

THE HONORABLE MAFÉ RAJUL  
Noted for Consideration: June 10, 2021  
*Without Oral Argument*

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

JANICE BUSBY RICHARDSON,  
individually and on behalf of others  
similarly situated,

Plaintiff,

v.

OVERLAKE HOSPITAL MEDICAL  
CENTER and OVERLAKE MEDICAL  
CLINICS, LLC,

Defendants.

No. 20-2-07460-8 SEA

**DECLARATION OF DAVID K. LIETZ IN  
SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

1 I, David K. Lietz, being competent to testify, make the following declaration based on my  
2 personal knowledge, and where stated, upon information and belief. I declare:

3 1. I am a partner in the law firm Mason Lietz & Klinger LLP (“MLK”) and am one of  
4 the lead attorneys for Plaintiff and the proposed Class in this matter. I submit this declaration in  
5 support of Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement.  
6 Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and  
7 could testify competently to them if called upon to do so.

8 2. A true and correct copy of the Settlement Agreement (“Agr.”) is attached hereto as  
9 **Exhibit 1.**

10 3. Included with the Agreement are the following sub-exhibits, the form and substance  
11 of which have been agreed to by the parties and are submitted to for the Court’s approval:

12 **Exhibit A: Claim Form**

13 **Exhibit B: Short Notice**

14 **Exhibit C: Long Notice**

15 **Exhibit D: Proposed Preliminary Approval Order**

16 **Exhibit E: Proposed Final Approval Order**

17 **Counsel Qualifications**

18 4. Proposed Class Counsel have extensive experience prosecuting complex class  
19 actions. My experience, and that of my partners and Proposed Class Counsel, is described in  
20 MLK’s Firm Resume, attached hereto as **Exhibit 2.**

21 5. I, as well as the other attorneys at MLK have substantial experience handling  
22 consumer class actions, including data breach cases, as well as other complex litigation. The firm’s  
23 attorneys have represented both plaintiffs and defendants in more than 100 class action lawsuits in  
24 state and federal courts throughout the United States.



1 (“Overlake” of “Defendants”) employee email accounts which contained highly confidential and  
2 protected patient information.

3 12. An estimated 24,439 patients’ data was potentially compromised.

4 13. Our preliminary investigation showed the following facts, alleged more fully in  
5 Plaintiff’s operative Complaint, which I describe upon information and belief:

6 a. Overlake renders healthcare services, medical care, and treatment to the Puget  
7 Sound region throughout the State of Washington.<sup>1</sup>

8 b. Overlake operates a 349-bed medical center offering a full range of advanced  
9 medical services. In addition, Defendants operate primary care clinics, urgent  
10 care clinics, specialty clinics, and an emergency and trauma center. It is  
11 accredited by the Healthcare Facilities Accreditation Program and has a Level  
12 III trauma center.<sup>2</sup>

13 c. Overlake employs nearly 3,000 people and have some 1,000 active and courtesy  
14 providers on their medical staff, including more than 200 providers who are  
15 employed by the organization.<sup>3</sup>

16 d. In the ordinary course of receiving treatment and health care services from  
17 Overlake, patients are required to provide sensitive personal and private  
18 information such as: dates of birth; demographic information; Social Security  
19 numbers; information relating to individual medical history; insurance  
20 information and coverage; information concerning an individual’s doctor, nurse  
21 or other medical providers; photo identification; employer information; and  
22 other information that may be deemed necessary to provide care.

25 <sup>1</sup> Pl.’s Am. Compl. ¶ 5.1, filed on or about July 16, 2020 (“Am. Compl.”).

26 <sup>2</sup> Am. Compl. ¶ 5.2.

<sup>3</sup> Am. Compl. ¶ 5.3.

1 e. The Data Breach at issue occurred between December 6–9, 2019, when  
2 unauthorized person(s) accessed email accounts of Overlake employees.<sup>4</sup>

3 f. The email accounts accessed by the Data Breach included one or more of the  
4 following: names, demographic information, dates of birth, identification card  
5 numbers, health insurance information, medical information, other protected  
6 health information as defined in HIPAA, and additional PII and PHI.<sup>5</sup>

7 g. Overlake provided notice to affected individuals of the Data Breach on or about  
8 February 7, 2020, nearly two months after the data breach was discovered.

9 14. The compromised email accounts were originally thought to have contained  
10 messages and email attachments that included the Private Information of approximately 109,000  
11 patients, including Plaintiff’s Private Information. However, further investigation demonstrated  
12 that only 23,439 persons’ Private Information was potentially compromised.<sup>6</sup>

13 **Procedural Posture**

14 15. Plaintiff filed her initial Complaint in the Superior Court for the State of  
15 Washington in and for the County of King on April 3, 2020, bringing causes of action for: (1)  
16 violation Washington State Uniform Healthcare Information Act (“UHCIA”); (2) violation of the  
17 Washington State Consumer Protection Act (“CPA”); (3) Negligence; (4) Intrusion Upon  
18 Seclusion / Invasion of Privacy; (5) violation of the Washington State Constitutional Right to  
19 Privacy; (6) Breach of Express Contract; and (7) Breach of Implied Contract.<sup>7</sup>

20 16. On or about June 17, 2020, Overlake moved to dismiss Plaintiff’s Complaint,  
21 arguing, among other things, that there is no private right of action for Washington’s constitutional  
22 right to privacy, and that the “possibility of future harm is not sufficient to confer standing.”<sup>8</sup>

23  
24 <sup>4</sup> Am. Compl. ¶¶ 6.1–6.2.

<sup>5</sup> Am. Compl. ¶ 6.5.

<sup>6</sup> See Agr. ¶ 1.25

<sup>7</sup> Initial Compl., at Doc. No. 1.

<sup>8</sup> Defs.’ Mot. to Dismiss, at Doc. No. 21.

1 17. In response, on or about July 16, 2020, Plaintiff filed her Amended Class Action  
2 Complaint, removing her causes of action for Intrusion Upon Seclusion / Invasion of Privacy and  
3 violation of the Washington State Constitutional Right to Privacy.<sup>9</sup>

4 18. Overlake withdrew its initial motion to dismiss, and on or about July 27, 2020 filed  
5 its Motion to Dismiss Plaintiff's Amended Complaint, again arguing, among other things, that  
6 Plaintiff had not sufficiently plead the harm required to establish standing.<sup>10</sup>

7 19. After a full briefing and oral argument via Zoom on September 11, 2020, this Court  
8 granted Defendants' Motion to Dismiss with regard to Plaintiffs' First, Fourth, and Fifth causes of  
9 action for violation of the UHCIA, Breach of Express Contract, and Breach of Implied Contract,  
10 respectively, and denied Defendants' Motion as to Plaintiff's Second and Third causes of action,  
11 allowing her to proceed with her claims for violation of the CPA and Negligence.<sup>11</sup>

12 20. Overlake filed its Answer to Plaintiff's Amended Class Action Complaint on or  
13 about October 12, 2020.

14 21. On December 23, 2020, the Parties notified the Court of their intention to attend a  
15 mediation on January 26, 2021, in an effort to resolve Plaintiff's claims without further litigation.<sup>12</sup>

16 **History of Negotiations**

17 22. To facilitate their negotiations, the Parties agreed to mediate the remaining claims  
18 with Mark G. Honeywell of Gordon Thomas Honeywell LLP in Seattle, Washington.

19 23. In advance of mediation, the Parties began negotiations regarding the potential  
20 structure of a settlement, and exchanged letter briefs that outlined the various strengths and  
21 weaknesses of Plaintiff's claims and Defendants' defenses.

22  
23  
24 <sup>9</sup> Am. Compl., at Doc. 24.

25 <sup>10</sup> Defs.' Mot. to Dismiss Am. Compl., at Doc. No. 24.

26 <sup>11</sup> Order Granting in Part & Denying in Part Defs.' Mot. to Dismiss (Sept. 25, 2020), at Doc. No. 33.

<sup>12</sup> Stip. Mot. & Order to Continue Trial Date, at Doc No. 40.

1 24. Prior to mediation, and to help focus the Parties on the outstanding issues,  
2 Defendant proposed (and submitted to the mediator) a term sheet, outlining a potential structure  
3 for the settlement, but including no concrete monetary figures or measures.

4 25. On January 26, 2021, mediation proceeded via Zoom Video Conference with Mark  
5 G. Honeywell of Gordon Thomas Honeywell LLP.

6 26. After a full day of arm's-length negotiations, and with the assistance of Mark G.  
7 Honeywell, the Parties agreed to a memorandum of understanding describing the key terms of the  
8 Settlement Agreement.

9 27. Over the next six weeks or so, the Parties diligently drafted, negotiated, and  
10 finalized the Settlement Agreement, Notice Forms, and agreed upon a Claims Administrator.

### 11 **The Settlement Agreement**

#### 12 ***Settlement Benefits***

13 28. The Settlement negotiated on behalf of the Class provides for two separate forms  
14 of relief: (1) direct monetary relief to Class Members for reimbursement of actual ordinary and  
15 extraordinary expenses stemming from the Data Incident; and (2) equitable relief in the form of  
16 information security enhancements which has cost Overlake \$218,460 in February 2021 on email  
17 filter enhancements, and for which Overlake has expects to spend approximately \$504,000,  
18 (\$168,000 per year) to be paid in each year of 2021 through 2023 for its malware protection  
19 solution.<sup>13</sup>

20 29. The Settlement Class includes Plaintiff and all individuals whose private  
21 information was received, gathered, shared, obtained, or otherwise found itself in the possession  
22 of Defendants and potentially affected by the Data Incident. The Settlement Class specifically  
23 excludes: (i) Overlake and its officers and directors; (ii) all Settlement Class Members who timely  
24 and validly request exclusion from the Settlement Class; (iii) the Judge assigned to evaluate the  
25

26 <sup>13</sup> See Agr. ¶ 2.1–2.2.

1 fairness of this Settlement; and (iv) any other person found by a court of competent jurisdiction to  
2 be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity  
3 occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.<sup>14</sup>

4 30. Payments to Class Members are divided into two separate categories:

5 a. The first category provides for reimbursement of ordinary expenses up to \$250  
6 per Settlement Class Member, for out-of-pocket expenses incurred as a result  
7 of the Data Incident including bank fees, long distance phone charges, cell  
8 phone charges (only if charged by the minute), data charges (only if charged  
9 based on the amount of data used), postage, or gasoline for local travel; fees for  
10 credit reports, credit monitoring, or other identity theft insurance product  
11 purchased between February 4, 2020 and the date of the Preliminary Approval  
12 Order (with affirmative statement by Settlement Class Member that it was  
13 purchased primarily because of the Data Incident). Settlement Class Members  
14 can also be reimbursed for up to three hours of lost time, at a rate of \$20 per  
15 hour.<sup>15</sup>

16 b. The second category provides for reimbursement of extraordinary expenses, up  
17 to \$2,500 per Settlement Class Member, incurred between December 1, 2019  
18 and the end of the Claims Period for out-of-pocket more likely than not to have  
19 been incurred due to the Data Incident.<sup>16</sup>

20 31. In addition to the monetary relief, Overlake has, and will through 2023 continue to  
21 implement data security enhancements estimated to cost a total of \$722,460. Information security  
22 enhancements that Overlake has or will be implementing include, but are not limited to:

23  
24  
25 <sup>14</sup> Agr. ¶ 1.25.

26 <sup>15</sup> Agr. ¶ 2.1.

<sup>16</sup> Agr. ¶ 2.2.



- 1 a. Resetting passwords for all compromised accounts to prevent further  
2 unauthorized access;
- 3 b. Enhancing the already mandatory education for employees to help them better  
4 recognize and avoid phishing emails;
- 5 c. Enhancing the technology in use to identify and block suspicious external  
6 emails;
- 7 d. Implementing multi-factor authentication, which requires users to go through  
8 multiple steps to verify their identity in order to access systems; and
- 9 e. Implementing new email retention policies to reduce risk of exposure.<sup>17</sup>
- 10 32. The benefits are provided in exchange for a release of claims reasonably related to  
11 the Data Incident.<sup>18</sup>

12 *Notice and Claims Process*

13 33. After reviewing bids, the Parties agreed to use Postlewaite & Netterville (“P&N”),  
14 as the Notice Specialist and Claims Administrator in this case.

15 34. Overlake has agreed to pay for providing Notice to the Settlement Class.<sup>19</sup>

16 35. The Notice and Claim Forms negotiated by the Parties are clear and concise, and  
17 inform Settlement Class Members of their rights and options under the Settlement, including  
18 detailed instructions on how to make a claim, object to the Settlement, or opt-out of the  
19 Settlement.<sup>20</sup>

20 36. The current and agreed upon Notice Plan calls for Notice to be provided to  
21 Settlement Class Members via mail to the postal address provided when the Settlement Class  
22 Members conducted transactions with Overlake, by or before 30-days after entry of Preliminary  
23 Approval.<sup>21</sup>

24 \_\_\_\_\_  
25 <sup>17</sup> Agr. ¶ 2.2.

<sup>18</sup> See Agr. ¶¶ 6.1–6.3.

<sup>19</sup> Agr. ¶ 3.2.

<sup>20</sup> See Agr., Exs. A, B, C.

<sup>21</sup> Agr. ¶ 3.2.

1           37.     The Claims Administrator will mail a Postcard Summary Notice directly to each of  
2 the approximate 23,459 Class Members. Where postcards are returned undeliverable, the Claims  
3 Administrator will process the undeliverable mail and run a skip trace to find updated addresses.

4           38.     The Claims Administrator will also be responsible for creating a Settlement  
5 Website, and shall maintain and update the Website throughout the Claims Period, with the forms  
6 of Short Notice, Long Notice, and Claim Form approved by the Court, as well as this Settlement  
7 Agreement. Settlement Class Members will be able to submit Claim Forms through the Settlement  
8 Website.<sup>22</sup>

9           39.     A toll-free help line shall be made available to provide Settlement Class Members  
10 with additional information about the Settlement.<sup>23</sup>

11          40.     The Claims Administrator also will provide copies of the forms of Short Notice,  
12 Long Notice, and Claim Form approved by the Court, as well as this Settlement Agreement, upon  
13 request.<sup>24</sup>

14          41.     The timing of the Claims Process is structured to ensure that all Class Members  
15 have adequate time to review the terms of the Settlement Agreement, compile documents  
16 supporting their claim, and decide whether they would like to opt-out or object.<sup>25</sup>

17          42.     Class Members will have 150 days from the completion of the notice mailing to  
18 submit their Claim Form to the Claims Administrator, either by mail or online.<sup>26</sup>

19          43.     The Claims Administrator is given the authority to assess the validity of claims,  
20 and to ask for additional documentation.<sup>27</sup> Should any Class Member wish to dispute the amount  
21 offered after making a claim, there is a process by which he or she can do so.<sup>28</sup>

---

22  
23 <sup>22</sup> Agr. ¶ 3.2.

24 <sup>23</sup> Agr. ¶ 3.2.

25 <sup>24</sup> Agr. ¶ 3.2.

26 <sup>25</sup> Agr. ¶¶ 2.1, 4.1, 5.1.

27 <sup>26</sup> Agr. ¶ 2.1.

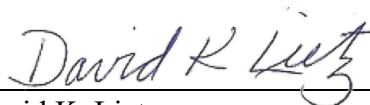
28 <sup>27</sup> Agr. ¶ 2.6.

<sup>28</sup> See Agr. ¶¶ 2.5–2.9



\* \* \* \* \*

I declare under penalty of perjury of the laws of State of Washington and the United States that the foregoing is true and correct, and that this declaration was executed in Washington, DC on this 11th day of May, 2021.



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

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that a true and correct copy of the foregoing document was served via King  
3 County E-Service and/or email upon the following:

4 Paul Karlsgodt, WSBA No. 40311  
5 Baker & Hostetler, LLP  
6 1801 California Street, Suite 4400  
7 Denver, CO 80202-2662  
8 Tel: 303.764.4013  
9 E-mail: [pkarlsgodt@bakerlaw.com](mailto:pkarlsgodt@bakerlaw.com)

10 James R. Morrison, WSBA No. 43043  
11 James Barnao, WSBA No. 56221  
12 Baker & Hostetler, LLP  
13 999 Third Avenue, Suite 3600  
14 Seattle, WA 98104 Tel: 206.332.1380  
15 E-mail: [jmorrison@bakerlaw.com](mailto:jmorrison@bakerlaw.com)  
16 [jbarnao@bakerlaw.com](mailto:jbarnao@bakerlaw.com)

17 *Attorneys for Defendants*

18 DATED this 27<sup>th</sup> day of May 2021.

19 */s/ Sarah Gunderson*  
20 \_\_\_\_\_  
21 Sarah Gunderson