

IN THE SUPERIOR COURT OF ATHENS/CLARKE COUNTY  
STATE OF GEORGIA

MISTY CECE and SHANITA REED, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

ST. MARY'S HEALTH CARE SYSTEM,  
INC. and HEALTH FISCAL MANAGEMENT,  
INC.,

Defendants.

Civil Action No. SU20CV0500

  
Beverly Logan, Clerk  
Clarke County, Georgia

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

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

1. I am currently a partner of the law firm Mason Lietz & Klinger LLP ("MLK"), which was founded on March 16, 2020. 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. All attorneys named Class Counsel in this matter—me and Danielle L. Perry—are now partners at Mason Lietz & Klinger LLP. Combined, Class Counsel have extensive experience prosecuting complex class actions. My experience, and that of my partners, is described in my Declaration filed in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

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 total cash value of the Settlement negotiated significant, and includes up to over \$41,000,000 in expense reimbursements and comensable time; well over \$6,600,000 in credit monitoring services;<sup>1</sup> approximately \$88,507.00 in notice and settlement administration costs, \$250,000 in attorneys' fees and costs (subject to court approval), and \$2,000 in total Service Awards to the Class Representatives (subject to court-approval).

6. Additionally, the Settlement Agreement provides for equitable relief in the form of enhancements to Defendants' 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. Here, Defendants estimate that the improvements have already cost \$90,000 and will continue to cost \$80,000 per year. *See* Lietz MPA Decl. ¶ 41.

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<sup>1</sup> The valuation of credit monitoring services here accounts for one-year of *myTrueIdentity* credit monitoring and identity theft protection service for each Settlement Class Member: the Settlement Agreement actually provides for two-years of such services for every Settlement Class Member who did not previously enroll in the single year originally offered by HFMI. *See* Lietz MPA Decl. ¶ 40.

7. The Settlement Agreement provides for a reasonable Service Award to Plaintiffs in the amount of \$1,000 each, and for combined attorneys' fees and costs in the amount of \$250,000, to be paid separate and apart from any recovery to Settlement Class Members.

8. The Service Award is meant to compensate Plaintiffs for their efforts on behalf of the Settlement Class, including assisting in the investigation of the case, reviewing the pleadings, remaining available for consultation throughout the mediation and settlement negotiations, answering counsel's many questions, and reviewing the terms of the Settlement Agreement.

9. 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**

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

11. 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 until the start of 2022, and only five presently.

12. 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.

13. 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.

14. 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 in Georgia. Without providing a summary of Georgia law, the Georgia Supreme Court's *McConnell II (Dep't of Labor v. McConnell, 305 Ga. 812 (2019) (McConnell II))*, decision casts real doubt on the question of whether any duty to protect confidential data exists in Georgia. Therefore, despite my Firm's devotion to the case and our confidence in the claims alleged against Defendants, there have been many factors beyond our control that posed significant risks.

15. 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 Incurred**

16. Due to the early stage of litigation, costs incurred by Plaintiffs are low. Plaintiffs' current costs are \$9,679.89, and include filing fees, service fees, and costs of mediation. These costs are reasonable, and necessary for the litigation.

17. 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. Overall, the Notice and Settlement Administration is projected to cost approximately \$88,507.00, all of which

is to be borne by Defendants separate and apart from any funds available to Settlement Class Members.

18. As of Thursday January 27, 2022, the Settlement Administrator reports receiving zero requests for exclusion. MLK has similarly received no requests for exclusion.

19. As of Thursday January 27, 2022, 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.

20. 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 Georgia and the United States that the foregoing is true and correct, and that this declaration was executed in Washington, D.C. on this 28th day of January, 2022.

/s/ David Lietz  
David Lietz (*admitted pro hac vice*)  
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