

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

CODY KENNEY and MELISSA SKINNER,
individually and on behalf of all similarly
situated persons,

Plaintiffs,

v.

CENTERSTONE OF AMERICA, INC.,
CENTERSTONE OF INDIANA, INC., and
CENTERSTONE OF TENNESSEE, INC.,

Defendants.

Case No. 3:20-cv-01007

JUDGE ELI J. RICHARDSON

MAGISTRATE JUDGE
BARBARA D. HOLMES

**DECLARATION OF DAVID K. LIETZ IN SUPPORT OF
PLAINTIFFS' MOTION FOR ATTORNEYS' 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 Approval of 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. Both attorneys named Class Counsel in this matter—me and Gary M. Klinger—are now partners at Mason Lietz & Klinger LLP. Combined, Class Counsel 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. It is noteworthy that just in the time since Mason Lietz & Klinger LLP'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. IvyRehab Network, Inc.*, No. 7:20-cv-01845-CS (S.D.N.Y. Jan. 27, 2021) (Class Counsel in a data breach class action settlement);
- b. *In re GE/CBPS Data Breach Litig.*, No. 1:20-cv-02903 (S.D.N.Y. June 11, 2020), ECF No. 35 (Mr. Klinger appointed Co-Lead Counsel in nationwide class action);
- c. *Mowery v. Saint Francis Healthcare Sys.*, No. 1:20-cv-00013-SRC (E.D. Mo. Dec. 22, 2020) (appointed Class Counsel);
- d. *Chatelain v. C, L & W PLLC d/b/a Affordacare Urgent Care Clinics*, No. 50742-A (Tex. 42d Dist. Ct. Taylor Cnty. Nov. 6, 2020) (appointed Class Counsel; settlement valued at over \$7 million);
- e. *Jackson-Battle v. Navicent Health, Inc.*, No. 2020-CV-072287 (Ga. Super. Ct. Bibb Cnty. Apr. 21, 2021) (Mr. Lietz appointed Class Counsel in data breach case involving 360,000 patients);
- f. *Bailey v. Grays Harbor Cnty. Pub. Hosp. Dist.*, No. 20-2-00217-14 (Wash. Super. Ct. Grays Harbor Cnty. May 27, 2020) (appointed Class Counsel in hospital data breach class action involving approximately 88,000 people; Final Approval granted);
- g. *Nelson v. Idaho Cent. Credit Union*, No. CV03-20-00831 (Idaho 6th Jud. Dist. Ct. Bannock Cnty. Jan. 19, 2021) (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 Litig.*, No. 1:20-cv-06239-AMD-SJB (E.D.N.Y. Mar. 9, 2021), ECF No. 19 (Mr. Klinger appointed Co-Lead Counsel);
- i. *Carrera Aguallo v. Kemper Corp.*, No. 1:21-cv-01883-MMP (YBK) (N.D. Ill. Apr. 30, 2021), ECF No. 19 (Mr. Klinger appointed Co-Lead Interim Class Counsel);
- j. *Chacon v. Nebraska Med.*, No. 8:21-cv-00070-RFR-CRZ (D. Neb. June 4, 2021), ECF No. 19 (appointed Class Counsel in data breach settlement);
- k. *Richardson v. Overlake Hosp. Med. Ctr.*, No. 20-2-07460-8 SEA (Wash. Super. Ct. King Cnty. June 11, 2021) (appointed Class Counsel in data breach case).

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 (Ill. Cir. Ct. Cook Cnty.); *Sweis v. State Farm Mut. Auto. Ins. Co.*, No. 2015-CH-18757 (Ill. Cir. Ct. Cook Cnty.); *Ghose Inc. v. 7 Eleven, Inc.*, No. 2012-CH-04114 (Ill. Cir. Ct. Cook Cnty.); *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 (Ill. Cir. Ct. Cook Cnty.); *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.); *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. Accts. 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. Am. Express Co.*, No. 19-cv-01782 (S.D.N.Y.); *Palmer v. KCI USA, Inc.*, No. 19-cv-3084 (D. Neb.).

MLK Attorneys have served as Lead Counsel, Co-Counsel or Class Counsel on dozens of class actions ranging from defective construction materials, (e.g., defective radiant heating systems, siding, shingles, and windows), to misrepresented and recalled products (e.g., dog food, prenatal vitamins), and environmental incidents (e.g., the Exxon Valdez, BP Oil Spill). These cases include: *In re Hill's Pet Nutrition, Inc. Dog Food Prods. Liab. Litig.*, MDL No. 2887, No. 2:19-md-02887 (D. Kan. filed June 6, 2019), where MLK currently serves as Court-appointed Co-Lead Counsel; *Cox v. Shell Oil Co.*, No. 18844, 1995 WL 775363 (Tenn. Ch. Ct. 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 Apr. 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. Prods. 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 one 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 Prods. Liab. Litig.*, No. 08-MDL-1958, 2013 WL 716088 (D. Minn. Feb. 27, 2013) (Plaintiffs' Executive Committee; +\$20 million claims made settlement). With respect to privacy cases, MLK is presently litigating more than fifty

cases across the country involving violations of the TCPA, privacy violations, data breaches, and ransomware attacks. MLK also serves as Court-appointed Liaison Counsel in *In re U.S. Off. of Pers. Mgmt. Data Sec. Breach Litig.*, 266 F. Supp. 3d 1 (D.D.C. 2017). Attorneys at MLK were also Co-Lead Counsel in *In re Dep't of Veterans Affs. (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) and Court-appointed Lead Counsel in *In re Google Buzz Priv. 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).

My experience, and that of my partners, is further described in MLK's Firm Resume, attached as Exhibit 2 to my Declaration submitted in support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, filed on April 30, 2021, at ECF No. 32-4 ("Lietz MPA Decl.").

3. 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 the other Class Counsel, based on our substantial experience, the settlement provides significant relief to the Settlement Class.

The Settlement Agreement

4. The Settlement Agreement in this case provides for both monetary and equitable relief for Settlement Class Members.

5. The Settlement Agreement provides for a Settlement Cap of \$1,500,000. The Cap includes payments to Settlement Class Members who make a valid claim for ordinary expense reimbursements and lost time up to \$500 per person, extraordinary reimbursements of up to \$2,500 per person, and up to 24-months of Identity Theft Protection Services. Through my personal research into the retail cost of 3-bureau credit monitoring and identity theft protection, my experience with data breach cases, and my familiarity with multiple damages expert reports in data breach cases, I am aware that extremely conservative estimates of the value of a year (12 months) of single-bureau credit monitoring (which is a lesser product than what is being offered here) range from \$90.00 (\$7.50 per month, which is the lowest retail value of single-bureau identity theft protection) to \$107.88 per Class Member. Additional information regarding these benefits can be found in my declaration in support of preliminary approval and the attached Settlement Agreement, at Dkt. No. 32-2. The Settlement Cap will also cover the costs of Notice and Settlement Administration, and attorney's fees, costs and Plaintiffs' Service Awards, which are subject to approval by the Court.

6. In addition to the \$1,500,000 Settlement, 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. Such improvements in similar cases have cost defendants hundreds of thousands of dollars.

7. The Settlement Agreement provides for a reasonable Service Award to Plaintiffs in the amount of \$2,500 each, subject to approval by the Court.

8. The Service Award is meant to compensate Plaintiffs for their efforts on behalf of the Class, which include maintaining contact with counsel, participating in client interviews, providing relevant documents, assisting in the investigation of the case, remaining available for consultation throughout mediation, reviewing relevant pleadings and the Settlement Agreement, and for answering counsel's many questions.

9. The Settlement Agreement also provides for an award of combined attorneys' fees and costs in an amount up to \$410,000, subject to approval by the Court. These fees, costs, and expenses will not only go to Class Counsel, but will be split with local counsel and with counsel representing plaintiffs in other cases and other potential cases pertaining to the same Data Incident at issue here. The fact that multiple lawsuits were filed by multiple groups of plaintiffs' attorneys, and that even more lawsuits were on the cusp of being filed, all increased Defendants' litigation risks, and thereby contributed to reaching this settlement. All such attorneys have helped drive this case to resolution on behalf of Named Plaintiffs and the Settlement Class, and all will be compensated out of the fee award granted by this Court.

10. As of the date of filing, I have received no objections to either the Settlement Agreement in general or to the proposed attorneys' fees, costs (the amount of which was made known to the Class via the Court-approved notice program) in particular.

The Contingent Nature of the Case

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

12. 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.

13. 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.

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

15. 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 my Firm's devotion to the case and our confidence in the claims alleged against Defendant, there have been many factors beyond our control that posed significant risks.

16. Class Counsels' fees were not guaranteed—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.

The Costs and Fees Incurred

17. Due to the early stage of litigation and efficiency by which Class Counsel was able to obtain this significant settlement, costs and fees incurred by Plaintiffs are low. Plaintiffs' current costs are \$7,338.76, and include filing fees, service fees, and costs of mediation. These costs are reasonable, and necessary for the litigation. Plaintiffs' Counsel must also brief their Motion for Final Approval, prepare for and appear at the Final Approval Hearing, and monitoring the claims

and Settlement Administration process, which will require not insignificant additional work, costs, and fees in this matter.

18. Upon information and belief, Notice in this case has been provided as agreed upon and as approved by the Court's Preliminary Approval Order and will be reported on more extensively in Plaintiffs' Motion for Final Approval of Class Action Settlement. The Claims Period is ongoing.

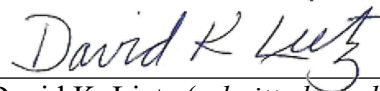
19. As of Tuesday, July 6, 2021, the Settlement Administrator reports receiving four requests for exclusion. MLK has received no additional requests for exclusion.

20. As of Tuesday, July 6, 2021, the Settlement Administrator reports receiving zero objections to the Settlement or to the request for fees, costs, and Service Awards. MLK has similarly received no objections to the Settlement Agreement.

21. I strongly believe that the Settlement Agreement is favorable for the Settlement Class. In the opinion of the undersigned and other Class Counsel, the Settlement is fair, reasonable, adequate, and worthy of Final Approval.

* * * * *

I declare under penalty of perjury of the laws of the State of Tennessee and the United States that the foregoing is true and correct, and that this declaration was executed in Washington, D.C. on this 7th day of July, 2021.



David K. Lietz (*admitted pro hac vice*)
MASON LIETZ & KLINGER LLP
5101 Wisconsin Avenue NW, Suite 305
Washington, D.C. 20016
Phone: (202) 429-2290
Fax: (202) 429-2294
dlietz@masonllp.com

Attorney for Plaintiffs and the Class