

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

JOHN CHACON and LEONARD BRADLEY,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

NEBRASKA MEDICINE,

Defendant.

CASE NO. 8:21-cv-00070-RFR-CRZ

**DECLARATION OF DAVID LIETZ IN SUPPORT OF
PLAINTIFFS' MOTION FOR FEES, COSTS, AND SERVICE AWARDS**

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

1. I am currently a partner of the law firm Mason Lietz & Klinger LLP ("MLK"). I am one of the lead attorneys for Plaintiffs and have been appointed Class Counsel for the Settlement Class. I submit this declaration in support of Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

2. Attorneys appointed Class Counsel in this matter – me and Gary M. Klinger -- have extensive experience prosecuting complex class actions, especially in the area of data breach litigation. I have been licensed to practice law in the District of Columbia since 1991, am a

member of the bars of numerous federal district and appellate courts, and have decades of litigation and class action experience.

3. As members of MLK and other prior law firms, the firm's attorneys have represented both plaintiffs and defendants in more than 100 class action lawsuits in state and federal courts throughout the United States.

4. With respect to privacy cases, MLK is currently litigating more than sixty cases across the country involving violations of the TCPA, BIPA, privacy violations, data breaches, and ransomware attacks.

5. While the firm's partners have decades of class action experience, it is noteworthy that just in the time since Mason Lietz & Klinger's inception on March 14, 2020, Mr. Lietz and Mr. Klinger (either individually, or as a members of their firm) have been appointed class counsel in a number of data breach or data privacy cases, including:

a. *Baksh v. Ivy Rehab Network, Inc.*, Case No. 7:20-cv-01845-CS (S.D. N.Y.) (class counsel in a data breach class action settlement; final approval granted);

b. *In re: GE/CBPS Data Breach Litigation*, 1:2020-cv-02903, Doc. 35 (S.D.N.Y.) (Mr. Klinger appointed co-lead counsel in nationwide class action);

c. *Mowery et al. v. Saint Francis Healthcare System*, Case No. 1:20-cv-00013-SRC (E.D. Mo.) (appointed class counsel; final approval granted);

d. *Chatelain et al. v. C, L and W PLLC d/b/a Affordacare Urgent Care Clinics*, Case No. 50742-A (42nd District Court for Taylor County, Texas) (appointed class counsel; settlement valued at over \$7 million; final approval granted);

e. *Jackson-Battle v. Navicent Health, Inc.*, Civil Action No. 2020-CV-072287 (Superior Court of Bibb County, Georgia) (Mr. Lietz appointed class counsel in data breach case involving 360,000 patients; final approval granted);

f. *Bailey v. Grays Harbor County Public Hospital District et al.*, Case No. 20-2-00217-14 (Grays Harbor County Superior Court, State of Washington) (appointed class counsel in hospital data breach class action involving approximately 88,000 people; final approval granted);

g. *Nelson, et al. v. Idaho Central Credit Union*, No. CV03-20-00831 (Bannock County, Idaho) (Mr. Klinger appointed co-lead counsel in data breach class action involving 17,000 class members; granted final approval of settlement valued at \$3.3 million)

h. *In Re: Canon U.S.A. Data Breach Litigation*, Master File No. 1:20-cv-06239-AMD-SJB (E.D.N.Y.) (Mr. Klinger appointed co-lead counsel);

i. *Carrera Aguallo et al v. Kemper Corporation et al.*, 1:21-cv-01883-MMP (YBK) (N.D. Ill.) (Mr. Klinger appointed co-lead interim class counsel);

j. *Richardson v. Overlake Hospital Medical Center et al.*, Case No. 20-2-07460-8 SEA (King County Superior Court, State of Washington (Mr. Lietz, Mr. Klinger, and Ms. Perry appointed class counsel in data breach case; preliminary approval granted);

k. *Kenney et al. v. Centerstone of America, Inc. et al.*, Case No. 3:20-cv-01007-EJR (M.D. Tenn.) (Mr. Lietz and Mr. Klinger appointed co-lead class counsel; final approval granted August 9, 2021);

l. *Klemm et al. v. Maryland Health Enterprises, Inc. D/B/A Lorien Health Services*, C-03-CV-20-002899 (Circuit Court for Baltimore County, Maryland) (appointed Settlement Class Counsel, preliminary approval granted);

m. *Martinez et al. v. NCH Healthcare System, Inc.*, Case No. 2020-CA-000996 (Circuit Court of the Twentieth Judicial Circuit in and for Collier County, Florida) (Mr. Lietz appointed Settlement Class Counsel; preliminary approval granted).

6. Mr. Klinger has personally resolved dozens of class action cases involving consumer and privacy statutes in state and federal courts across the country. Some representative cases include the following: *Smith v. State Farm Mut. Auto. Ins. Co.*, No. 1:13-cv-2018 (N.D. Ill.); *Jochan v. State Farm Mut. Auto. Ins. Co.*, No. 1:15-cv-04326 (N.D. Ill.) (Leinenweber, J.); *Burk v. State Farm Fire & Cas. Co.*, No. 14-cv-02642-PHX-GMS (D. Ariz.); *Aguilar v. State Farm Mut. Auto. Ins. Co.*, No. 16-cv-01211 (C.D. Ill.); *Kim v. State Farm Mut. Auto. Ins. Co.*, No. 2015-CH-08655 (Cook Cty. Ill. Cir. Ct.); *Sweis v. State Farm Mut. Auto. Ins. Co.*, No. 2015-CH-18757 (Cook Cty. Ill. Cir. Ct.); *Ghose Inc. v. 7 Eleven, Inc.*, No. 2012-CH-04114 (Cook Cty. Ill. Cir. Ct.); *Schumacher v. State Auto. Ins. Co.*, No. 13-cv-00232 (S.D. Ohio); *Block v. Lifeway Foods, Inc.*, No. 17-cv-01717 (N.D. Ill.); *Chavez v. Church & Dwight Co., Inc.*, No. 17-cv-01948 (N.D. Ill.); *Craftwood Lumber Co. v. CMT USA, Inc.*, No. 14-cv-06864 (N.D. Ill.); *LaBrier v. State Farm Fire*

& Cas. Co., No. 15-cv-04093 (W.D. Mo.); *Dennington v. State Farm Fire & Cas. Co.*, No. 14-cv-04001 (W.D. Ark.); *Selby v. State Farm Mut. Auto. Ins. Co.*, No. 2010-CH-43684 (Cook Cty. Ill. Cir. Ct.); *O'Sullivan v. iSpring Water Sys., LLC*, No. 17-cv-2237 (N.D. Ga.); *In re Auto Body Shop Antitrust Litig.*, No. 14-md-02557 (M.D. Fla.); *Pine v. A Place for Mom, Inc.*, No. 2:17-cv-01826 (W.D. Wash.); *Karpilovsky v. All Web Leads, Inc.*, No. 1:17-cv-01307 (N.D. Ill. 2017); *Accardi v. Hartford Underwrites Ins. Co.*, No. 18-cvs-2162 (N.C. Bus. Ct.); *Burk v. Direct Energy, LP*, No. 4:19-cv-663 (S.D. Tex.); *Bellenger v. Accounts Receivable Mgmt., Inc.*, No. 19-cv-60205 (S.D. Fla.); *Drake v. Mirand Response Sys., Inc.*, No. 1:19-CV-1458-RLY-DML (S.D. Ind.); *Fry v. Gen. Revenue Corp.*, No. 19-cv-172 (S.D. Ohio); *Poole v. Benjamin Moore*, No. 18-cv-05168 (W.D. Wash.); *Thomas v. Fin. Corp. of America*, No. 3:19-cv-00152 (N.D. Tex.); *Bonoan v. Adobe Inc.*, No. 3:19-cv-01068 (N.D. Cal.); *Musto v. American Express Co.*, No. 19-cv-01782 (S.D. N.Y.); *Palmer v. KCI USA, Inc.*, No. 19-cv-3084 (D. Neb.).

7. In addition, MLK serves as Court-appointed Liaison Counsel in *In re U.S. Off. of Pers. Mgmt. Data Security Breach Litig.*, 266 F. Supp. 3d 1 (D.D.C. 2017).

8. Attorneys at MLK were also Co-Lead Counsel in *In re Dep't of Veterans Aff. (VA) Data Theft Litig.*, No. 1:06-MC-00506, 2007 WL 7621261 (D.D.C. Nov. 16, 2007) (unlawful disclosure of PPI of 28.5 million military veterans and active duty personnel; \$20 million settlement fund).

9. Attorneys at MLK were court-appointed Lead Counsel in *In re Google Buzz Privacy Litig.*, No. C 10-00672 JW, 2011 WL 7460099 (N.D. Cal. June 2, 2011) (\$10 million settlement fund in case arising for unauthorized disclosure or personal information).

10. MLK Attorneys have also served as Lead Counsel, Co-Counsel or Class Counsel on dozens of class actions ranging from defective construction materials, (i.e. defective radiant

heating systems, siding, shingles, and windows), to misrepresented and recalled products (e.g., dog food, prenatal vitamins), and environmental incidents (the Exxon Valdez, BP Oil Spill).

11. These cases include: Co-Lead Counsel in *In re: Hill's Pet Nutrition, Inc., Dog Food Products Liability Litigation*, MDL No. 2887 (D. Kansas, order granting final approval of \$12 million settlement entered July 30, 2021); court-appointed Co-Lead Counsel in *In Re: Deva Concepts Products*, Master File No. 1:20-cv-01234-GHW (S.D.N.Y.) (order granting preliminary approval of \$5.2 million settlement entered July 30, 2021); *Cox v. Shell Oil Co.*, No. 18844, 1995 WL 775363 (Ch. Ct. Tenn., July 31, 1995) (defective polybutylene pipe; \$950 million settlement); *Hobbie v. RCR Holdings, II, LLC*, No. 10-113, MDL No. 2047 (E.D. La. filed April 20, 2010) (354 unit condominium built with Chinese Drywall; settlement for complete remediation at cost of \$300 million); *Adams v. Fed. Materials*, No. 5:05-CV-90-R, 2006 WL 3772065 (W.D. Ky. Dec. 19, 2006) (350 owners of commercial and residential property whose structures were built with defective concrete; \$10.1 million settlement); *In re MI Windows & Doors Inc. Prod. Liab. Litig.*, No. 2:12-MN-00001-DCN, MDL No. 2333, 2015 WL 4487734 (D.S.C. July 23, 2015) (defective windows; claims made settlement for over 1 million homes); *In re Synthetic Stucco Litig.*, No. 5:96-CV-287-BR(2), 2004 WL 2881131 (E.D.N.C. May 11, 2004) (settlements with four EIFS Manufacturers for North Carolina homeowners valued at more than \$50 million); *Posey v. Dryvit Sys., Inc.*, No. 17,715-IV, 2002 WL 34249530 (Tenn. Cir. Ct. Oct. 1, 2002) (Co-Lead Counsel; national class action settlement provided cash and repairs to more than 7,000 claimants); *Galanti v. Goodyear Tire & Rubber Co.*, No. 03CV00209, 2004 WL 6033527 (D.N.J. Nov. 17, 2004) (Class counsel; defective radiant heating systems; \$330 million settlement); and *In re Zurn Pex Prod. Liab. Litig.*, No. 08-MDL-1958, 2013 WL 716088 (D. Minn. Feb. 27, 2013) (Plaintiffs' Executive Committee; +\$20 million claims made settlement).

12. My experience, and that of my partners, is described in MLK's Firm Resume, attached to my declaration submitted in support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, at Dkt. 17-3.

13. My years of experience representing individuals in complex class actions—including data breach actions—contributed to an awareness of Plaintiffs' settlement leverage, as well as the needs of Plaintiffs and the proposed Settlement Class. I believe that our clients would ultimately prevail in the litigation on a class-wide basis. However, I am also aware that a successful outcome is uncertain and would be achieved, if at all, only after prolonged, arduous litigation with the attendant risk of drawn out appeals. It is my individual opinion, and that of my co-counsel, based on our substantial experience, the settlement provides significant relief to the Members of the Class and warrants the Court's approval.

14. The Settlement Agreement in this case provides for both monetary and equitable relief for Settlement Class Members. The Settlement is uncapped in the aggregate, and allows each of the 125,902 Settlement Class Members to each make a claim for up to \$3,300 in ordinary expense reimbursements, lost time, and extraordinary expense reimbursements. Agr. ¶ 1.35. The Settlement Agreement also provides that the 13,497 members of the Credit Monitoring Subclass will automatically be provided one-year of credit monitoring and identity theft protections. Agr. ¶ 1.7. Additionally, the Settlement Agreement provides for equitable relief in the form of enhancements to Defendant's data security systems structured to ensure Settlement Class Members' data is better safeguarded in the future.

15. I have researched the cost of credit monitoring and identity theft restoration services similar to those provided for in the Settlement Agreement, and estimate the value to total \$100 per class member, or \$1,349,700 in total. The per-class-member value was determined by a

comparison to comparable products marketed to retail consumers. See, e.g., <https://www.experian.com/consumer-products/compare-identity-theft-products.html>; (basic identity protection plan at \$9.99 per month). The \$100 value thus represents a conservative estimate of the benefit to each class member. See *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 323 (N.D. Cal. 2018) (“Obviously, the credit monitoring services themselves confer an economic benefit, as they can retail for \$9 to \$20 a month.”).

16. The Settlement Agreement provides for a reasonable service award to Plaintiffs in the amount of \$2,000 each, and for combined attorneys’ fees and costs in the amount of \$195,000, to be paid separate and apart from the Settlement Fund. Agr. ¶¶ 7.1-7.2.

17. The service award is meant to compensate Plaintiffs for their efforts which include maintaining contact with counsel, assisting in the investigation of the case, producing relevant documents, reviewing the Complaint, remaining available for consultation throughout mediation, for answering counsel’s many questions, and for reviewing the Settlement Agreement.

18. My Firm took on this case on a purely contingent basis. As such, the firm assumed a significant risk of nonpayment or underpayment.

19. This matter has required me, and other attorneys at my Firm, 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, which is a small firm consisting of only four attorneys. Such time could otherwise have been spent on other fee-generating work. Because our Firm 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.

20. 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.

21. Class Counsels' fees were not guaranteed in this matter—the retainer agreement counsel had with Plaintiffs did not provide for fees apart from those earned on a contingent basis, and, in the case of class settlement, approved by the court.

22. Due to the early stage of litigation, costs incurred by Plaintiffs are low. Plaintiffs' current costs are \$690, and include filing fees. These costs are reasonable, and necessary for the litigation.

23. Upon information and belief, notice in this case has been provided pursuant to the Court's Preliminary Approval Order and will be reported on more extensively in Plaintiffs' Motion for Final Approval of Class Action Settlement. Overall, the costs of Settlement Administration will not exceed \$145,000, all of which is to be borne by Defendant separate and apart from the funds available to claimants.

24. As of August 6, 2021, the Settlement Administrator reports having received zero requests for exclusion.

25. As of the date of filing, Class Counsel has not received any objections to the Settlement or to the request for fees, costs, and service awards.

26. In the opinion of the undersigned and other Class Counsel, the attorneys' fees and costs requested are fair and reasonable, under the facts and circumstances of this case.

* * * * *

I declare under penalty of perjury of the laws of the State of Nebraska and the United States that the foregoing is true and correct, and that this declaration was executed in Washington, D.C. on this 19th day of August, 2021.

/s/ David K. Lietz

David K. Lietz (*admitted pro hac vice*)

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