

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 LIETZ IN
SUPPORT OF PLAINTIFFS' MOTION
FOR 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"). 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.

1 2. Attorneys appointed Class Counsel in this matter—me, Gary M. Klinger, and
2 Danielle L. Perry—are now partners at Mason Lietz & Klinger LLP. Combined, Class Counsel
3 have extensive experience prosecuting complex class actions, especially in the area of data breach
4 litigation. I have been licensed to practice law in the District of Columbia since 1991, am a
5 member of the bars of numerous federal district and appellate courts, and have decades of litigation
6 and class action experience. It is noteworthy that just in the time since Mason Lietz & Klinger’s
7 inception on March 14, 2020, Mr. Lietz, Mr. Klinger, and Ms. Perry (either individually, or as a
8 members of their firm) have been appointed class counsel in a number of data breach or data
9 privacy cases, including:
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- 11 a. *Baksh v. Ivy Rehab Network, Inc.*, Case No. 7:20-cv-01845-CS (S.D. N.Y.) (class
12 counsel in a data breach class action settlement);
- 13 b. *In re: GE/CBPS Data Breach Litigation*, 1:2020-cv-02903, Doc. 35 (S.D.N.Y.)
14 (Mr. Klinger appointed co-lead counsel in nationwide class action);
- 15 c. *Mowery et al. v. Saint Francis Healthcare System*, Case No. 1:20-cv-00013-SRC
16 (E.D. Mo.) (appointed class counsel);
- 17 d. *Chatelain et al. v. C, L and W PLLC d/b/a Affordacare Urgent Care Clinics*, Case
18 No. 50742-A (42nd District Court for Taylor County, Texas) (appointed class
19 counsel; settlement valued at over \$7 million);
- 20 e. *Jackson-Battle v. Navicent Health, Inc.*, Civil Action No. 2020-CV-072287
21 (Superior Court of Bibb County, Georgia) (Mr. Lietz appointed class counsel in
22 data breach case involving 360,000 patients);
- 23 f. *Bailey v. Grays Harbor County Public Hospital District et al.*, Case No. 20-2-
24 00217-14 (Grays Harbor County Superior Court, State of Washington) (appointed
25 class counsel in hospital data breach class action involving approximately 88,000
26 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

1 involving 17,000 class members; granted final approval of settlement valued at \$3.3
2 million)

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

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

7 j. *Chacon v. Nebraska Medicine*, Case No. 8:21-cv-00070-RFR-CRZ (D. Neb)
8 (appointed class counsel in data breach settlement);

9 3. Mr. Klinger has personally resolved dozens of class action cases involving
10 consumer and privacy statutes in state and federal courts across the country. Some representative
11 cases include the following: *Smith v. State Farm Mut. Auto. Ins. Co.*, No. 1:13-cv-2018 (N.D. Ill.);
12 *Jochan v. State Farm Mut. Auto. Ins. Co.*, No. 1:15-cv-04326 (N.D. Ill.) (Leinenweber, J.); *Burk*
13 *v. State Farm Fire & Cas. Co.*, No. 14-cv-02642-PHX-GMS (D. Ariz.); *Aguilar v. State Farm*
14 *Mut. Auto. Ins. Co.*, No. 16-cv-01211 (C.D. Ill.); *Kim v. State Farm Mut. Auto. Ins. Co.*, No. 2015-
15 CH-08655 (Cook Cty. Ill. Cir. Ct.); *Sweis v. State Farm Mut. Auto. Ins. Co.*, No. 2015-CH-18757
16 (Cook Cty. Ill. Cir. Ct.); *Ghose Inc. v. 7 Eleven, Inc.*, No. 2012-CH-04114 (Cook Cty. Ill. Cir. Ct.);
17 *Schumacher v. State Auto. Ins. Co.*, No. 13-cv-00232 (S.D. Ohio); *Block v. Lifeway Foods, Inc.*,
18 No. 17-cv-01717 (N.D. Ill.); *Chavez v. Church & Dwight Co., Inc.*, No. 17-cv-01948 (N.D. Ill.);
19 *Craftwood Lumber Co. v. CMT USA, Inc.*, No. 14-cv-06864 (N.D. Ill.); *LaBrier v. State Farm Fire*
20 *& Cas. Co.*, No. 15-cv-04093 (W.D. Mo.); *Dennington v. State Farm Fire & Cas. Co.*, No. 14-cv-
21 04001 (W.D. Ark.); *Selby v. State Farm Mut. Auto. Ins. Co.*, No. 2010-CH-43684 (Cook Cty. Ill.
22 Cir. Ct.); *O'Sullivan v. iSpring Water Sys., LLC*, No. 17-cv-2237 (N.D. Ga.); *In re Auto Body Shop*
23 *Antitrust Litig.*, No. 14-md-02557 (M.D. Fla.); *Pine v. A Place for Mom, Inc.*, No. 2:17-cv-01826
24 (W.D. Wash.); *Karpilovsky v. All Web Leads, Inc.*, No. 1:17-cv-01307 (N.D. Ill. 2017); *Accardi v.*
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1 *Hartford Underwrites Ins. Co.*, No. 18-cvs-2162 (N.C. Bus. Ct.); *Burk v. Direct Energy, LP*, No.
2 4:19-cv-663 (S.D. Tex.); *Bellenger v. Accounts Receivable Mgmt., Inc.*, No. 19-cv-60205 (S.D.
3 Fla.); *Drake v. Mirand Response Sys., Inc.*, No. 1:19-CV-1458-RLY-DML (S.D. Ind.); *Fry v. Gen.*
4 *Revenue Corp.*, No. 19-cv-172 (S.D. Ohio); *Poole v. Benjamin Moore, No. 18-cv-05168 (W.D.*
5 *Wash.)*; *Thomas v. Fin. Corp. of America*, No. 3:19-cv-00152 (N.D. Tex.); *Bonoan v. Adobe Inc.*,
6 No. 3:19-cv-01068 (N.D. Cal.); *Musto v. American Express Co.*, No. 19-cv-01782 (S.D. N.Y.);
7 *Palmer v. KCI USA, Inc.*, No. 19-cv-3084 (D. Neb.).

9 4. MLK Attorneys have served as Lead Counsel, Co-Counsel or Class Counsel on
10 dozens of class actions ranging from defective construction materials, (i.e. defective radiant
11 heating systems, siding, shingles, and windows), to misrepresented and recalled products (e.g.,
12 dog food, prenatal vitamins), and environmental incidents (the Exxon Valdez, BP Oil Spill). These
13 cases include: *In re: Hill's Pet Food*, MDL No. 2887, No. 2:19-md-02887 (D. Kan. June 6, 2019)
14 where MLK currently serves as court appointed Co-Lead Counsel, *Cox v. Shell Oil Co.*, No. 18844,
15 1995 WL 775363 (Ch. Ct. Tenn., July 31, 1995) (defective polybutylene pipe; \$950 million
16 settlement); *Hobbie v. RCR Holdings, II, LLC*, No. 10-113, MDL No. 2047 (E.D. La. filed April
17 20, 2010) (354 unit condominium built with Chinese Drywall; settlement for complete remediation
18 at cost of \$300 million); *Adams v. Fed. Materials*, No. 5:05-CV-90-R, 2006 WL 3772065 (W.D.
19 Ky. Dec. 19, 2006) (350 owners of commercial and residential property whose structures were
20 built with defective concrete; \$10.1 million settlement); *In re MI Windows & Doors Inc. Prod.*
21 *Liab. Litig.*, No. 2:12-MN-00001-DCN, MDL No. 2333, 2015 WL 4487734 (D.S.C. July 23, 2015)
22 (defective windows; claims made settlement for over 1 million homes); *In re Synthetic Stucco*
23 *Litig.*, No. 5:96-CV-287-BR(2), 2004 WL 2881131 (E.D.N.C. May 11, 2004) (settlements with
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1 four EIFS Manufacturers for North Carolina homeowners valued at more than \$50 million); *Posey*
2 *v. Dryvit Sys., Inc.*, No. 17,715-IV, 2002 WL 34249530 (Tenn. Cir. Ct. Oct. 1, 2002) (Co-Lead
3 Counsel; national class action settlement provided cash and repairs to more than 7,000 claimants);
4 *Galanti v. Goodyear Tire & Rubber Co.*, No. 03CV00209, 2004 WL 6033527 (D.N.J. Nov. 17,
5 2004) (Class counsel; defective radiant heating systems; \$330 million settlement); and *In re Zurn*
6 *Pex Prod. Liab. Litig.*, No. 08-MDL-1958, 2013 WL 716088 (D. Minn. Feb. 27, 2013) (Plaintiffs’
7 Executive Committee; +\$20 million claims made settlement). With respect to privacy cases, MLK
8 is presently litigating more than fifty cases across the country involving violations of the TCPA,
9 privacy violations, data breaches, and ransomware attacks. MLK also serves as Court-appointed
10 Liaison Counsel in *In re U.S. Off. of Pers. Mgmt. Data Security Breach Litig.*, 266 F. Supp. 3d 1
11 (D.D.C. 2017). Attorneys at MLK were also Co-Lead Counsel in *In re Dep’t of Veterans Aff. (VA)*
12 *Data Theft Litig.*, No. 1:06-MC-00506, 2007 WL 7621261 (D.D.C. Nov. 16, 2007) (unlawful
13 disclosure of PPI of 28.5 million military veterans and active duty personnel; \$20 million
14 settlement fund) and court-appointed Lead Counsel in *In re Google Buzz Privacy Litig.*, No. C 10-
15 00672 JW, 2011 WL 7460099 (N.D. Cal. June 2, 2011) (\$10 million settlement fund in case arising
16 for unauthorized disclosure or personal information).

19 5. My experience, and that of my partners, is further described in MLK’s Firm
20 Resume, attached as Exhibit 2 to my declaration submitted in support of Plaintiffs’ Unopposed
21 Motion for Preliminary Approval of Class Action Settlement, filed on May 27, 2021 (“Lietz MPA
22 Dec.”).

24 6. My years of experience representing individuals in complex class actions—
25 including data breach actions—contributed to an awareness of Plaintiff’s settlement leverage, as
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1 well as the needs of Plaintiff and the proposed Settlement Class. I believe that our clients
2 would ultimately prevail in the litigation on a class-wide basis. However, I am also aware that a
3 successful outcome is uncertain and would be achieved, if at all, only after prolonged, arduous
4 litigation with the attendant risk of drawn out appeals. It is my individual opinion, and that of the
5 other Class Counsel, based on our substantial experience, the settlement provides significant relief
6 to the Settlement Class.
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8 The Settlement Agreement

9 7. The Settlement Agreement in this case provides for both monetary and equitable
10 relief for Settlement Class Members.
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12 8. The Settlement Agreement provides for two separate forms of relief: (1) up to
13 \$2,750 per class member in ordinary expense reimbursements, lost time reimbursements and
14 extraordinary expense reimbursements; and (2) equitable relief in the form of information security
15 enhancements which have cost Overlake \$218,460 and for which Overlake has expects to spend
16 another \$504,000 (\$168,000 per year), to be paid in each year of 2021 through 2023.
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18 9. The Settlement Agreement provides for a reasonable service award to Plaintiff in
19 the amount of \$1,000 subject to approval by the Court.

20 10. The service award is meant to compensate Plaintiff for her efforts on behalf of the
21 class, which include maintaining contact with counsel, participating in client interviews, providing
22 relevant documents, assisting in the investigation of the case, remaining available for consultation
23 throughout mediation, reviewing relevant pleadings and the settlement agreement, and for
24 answering counsel's many questions.
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1 11. The Settlement Agreement also provides for an award of combined attorneys’ fees
2 and costs in an amount up to \$195,000, subject to approval by the Court.

3 12. As of the date of filing, I have received no objections to either the Settlement
4 Agreement in general or to the proposed attorneys’ fees, costs (the amount of which was made
5 known to the Class via the Court-approved notice program) in particular.
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7 The Contingent Nature of the Case

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

10 14. This matter has required me, and other attorneys at my Firm, to spend time on this
11 litigation that could have been spent on other matters. At various times during the litigation of this
12 class action, this lawsuit has consumed significant amounts of my time and my Firm’s time, which
13 is a small firm consisting of only four attorneys.
14

15 15. Such time could otherwise have been spent on other fee-generating work. Because
16 our Firm undertook representation of this matter on a contingency-fee basis, we shouldered the
17 risk of expending substantial costs and time in litigating the action without any monetary gain in
18 the event of an adverse judgment.
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20 16. If not devoted to litigating this action, from which any remuneration is wholly
21 contingent on a successful outcome, the time our Firm spent working on this case could and would
22 have been spent pursuing other potentially fee generating matters.

23 17. Litigation is inherently unpredictable and therefore risky. Here, that risk was very
24 real, due to the rapidly evolving nature of case law pertaining to data breach litigation, and the
25 state of data privacy law. Therefore, despite my Firm’s devotion to the case and our confidence in
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1 the claims alleged against Defendant, there have been many factors beyond our control that posed
2 significant risks.

3 18. Class Counsels' fees were not guaranteed—the retainer agreement counsel had with
4 Plaintiffs did not provide for fees apart from those earned on a contingent basis, and, in the case
5 of class settlement, approved by the court.
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7 The Costs and Fees Incurred

8 19. Due to the early stage of litigation and efficiency by which Class Counsel was able
9 to obtain this significant settlement, costs and fees incurred by Plaintiff are low.

10 20. Class Counsel has currently accrued \$88,900 in reasonable attorneys' fees. Class
11 Counsel expects to accrue another \$10,000-\$15,000 in fees in drafting the motion for final
12 approval, preparing for and attending the hearing on final approval, and monitoring and assisting
13 Plaintiff and class members with the claims process and settlement administration.
14

15 21. Plaintiff's current out-of-pocket costs are \$5,496.65, and include local counsel
16 costs, filing fees, service fees, research costs, and costs of mediation. These costs are reasonable,
17 and necessary for the litigation.

18 22. Upon information and belief, notice in this case has been provided as agreed upon
19 and as approved by the Court's Preliminary Approval Order and will be reported on more
20 extensively in Plaintiffs' Motion for Final Approval of Class Action Settlement. The claims period
21 is ongoing.
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23 23. Upon information and belief, as of July 29, 2021, the Settlement Administrator
24 reports receiving four requests for exclusion. MLK has received no requests for exclusion.
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24. Upon information and belief, as of July 29, 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.

25. Plaintiff will file a declaration from P&N certifying completion of notice and detailing the status of the claims administration process with her motion for final approval.

26. 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 Washington and the United States that the foregoing is true and correct, and that this declaration was executed in Washington, D.C. on this 30th day of July, 2021.

/s/ David Lietz
David 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
gmason@masonllp.com

Attorney for Plaintiff and the Class

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

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
16 jbarnao@bakerlaw.com

17 *Attorneys for Defendants*

18 DATED this 30th day of July 2021.

19 */s/ Megan Grosse*
20 _____
21 Megan Grosse
22
23
24
25
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