the Tribe's reservation in Montana. Ex. A at 1, 3, 6, 13. The Tribe has the sole proprietary interest in, and sole responsibility for, the conduct of the activities of Plain Green. *Id.* at 13. The Tribe formed Plain Green for the purposes of serving the social economic, educational, and health needs of the Tribe; increasing Tribal revenues; enhancing the Tribe's economic self-sufficiency and self-determination; and providing positive, long-term social, environmental and economic benefits to Tribal members by enhancing the Tribe's business undertakings and prospects. *Id.* at 13. And because Plain Green was formed as an economic arm of the Tribe, the Tribe has affirmed that it and its officers share all of the "rights, powers, privileges and federal immunities of the Tribe," *id.* at 3, including sovereign immunity from suit, *id.* at 14.

In sum, because Plain Green is an economic arm of the Tribe that is entitled to sovereign immunity from suit, this Court has jurisdiction over Plaintiff's claims only if Plain Green's immunity has been waived or abrogated.

C. Plain Green's sovereign immunity has neither been waived nor abrogated.

As a matter of federal law, an Indian tribe or its economic arms are subject to suit "only where Congress has authorized the suit or the tribe has waived its immunity." *Kiowa Tribe of Okla.*, 523 U.S. at 754. A tribe's "waiver of sovereign immunity 'cannot be implied but must be unequivocally expressed.'" *Santa Clara Pueblo*, 436 U.S. at 59. As part of his burden to prove subject-matter jurisdiction, *SunTrust Bank*, 766 F. Supp. 2d at 688, Plaintiff bears the burden of proving that the Tribe's sovereign immunity has been abrogated or waived. *See also Amerind*, 633 F.3d at 685-86 (stating that the Plaintiff "bear[s] the burden of proving that either Congress or [the Tribe] has expressly and unequivocally waived tribal sovereign immunity").

Plaintiff presents no evidence that any entity with the authority to waive Plain Green's immunity has done so with respect to Plaintiff's claims. And that is because such evidence does not exist. Neither the Tribe nor Plain Green has executed any instrument or taken any action that could be construed as a waiver of Plain Green's immunity.

Furthermore, Plaintiff presents no evidence that Congress abrogated Plain Green's sovereign immunity from unconsented suit for private claims brought under FCRA. Again, that is because no such evidence exists. Even if FCRA is a statute of general application that applies to Indian tribes, which Plain Green does not concede, Congress must still have abrogated the Tribe's sovereign immunity to permit private claims against Tribes. Indeed, the question of whether a federal statute applies to Indians tribes is distinct from whether that a tribe can be sued for violating that statute. *See Fla. Paraplegic, Ass'n, Inc. v. Miccosukee Tribe of Indians of Fla.*, 166 F.3d 1126, 1130 (11th Cir. 1999) ("[W]hether an Indian tribe is *subject* to a statute and whether the tribe may be *sued* for violating the statute are two entirely different questions."(emphasis in original)); *see also Kiowa Tribe of Okla.*, 523 U.S. at 755 ("There is a difference between the right to demand compliance with state laws and the means available to enforce them."). Moreover, whether the federal government may enforce a statute against an Indian tribe has no bearing on whether Congress clearly and explicitly authorized private actions against tribes in that same statute. *See E.E.O.C. v. Karuk Tribe Hous. Auth.*, 260 F.3d 1071, 1075 (9th Cir. 2001) (explaining that the federal government's ability to bring suit against an Indian tribe is distinct from the general rule that "Indian tribes do . . . enjoy sovereign immunity from private lawsuits").

Critically, FCRA lacks any unequivocal expression of Congress's intent to abrogate the Tribe's immunity. *See Santa Clara Pueblo*, 436 U.S. at 59. This is borne out in *Meyers v.*

Oneida Tribe of Indians of Wisconsin, 836 F.3d 818, 827 (7th Cir. 2016), *cert. denied*, 137 S. Ct. 1331, 197 L. Ed. 2d 518 (2017), in which the Seventh Circuit recently held that Congress did not abrogate tribal sovereign immunity by defining the "person[s]" subject to the FCRA as including "any . . . government."[3] The court reasoned:

> It is one thing to say "any government" means "the United States." That is an entirely natural reading of "any government." But it's another thing to say "any government" means "Indian Tribes." Against the long-held tradition of tribal immunity . . . "any government" is equivocal in this regard. Moreover, it is one thing to read "the United States" when *Congress* says "government." But it would be quite another, given that ambiguities in statutes are to be resolved in favor of tribal immunity, to read "Indian tribes" when Congress says "government."

Id. at 826 (citing D. Ct. Order at 4 (R. 23, p.4) (emphasis in original)). The Court added that plaintiff had "lost sight of the real question in this sovereign immunity case—whether an Indian tribe can claim immunity from suit. The answer to this question must be 'yes' unless Congress has told us in no uncertain terms that it is 'no.' Any ambiguity must be resolved in favor of immunity." *Id.* at 826-27. Finding no unequivocal Congressional intent to abrogate, the Court reached the unsurprising conclusion that the definition of "person" in the FCRA did not abrogate tribal sovereign immunity. *Id.* at 827. After all, "there is not one example in all of history where the Supreme Court has found that Congress intended to abrogate tribal sovereign immunity *without* expressly mentioning Indian tribes somewhere in the statute." *In re Greektown Holdings, LLC*, 532 B.R. 680, 693 (E.D. Mich. 2015) (emphasis in original).

In sum, there has been no waiver of Plain Green's immunity with respect to Plaintiff's claims, and Congress has not abrogated that immunity. Because Plain Green is shielded by the

[3] The *Meyers* court framed the question as whether Congress intended to abrogate tribal immunity for private actions under the Fair and Accurate Credit Transaction Act (FACTA) by defining "person[s]" subject to the Act as including "any . . . government." *Meyers*, 836 F.3d at 824. However, because FACTA was an amendment to FCRA, both statutes share the same definition of "person." *See* 15 U.S.C. § 1681 a(b). As a result, the analysis and holding in *Meyers* is equally applicable to a private claim made under FCRA.

Tribe's sovereign immunity, this Court lacks subject-matter jurisdiction to adjudicate Plaintiff's claims against Plain Green. As a result, the claims must be dismissed.

II. PLAINTIFF FAILS TO STATE A FCRA CLAIM AGAINST PLAIN GREEN.[4]

A. As a matter of law, Plain Green is not liable under FCRA if Trans Union failed to provide requisite notice.

Plaintiff alleges that Plain Green violated the provision of FCRA, 15 U.S.C. § 1681s-2(b), by failing to take certain actions, including "conducting an investigation with respect to the disputed information." *Id.*, § 1681s-2(b)(1)(A); *see* Compl., ¶ 30-32. But the duties Plaintiff alleges Plain Green violated are not triggered unless Trans Union notified Plain Green of Plaintiff's dispute. *Id.*, § 1681s-2(b)(1) (stating that furnishers must comply with discrete duties "[a]fter receiving notice pursuant to section 611(a)(2) [§ 1681i] of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency"). Such notice must have been sent to Plain Green within five business days of Trans Union receiving notice of Plaintiff's dispute. 15 U.S.C. § 1681i(a)(2)(A). Absent receipt of a timely notice, Plain Green cannot be liable as a "furnisher" under the FCRA, 15 U.S.C. § 1681s-2(b).

B. Plaintiff has not alleged sufficient facts to demonstrate that Trans Union notified Plain Green as required by 15 U.S.C. § 1681s-2(b)(1).

In an attempt to plead facts necessary to state a claim against Plain Green, Plaintiff alleges that Trans Union "did notify Plain Green and Plain Green failed to properly investigate and delete the trade line or properly update the trade line on Plaintiff's credit reports." Compl., ¶

[4] While Plain Green recognizes the truth of all well-pleaded factual allegations must be assumed for purposes of its Motion to Dismiss under Rule 12(b)(6), its Motion is not an admission of any allegation in the Plaintiff's Complaint.

18. However, in the same paragraph, Plaintiff alternatively alleges that "Transunion did not notify Plain Green of the dispute by Plaintiff in accordance with the FCRA." *Id.*

Plaintiff's allegation that Plain Green failed to investigate after notification cannot withstand Rule 12(b)(6) scrutiny. Plaintiff's alternative allegations at Paragraph 18 of the Complaint demonstrate that it is pure speculation as to whether Trans Union provided the requisite notice to Plain Green. Critically, though, federal pleading standards require Plaintiff to "raise a right to relief above the speculative level" in order to withstand a Rule 12(b)(6) motion. *Twombly*, 550 U.S. at 555. Indeed, when plead in the alternative, Plaintiff's allegations at Paragraph 18 amount to little more than "'a formulaic recitation'" of the notice element that Plaintiff must establish as a condition precedent to pleading a valid cause of action against Plain Green. *U.S. Airline Pilots Ass'n v. Awappa, LLC*, 615 F.3d 312, 317 (4th Cir. 2010) (quoting *Twombly*, 550 U.S. at 555). Without more, this naked allegation is nothing more than a conclusion, which "do[es] not suffice to withstand a motion to dismiss for failure to state a claim." *McCleary-Evans v. Maryland Dept. of Transp., State Highway Admin.*, 780 F.3d 582, 585 (4th Cir. 2015), *cert. denied*, 136 S. Ct. 1162, 194 L. Ed. 2d 176 (2016). Because Plaintiff has failed to allege beyond the speculative level that Plain Green received proper notice from Trans Union, Plaintiff's claims against Plain Green must be dismissed.

C. Should this Court determine that Plaintiff has properly stated a claim against Plain Green, the Court should convert Plain Green's 12(b)(6) Motion into one for summary judgment.

"It is well settled that district courts may convert a Rule 12(b)(6) motion to dismiss into a Rule 56 motion for summary judgment, allowing them to assess whether genuine issues of material fact do indeed exist." *Bosiger v. U.S. Airways*, 510 F.3d 442, 450 (4th Cir. 2007). Prior to converting the motion, the district court must simply provide the parties "reasonable opportunity" to present all materials pertinent to the motion. *Herbert v. Saffell*, 877 F.2d 267,

270 (4th Cir. 1989). This "reasonable opportunity" can take the form of limited, expedited discovery into the narrow factual issue in question. *See* Fed. R. Civ. P. 26(d) (explaining that a party can seek discovery before the parties have conferred as required by Rule 26(f) if authorized by court order); *see, e.g.*, *Shriner v. Annapolis City Police Dept.*, Civ. No. ELH-11-2633, 2012 WL 959380, at *1 (D. Md. Mar. 19, 2012) (describing the district court's order to provide limited, preliminary discovery to plaintiffs prior to the time specific in Rule 26(d)).

If this Court determines that Plaintiff's Complaint passes Rule 12(b)(6) muster, the Court should order preliminary discovery into the narrow question of whether Plain Green received adequate notice of Plaintiff's dispute and convert Plain Green's 12(b)(6) motion into one for summary judgment. Limited, preliminary discovery is warranted for multiple reasons. First, determining whether Plain Green received adequate notice is simple. Plain Green has no evidence that it received notice. As the noticing party, Trans Union can immediately produce evidence or verify that such evidence is lacking. Therefore, preliminary discovery on the question of notice will not be time consuming nor will it prejudice the parties in any way. Second, as discussed, the question of notice, while factually simple, has significant legal implications for Plain Green. If preliminary discovery reveals no evidence of adequate notice to Plain Green, dismissal of Plain Green will be appropriate.

Limited, preliminary discovery will give the parties the "reasonable opportunity" to present any evidence of notice prior to this Court converting Plain Green's 12(b)(6) Motion into one for summary judgment. *See Herbert*, 877 F.2d at 270. Once that discovery closes, the Court can assess the representation presented by Plain Green in this motion—that it possesses no evidence of notice from Trans Union—against any other evidence produced to determine

whether there is a genuine issue of material fact as to whether Plain Green received adequate notice under FCRA.

CONCLUSION

For the foregoing reasons, the Court should dismiss Plaintiff's claims against the Plain Green with prejudice.

Dated: June 23, 2017

/s/ Christian F. Henel
Christian F. Henel (VA# 76830)
Kilpatrick Townsend
607 14th Street NW
Suite 900
Washington, DC 20005-2018
Telephone: (202) 481-9943
Fax: (202) 379-7726
Email: Chenel@kilpatricktownsend.com

/s/ Joseph F. Halloran
Joseph F. Halloran (MN # 244132)
(*pro hac vice* motion pending)
Jeffrey K. Holth (MN# 393070)
The Jacobson Law Group
(*pro hac vice* motion pending)
Jacobson, Magnuson, Anderson & Halloran, P.C.
180 East Fifth Street, Suite 940
St. Paul, MN 55101
Telephone: (651) 644-4710
Email: jhalloran@thejacobsonlawgroup.com
jholth@thejacobsonlawgroup.com

Attorneys for Defendant Plain Green, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of June 2017, an electronic copy of the foregoing will be served using the Court's CM/ECF system on the following:

Alejandro Emilio Gomez
A E Gomez PC
P.O. Box 1632
Wytheville, VA 24382
(276) 365-8080
Fax: (276) 228-0687
alex@aegomezpc.com

Counsel for Plaintiff
Michael R. Ward
Virginia Bar Number 41133
McCandlish Holton Morris
P.O. Box 796
Richmond, VA 23218-0030
Phone: 804-775-3100
Fax: 804-775-3800
mward@lawmh.com
Counsel for Defendant Trans Union LLC

/s/ *Christian F. Henel*
Christian F. Henel