

**IN THE STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT**

LOUISE PREVOST, PAUL FREDERICK,
AMY RICHARDSON, JANE DOE #1, JANE
DOE #2, and JANE DOE #3, Individually
and on behalf of all others similarly situated,

Plaintiffs,

vs.

ROPER ST. FRANCIS HEALTHCARE,

Defendant.

C.A. NO.:
2021-CP-1001754

**DECLARATION OF DAVID K. LIETZ IN SUPPORT OF
PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, EXPENSES, AND
SERVICE AWARDS**

I, David K. Lietz, being competent to testify, make the following declaration:

1. I am currently a senior partner of the law firm Milberg Coleman Bryson Phillips Grossman, PLLC ("Milberg"). My credentials were previously outlined for this Court in the Joint Declaration submitted in connection with Plaintiffs' Unopposed Motion for Preliminary Approval. I have been appointed Class Counsel for Plaintiffs in this matter. I submit this declaration in support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could and would competently testify to them if called upon to do so.

2. My experience and qualifications are outlined in the joint declaration in support of Plaintiff's Unopposed Motion for Preliminary Approval.

3. The work of Class Counsel in connection with this action involved investigating the cause and effects of the Roper St. Francis Healthcare (“RSFH”) Data Incident, interviewing potential clients, evaluating the potential class representatives, contributing to the evaluation of the merits of the case before filing the various Complaints; conducting legal research; conducting extensive research into data security incidents and their causes and effects, conducting further extensive research into data security practices and standards across e-Commerce platforms and industries; drafting and filing the Complaints; litigating against an AmLaw 100 national law firm (Baker Hostetler) with extensive data breach litigation experience; working on briefing a response to Defendant’s significant motion to dismiss; finalizing and filing the opposition to the motion to dismiss, and the subsequent motion for reconsideration; obtaining information from RSFH regarding the Data Incident and analyzing that information; participating in a formal mediation of this case presided over by Hon. Wayne Andersen (Ret.) of JAMS (a highly experienced and well-regarded mediator well-versed in data breach litigation); conducting months of protracted settlement negotiations; drafting the settlement term sheet, the comprehensive settlement agreement, well-crafted notices of settlement, an easy to understand claim form, the Motion for Preliminary Approval, and this instant motion for attorneys’ fees; communicating with defense counsel; updating and handling questions from our class representative; overseeing the successful launching and implementation of the notice program with substantial interaction between me and the Settlement Administrator; and overseeing the

claims process. I conferred with my colleagues about strategy and case status while being mindful to avoid duplicative efforts within my firm and with co-counsel.

4. Continuing through to today co-counsel and I have continued to work with Defendant and the Claims Administrator regarding claims administration and processing as well as answering class members questions about the settlement and the process.

5. Based on my past experience I, my law firm, and other Plaintiffs' Counsel expect to spend another 50-60 hours seeking final approval, defending the Settlement from and potential objections, and supervising claims administration and the distribution of proceeds.

6. As of the date of filing, I have received no objections to the Settlement Agreement in general, and no objections to the proposed attorneys' fees, costs (the amount of which was made known to the Class via the Court-approved notice program) in particular. It is my understanding that Kroll, the Settlement Administrator, also has received no objections, and only four opt-outs to date. Plaintiffs will submit a declaration from Kroll detailing the notice and claims administration with their Motion for Final Approval. The deadline for submitting objections is April 30, 2024.

The Contingent Nature of the Case

7. My Firm and the other Plaintiffs' counsel firms prosecuted this case and the related cases on a purely contingent basis. As such, Plaintiffs' Counsel assumed a significant risk of nonpayment or underpayment.

8. This matter has required me, other attorneys at my Firm, and the other Plaintiffs' Counsel to spend time on this litigation that could have been spent on other matters. At various times during the litigation of this class action, this lawsuit has consumed significant amounts of my time and my Firm's time, as well as the time of the other Plaintiffs' counsel.

9. Such time could otherwise have been spent on other fee-generating work. Because our Firm and the other Plaintiffs' attorneys undertook representation of this matter on a contingency-fee basis, we shouldered the risk of expending substantial costs and time in litigating the action without any monetary gain in the event of an adverse judgment.

10. If not devoted to litigating this action, from which any remuneration is wholly contingent on a successful outcome, the time our Firm and other Plaintiffs' counsel spent working on this case could and would have been spent pursuing other potentially fee generating matters.

11. Litigation is inherently unpredictable and therefore risky. Here, that risk was very real, due to the rapidly evolving nature of case law pertaining to data breach litigation, and the state of data privacy law. Therefore, despite the devotion of all Plaintiffs' Counsel to the case and our confidence in the claims alleged against Defendant, there have been many factors beyond our control that posed significant risks.

12. The fees contemplated under Class Counsel's representation agreements for cases in this jurisdiction and elsewhere generally fall within the

one-third to 40% range. Class Counsel's fees were not guaranteed—the retainer agreements counsel had with Plaintiff did not provide for fees apart from those earned on a contingent basis, and, in the case of class settlement, approved by the court.

The Costs and Fees Incurred

13. Due to the efficiency by which Class Counsel was able to obtain this significant settlement, expenses and fees incurred by Plaintiffs are low.

14. My own hourly rates and the rates of my co-counsel are the rates we charge for our time in the ordinary course of business, and are also commensurate with hourly rates charged by our contemporaries around the country, including those rates charged by lawyers with our level of experience who practice in the area of data breach class litigation across the nation (i.e. the national market for data breach litigation). See e.g. *In re: Capital One Consumer Data Breach Litigation*, MDL No. 1:19-md-02915-AJT-JFA (Doc. 2231-1 – approving rates for partners in data breach ranging from \$919 to \$1050 per hour); *Fox v. Iowa Health Sys.*, No. 3:18-CV-00327-JDP, 2021 WL 826741, at *6 (W.D. Wis. Mar. 4, 2021) (data breach settlement awarding \$1,575,000 in attorneys' fees and costs, at hourly rates from \$815-\$865 per hour for partners, \$550-\$625 for senior associates, \$415-\$500 for associates, and \$215-\$350 for paralegals); *Perdue v. Hy-Vee, Inc.*, No. 19-1330, 2021 WL 3081051, at *5 (C.D. Ill. July 21, 2021) (approving reasonable hourly rates requested by Class Counsel of \$700-\$815 for partners, \$325-\$700 for associates, \$200-\$275 for paralegals, and \$150-\$225 for law clerks); *In re Equifax Inc. Customer*

Data Sec. Breach Litig., No. 1:17-MD-2800-TWT, 2020 WL 256132, at *39 (N.D. Ga. Mar. 17, 2020) (finding reasonable hourly rates charged by partners who billed \$1050, \$1000 \$750, and \$935 per hour); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752-LHK, 2020 WL 4212811, at *26 (N.D. Cal. July 22, 2020) (finding reasonable rates from \$450 to \$900 for partners, \$160-\$850 for non-partner attorneys, and \$50 to \$380 for paralegals);); *Fulton-Green v. Accolade, Inc.*, No. CV 18-274, 2019 WL 4677954, at *12 (E.D. Pa. Sept. 24, 2019) (finding reasonable hourly rates range \$202 to \$975 per hour); *In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617-LHK, 2018 WL 3960068, at *16 (N.D. Cal. Aug. 17, 2018) (finding reasonable hourly rates of partners from \$400 to \$970, non-partner attorneys from \$185 to \$850, and non-attorneys from \$95 to \$440).

15. The billable rates for Plaintiffs' law firms are also consistent with rates billed for similar class action legal services.¹

16. Prior to submitting the Motion for Attorneys' Fees, Costs, and Service Awards, I compared and confirmed our hourly rates with lawyers at other law firms whose practice is focused on data breach class litigation. Moreover, I routinely survey hourly rates charged by lawyers around the country in published surveys, and review continuously as part of my continuing education opinions rendered by courts on attorneys' fee requests. Again, based upon my research, my rate – and the

¹ 2020 Class Action Hourly Rate Survey, NALFA (March 4, 2020) <https://www.thenalfa.org/blog/survey-class-action-defense-rates-keep-pace-with-plaintiffs-rates-in-2020/#:~:text=The%20NALFA%20survey%20shows%20that,than%20%24200%20and%20over%20%241%2C200> (listing hourly rates up to \$1,200 per hour for class actions).

rates charged by my colleagues -- are within the range of lawyers with our levels of experience, practicing in this area of law.

17. The Milberg lawyers' hourly rates have been approved by federal courts around the country. Most recently, my hourly rate was approved in *In re: GE/CBPS Data Breach Litigation*, Case No. 1:20-cv-02903 (KPF) (S.D.N.Y. 3/28/2023) (Judge Failla); *Pagan v. Faneuil, Inc.*, Case No. 3:22-cv-297 (ED VA February 17, 2023); *Powers, Sanger et al v. Filters Fast LLC*, Case 3:20-cv-00982-jdp (WD WI, July 22, 2022), ECF 84) where the fee application was submitted on a lodestar basis; *James v. Cohnreznick LLP*, Case Number: 1:21-cv-06544-LJL (SD NY September 20, 2022) (fee application submitted on both percentage of benefit and lodestar calculation); *In re Deva Concepts Product Liability Litigation*, Case 1:20-cv-01234-GHW, Order Granting Motion for Attorneys' Fees, Document 129 (January 3, 2022); see also Document 121-1 (filed 10/01/21).

18. In addition, Milberg's hourly rates were approved by at least three federal courts using that hourly rate as a lodestar cross-check, which is what my hourly rate is submitted for in this case. See *Lamie et al. v. LendingTree, LLC*, Case No. 3:22-cv-00307, ECF Doc. 60 (W.D. N.C. February 27, 2024) (final approval order approving hourly rates as reasonable as part of a lodestar cross-check, and highlighting "the quality, skill, and experience of counsel" and "the excellent results"); *Baldwin et al. v. National Western life Insurance Company*, Case No. 2:21-cv-04066 (W.D. Mo.) ECF 76; *Purvis, et al v. Aveanna Healthcare, LLC*, Case No.

1:20-cv-02277-LMM (N.D. Ga.) (appointed class counsel; final approval granted October 2022), ECF 79.

19. It is my understanding that the hourly rates of my co-counsel have been approved by courts in many other settings and jurisdictions, including in South Carolina.

20. The lodestars and expenses of the various Plaintiffs' firms in this litigation are set out below:

Firm	Hours to Date	Rate Range	Total Amount Billed	Expenses
Milberg Coleman Bryson Phillips Grossman PLLC	129.2	\$208- \$1054	\$116,592.80	\$21,393.01
Mason Lietz & Klinger (David Lietz's former firm)	86.5	\$125-\$875	\$44,952.50	\$158.48
Anastopoulo Law Firm, LLC	165.8	\$239-\$997	\$116,713.00	\$9,265.46
Law Office of Carl Solomon	108.0	\$1000	\$108,000.00	\$1985.11
Halverson & Halverson	67.5	\$500	\$33,750.00	\$430.83
Slotchiver & Slotchiver	68.00	\$750	\$51,000.00	\$737.12

Richter Law Firm ²		\$	\$	\$
TOTALS	625.0	\$125- \$1054	\$471,008.30	\$33,970.01

21. The total accrued attorney/staff lodestar of all firms to date is 625.0 hours equaling **\$471,008.30**.

22. Additional time will be spent drafting the final approval motion, preparing for and attending the Final Approval Hearing, defending any appeals taken from the final judgment approving Settlement, and ensuring that the claims process and distribution of Settlement proceeds to Class Members is done in a timely manner in accordance with the terms of the Settlement. Based upon my past experience, I estimate that another 50-60 hours of attorney time will be reasonably expended on this matter. I assert that the attorneys' fees sought in the Motion for Attorneys' Fees, Costs, and Service Awards are reasonable and seek fair and reasonable compensation for undertaking this case on a contingency basis, and for obtaining the relief for Plaintiffs and the Class.

23. Where possible, Class Counsel made efforts to carefully assign work so as to avoid duplication of efforts and have the work completed by the appropriate level of attorney.

²² Due to unforeseen circumstances, Plaintiffs' attorneys were unable to obtain Mr. Richter's billing records in time to submit them with this filing. Plaintiffs will seasonably supplement this filing with the additional records, if they can be obtained.

24. Upon request, I and the other Plaintiffs' attorneys can provide detailed contemporaneous billing records to the Court for review.

25. All books and records in this case regarding costs expended were maintained in the ordinary course of business, from expense vouchers and check records. I have reviewed the records of costs expended in this matter.

26. My firm and my co-counsel have also accrued **\$33,970.01** in out-of-pocket expenses pertaining to this litigation; including costs for the services of Judge Andersen to mediate this matter (\$18,500), filing fees, service of process fees, court costs, reasonable and necessary litigation expenses, reasonable travel expenses for the in-person mediation in Chicago, and other costs typically incurred in connection with cases of this magnitude.

27. These costs are reasonable, and necessary for the litigation, and are modest in comparison to the enormous costs that likely would have been incurred if litigation had continued. Reimbursement of these costs is sought as part of the combined attorney fees and costs requested. Based upon my past experience, the amount of out-of-pocket case expenses will increase prior to Final Approval, and will include additional travel expenses to appear at the Final Approval Hearing.

28. The Settlement Agreement calls for reasonable service awards to each of the Plaintiffs named as Class Representatives in the amount of \$1,500, subject to approval of the Court. The Service Awards are meant to recognize Plaintiffs for their efforts on behalf of the Class, including assisting in the investigation of the case, maintaining contact with counsel, reviewing the pleadings, answering

counsel's many questions, communicating with counsel during the settlement negotiations, and reviewing the terms of the Settlement Agreement. Plaintiffs also put their reputations at risk, and put themselves forward for public scrutiny. Plaintiffs were not promised any service award, nor did they condition their representation on the expectation of any service or incentive award.

29. I strongly believe that the Settlement Agreement is favorable for the Settlement Class. The Settlement addresses the type of injury and repercussions sustained by Settlement Class Members in the wake of the Data Incident. In the opinion of the undersigned and other Class Counsel, the settlement is fair, reasonable, adequate, as are the attorneys' fees, expenses, and service awards requested here.

30. Although Plaintiffs believe in the merits of their claims, this litigation was inherently risky and complex. The claims involve the intricacies of data breach litigation (a fast-developing area in the law), and the Plaintiff would face risks at each stage of litigation. Against these risks, it was through the hard-fought negotiations and the skill and hard work of Class Counsel and the Class Representatives that the Settlement was achieved for the benefit of the Settlement Class.

* * * * *

I declare under penalty of perjury under the laws of the State of South Carolina that the foregoing is true and correct.

Executed this 16th day of April, 2024, at Washington, DC.

David K Lietz

DAVID K LIETZ

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