

IN THE COURT OF COMMON PLEAS OF
ALLEN COUNTY, OHIO

JANE DOE

Plaintiff,

Case No. CV2022 0490

vs.

LIMA MEMORIAL HOSPITAL, et al.,

Defendants.

**DECLARATION OF GARY M. KLINGER IN SUPPORT OF PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES, EXPENSES, AND A SERVICE AWARD**

I, Gary M. Klinger, being competent to testify, make the following declaration:

1. I am currently a senior partner of the law firm Milberg Coleman Bryson Phillips Grossman, PLLC ("Milberg"). My credentials were previously outlined for this Court in the Joint Declaration submitted in connection with Plaintiffs' Unopposed Motion for Preliminary Approval. I have been appointed Class Counsel for Plaintiffs in this matter. I submit this declaration in support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could and would competently testify to them if called upon to do so.

2. The work of Class Counsel in connection with this action involved investigating the effects of Lima's unlawful sharing of Plaintiff and Settlement Class Members Private Information, interviewing potential clients, evaluating the potential class representatives, evaluating the merits of the case before filing the Complaint; conducting legal research; drafting and filing the Complaint; litigating against a prominent law firm with extensive data privacy

litigation experience; briefing a response to Defendant's motion to dismiss; participating in a formal mediation of this case presided over by a highly experienced and well-regarded mediator; drafting the settlement term sheet, the comprehensive settlement agreement, well-crafted notices of settlement, an easy to understand claim form, the Motion for Preliminary Approval, and this instant motion for attorneys' fees; communicating with defense counsel; updating and handling questions from our class representative; overseeing the successful launching and implementation of the notice program with substantial interaction between me and the Settlement Administrator; and overseeing the claims process. I conferred with my colleagues about strategy and case status while being mindful to avoid duplicative efforts within my firm and with co-counsel.

3. Continuing through to today co-counsel and I have continued to work with Defendant and the Claims Administrator regarding claims administration and processing as well as answering class members questions about the settlement and the process.

4. As of June 24, 2024, the Settlement Administrator has received 2,879 claim forms which included claims for one year of Privacy Shield Services.

The Contingent Nature of the Case

5. My Firm and the other Class Counsel firms prosecuted this case on a purely contingent basis. As such, Class Counsel assumed a significant risk of nonpayment or underpayment.

6. This matter has required me, other attorneys at my Firm, and the other Class Counsel 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, as well as the time of the other Class Counsel.

7. Such time could otherwise have been spent on other fee-generating work. Because our Firm and the other Plaintiffs' attorneys 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.

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

9. 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 privacy litigation. Therefore, despite the devotion of Class Counsel to the case and our confidence in the claims alleged against Defendant, there have been many factors beyond our control that posed significant risks.

10. The fees contemplated under Class Counsel's representation agreements for cases in this jurisdiction and elsewhere generally fall within the one-third to 40% range. Class Counsel's fees were not guaranteed—the retainer agreements counsel had with Plaintiff 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

11. Due to the early stage of litigation and efficiency by which Class Counsel was able to obtain this significant settlement, expenses and fees incurred by Plaintiffs are low.

12. Additional time will be spent drafting the final approval motion, preparing for and attending the Final Approval Hearing, defending any appeals taken from the final judgment approving Settlement, and ensuring that the claims process and distribution of Settlement proceeds to Class Members is done in a timely manner in accordance with the terms of the Settlement. Based

upon my past experience. I assert that the attorneys' fees sought in the Motion for Attorneys' Fees, Costs, and Service Awards are reasonable and seek fair and reasonable compensation for undertaking this case on a contingency basis, and for obtaining the relief for Plaintiff and the Class.

13. Class Counsel has also accrued **\$14,645.10** in out-of-pocket expenses pertaining to this litigation; including: filing fees, pro hac vice fees, mediation fees and costs associated with attending an in person mediation, and the costs of an expert consultation,

14. These costs are reasonable, and necessary for the litigation, and are modest in comparison to the enormous costs that likely would have been incurred if litigation had continued. Reimbursement of these costs is sought as part of the combined attorney fees and costs requested. Based upon my past experience, the amount of out-of-pocket case expenses will increase prior to Final Approval.

15. The Settlement Agreement calls for a reasonable service award to Plaintiff in the amount of \$2,500, subject to approval of the Court. The Service Award is meant to recognize Plaintiff for her efforts on behalf of the Class, including assisting in the investigation of the case, maintaining contact with counsel, reviewing the pleadings, answering counsel's many questions, communicating with counsel during the settlement negotiations, and reviewing the terms of the Settlement Agreement. Plaintiff was not promised any service award, nor did she condition her representation on the expectation of any service or incentive award.

16. Although Plaintiff believes in the merits of her claims, this litigation was inherently risky and complex. The claims involve the intricacies of data privacy litigation (a fast-developing area in the law), and the Plaintiff would face risks at each stage of litigation. Against these risks, it was through the hard-fought negotiations and the skill and hard work of Class Counsel and the Class Representatives that the Settlement was achieved for the benefit of the Settlement Class.

17. This Settlement is the result of hard-fought, arm's-length negotiations. I strongly believe that the Settlement Agreement is favorable for the Settlement Class. The Settlement addresses the type of injury and repercussions sustained by Settlement Class Members as a result of the disclosure of their Private Information. In the opinion of the undersigned and other Class Counsel, the settlement is fair, reasonable, adequate, as are the attorneys' fees, expenses, and service awards requested here.

* * * * *

I declare under penalty of perjury that that foregoing is true and correct.

Executed this 26th day of June, 2024, at Chicago, Illinois.

/s/ Gary M. Klinger

Gary M. Klinger