

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

RAY STOLL, HEIDI IMHOF, and CHASE
WHITMAN, on behalf of B.W., a minor
child, individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

MUSCULOSKELETAL INSTITUTE,
CHARTERED d/b/a FLORIDA
ORTHOPAEDIC INSTITUTE,

Defendant.

Case No.: 8:20-cv-01798-CEH (AAS)

I, John Yanchunis, declare pursuant to 28 U.S.C. § 1746, as follows:

1. I have been licensed to practice law in the state of Florida since 1981.

2. I am one of the attorneys for the Plaintiffs and the proposed Settlement Class in this case. I submit this declaration in support of the Motion for Attorneys' Fees and Costs.¹ The facts herein stated are true of my own personal knowledge, and if called to testify to such facts, I could and would do so competently.

3. I lead the Class Action Department at Morgan & Morgan. Morgan & Morgan is the largest Plaintiff's, contingency-only law firm in the country, with over 800 lawyers in more than 50 offices throughout the United States. Its depth as a trial

¹ Unless otherwise noted, all capitalized terms are defined in the Settlement Agreement and Release, which is attached the Motion for Preliminary Approval as its **Exhibit A**.

firm, and its self-funded financial resources, allow it to undertake the largest and most significant cases throughout the country.

4. My practice—which began after completing a two-year clerkship with United States District Judge Carl O. Bue, Jr., Southern District of Texas, Houston Division—has concentrated on complex litigation and spans over 38 years, including consumer class actions for more than two-thirds of that time. I have represented consumers in numerous successful class actions involving a wide variety of claims and topics from anti-trust, securities, civil rights, defective products, deceptive and unfair trade practices, common law fraud, and the protection of the privacy rights of consumers.

5. I was appointed co-lead counsel in the successful prosecution of the two largest class action cases in the United States: *Fresco v. Automotive Directions, Inc.*, Case No. 03-61063-JEM, and *Fresco v. R.L. Polk*, Case 0:07-cv-60695-JEM (Southern District of Florida). These cases were filed against the world’s largest data and information brokers—Experian, R.L. Polk, Acxiom, Reed Elsevier (which owns Lexis-Nexis) and others—to protect the important privacy rights of consumers.

6. I presently serve, or have served in the past, as lead, co-lead, or class counsel in numerous multi-district litigations across the country in a wide variety of areas affecting consumers. For example and to name only a few cases in which I have served in leadership, I presently serve as co-lead counsel in the case of *In re: Capitol One Consumer Data Sec. Breach Litig.*, No. 1:19-md-02915 (E.D. Va.). I have also served as co-lead of the *Home Depot Data Breach*, a member of the five-member overall

Executive Committee in the *Target Data Breach*, No. 0:14-md-02522-PAM (Dist. Minn.), a member of the five-member Plaintiffs' Steering Committee in *In re: U.S. Office Personnel Mgmt Data Security Breach Litig.*, 1:15-cv-01321-ABJ (D.D.C.), and a member of the Plaintiffs' Steering Committee in *In re Equifax, Inc. Customer Data Security Breach Litigation*, 1:17-md-2800-TWT (N.D. Ga.). I also served as lead counsel in *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, 16-MD-02752-LHK (N.D. Cal.), a case involving a data breach of over 2.9 billion users of Yahoo's email service. The court in that case fairly recently entered final judgment and approved the settlement of the claims of a class of consumers in the United States and Israel.

7. As a result of my experience in litigation against the insurance industry, including class litigation, I served as lead counsel for the insurance regulators for the state of Florida in connection with their investigations of a number of insurance companies and brokers of allegations of price fixing, bidding rigging, undisclosed compensation and other related conduct, and negotiated a number of settlements with insurance companies and brokers who were the subject of those investigations. These investigations resulted in the recovery of millions of dollars for Florida policyholders and the implementation of changes to the way insurance is sold in Florida and throughout the United States.

8. During my career, I have tried numerous cases in state and federal courts, including one of the largest and longest insurance coverage cases in U.S. history, which was filed in 1991 by The Celotex Corporation and its subsidiary, Carey Canada, Inc. During the seventeen years the case pended, I served as lead counsel for several

insurance companies regarding coverage for asbestos and environmental claims. The case was tried in three phases over several years beginning in 1992. I was also lead counsel for these parties in the subsequent appeals that followed a judgment in favor of my clients.

9. As result of my experience in the area of class litigation and ethics, I have served as an expert for The Florida Bar on ethical issues arising in class action litigation.

10. I am currently a member in good standing of The Florida Bar, and of all the bars to which I have been admitted, including the United States Supreme Court, the United States Court of Appeals for the Third, Fifth, Ninth, and Eleventh Circuits, and the United States District Courts of the Southern District of Texas, Northern District of Texas, Western District of Texas, Eastern District of Wisconsin, Middle District of Florida, Southern District of Florida, Northern District of Florida, Eastern District of Michigan, Central District of Illinois and Northern District of Illinois.

11. We filed this matter on behalf of the Plaintiffs on June 30, 2020, accusing Defendant, Musculoskeletal Institute, Chartered d/b/a Florida Orthopaedic Institute (“Defendant”) of failing to securely maintain Plaintiffs’ and Class Members’ personally identifiable information.

12. On August 21, 2020, Defendant filed its Motion to Dismiss. (Doc. No. 14). On September 8, 2020, Plaintiffs responded to the Motion to Dismiss. (Doc. No. 23). Defendant replied on September 28, 2020. (Doc. No. 27).

13. Subsequently, the parties began exploring the potential for resolution of Plaintiffs' claims on a class-wide basis. These discussions were prompted by the parties' desire to avoid the expense, uncertainties, and burden of protracted litigation, and to put to rest any and all claims or causes of action that have been, or could have been, asserted against Defendant.

14. The parties engaged in a mediation with Mediator Rodney Max of Upchurch Watson White & Max on November 6, 2020. At all times, the parties' negotiations were adversarial, non-collusive, and conducted at arm's length. During this first session, the parties set forth and discussed their respective positions on the merits of the putative class claims and the potential for a settlement that would involve class-wide relief. The parties exchanged offers and counteroffers and negotiated the points of each vigorously. Ultimately, this first session did not result in settlement, and the parties continued litigating the case.

15. Plaintiffs subsequently moved to amend their complaint on January 29, 2021 (Doc. No. 59) and on October 22, 2021, Defendant responded by filing another Motion to Dismiss, (Doc. No. 89), which Plaintiffs responded to on November 5, 2021. (Doc. No. 91).

16. Thereafter, the parties engaged in subsequent settlement discussions.

17. Throughout the settlement process, proposed Class Counsel—Mr. McGee, Mr. Barthle, Mr. Howard, and I—carefully weighed: (1) the benefits to the Class Representatives and the Class under the terms of this Settlement, which provides significant relief to the Class; (2) the attendant risks and uncertainty of litigation, an

assessment I felt confident I could make based on my trial experience, as well as the difficulties and delays inherent in such litigation, including the challenges to certification of a class, both at the trial court level and at the appellate level if we were successful in obtaining an order certifying the class; (3) the desirability of consummating the present Settlement to ensure that the Class receives a fair and reasonable Settlement; and (4) providing the proposed Class Representatives and Class Members prompt relief. The matter of attorneys' fees, costs, and expenses were only negotiated after the parties reached agreement on all other material Settlement terms.

18. The hourly rates of the professionals in my firm, including my own, reflect experience and accomplishments in the area of class litigation. The rate of \$1,300 per hour which I charge for my time is commensurate with hourly rates charged by my contemporaries around the country, including those rates charged by lawyers with my level of experience who practice in the area of class litigation across the nation. Prior to submitting the motion for attorneys' fees, costs and expenses, I compared and confirmed the hourly rate of the professionals in my firm with lawyers at other law firms whose practice is focused on class litigation. Moreover, as I have been retained as an expert on attorneys' fees in other class cases, and as part of my legal education, I routinely survey hourly rates charged by lawyers around the country in published surveys, and review continuously as part of my continuing education, opinions rendered by courts on attorneys' fee requests.

19. The lawyers and other professional staff of my firm maintain and record their respective time and the specific services they perform contemporaneously in a computerized system. Based upon the records in this system, my firm's lodestar is in excess of 926.3 hours as of July 1, 2022, amounts to \$656,141.90 in lodestar. Additional time will be spent to prepare the motion for final approval and respond to any objections, to prepare for and attend the fairness hearing and obtain final approval, to defend any appeals taken from the final judgment approving settlement, and ensure that the distribution of settlement proceeds to class members is done in a timely manner in accordance with the terms of the settlement. I assert that the attorneys' fees sought in the motion for attorneys' fee is reasonable and seeks fair and reasonable compensation for undertaking this case on a contingency basis, and for obtaining the relief for the proposed Class Representatives and the Class. Throughout this action, we have been challenged by highly experienced and skilled counsel who deployed very substantial resources on Defendant's behalf.

20. The chart below reflects the amount of time spent by me and members of my firm in the prosecution of this case:

MORGAN & MORGAN COMPLEX LITIGATION GROUP			
Name	Hourly Rate	Hours Billed	Total
John A. Yanchunis (Attorney)	\$1,300	148.6	\$193,180.00
Ryan J. McGee (Attorney)	\$800	366	\$292,800.00
Patrick A. Barthle II (Attorney)	\$800	78.8	\$63,040.00
Jean Sutton Martin (Attorney)	\$1,000	9.4	\$9,400.00
Kenya Reddy (Attorney)	\$950	3.0	\$2,850.00
Marcio Valladares (Attorney)	\$900	18.8	\$16,920.00
Ra Amen (Attorney)	\$475	15.0	\$7,125.00
Linda Klama (Doc. Reviewer)	\$250	105.6	\$26,400.00

Audrey Sidell (Doc. Reviewer)	\$250	124.4	\$31,100.00
David Reign (Investigator)	\$300	13.4	\$4,020.00
Lee Walters (Investigator)	\$300	1.0	\$300.00
Andrea Carbone (Paralegal)	\$202	22.2	\$4,484.40
Jennifer Cabezas (Paralegal)	\$225	20.1	\$4,522.50
Total		926.3	\$656,141.90

21. A breakdown of my firm's costs and expenses, again which I assert are reasonable, are pulled from a computerized database maintained by individuals in the accounting office of my firm and which were checked for accuracy, are reflected below.

Description	Subtotals	Totals Per Category
Court Fees		\$426.42
Filing Fee	\$426.42	
Professional Services		\$16,042.12
PACER	\$79.30	
Epiq Discovery Solutions	\$2,230.02	
Huseby Global Litigation	\$4,033.60	
Tampa Process, LLC	\$349.20	
Mitnick Security Consulting, LLC	\$4,462.50	
Upchurch, Watson, White & Max Mediation Group, Inc.	\$4,887.50	
Shipping, Long Distance & Printing		\$280.67
In-House Printing	\$268.07	
FedEx	\$12.60	
Travel & Expenses		\$558.00
John A. Yanchunis	\$558.00	
	Total	\$17,307.21

22. As stated above, a number of tasks will be required of my firm to conclude the litigation. In my experience leading class actions of this type and magnitude, I reasonable estimate that the future number of hours required to bring this Settlement to finality would be:

Additional Work Required of Class Counsel	Projected Hours
Work reviewing and responding to objections	100
Continued work preparing and finalizing the Motion for Final Approval, and preparing for and attending the final hearing	75
Responding to and litigating any appeals taken	300
Overseeing the administration of the Settlement	100
Total	575

23. Although the present case was resolved before trial, we invested significant time and resources investigating and litigating this action. Specifically, among other work, we: (1) consulted with the Class Representatives throughout the course of this case and reviewed the facts and documentation that they had provided concerning identity theft and other forms of fraud; (2) investigated their claims through; (3) researched claims that could be and eventually were pursued in the Complaint; (4) drafted the Complaint, and subsequent amendments; (5) prepared and served discovery on Defendant; (6) reviewed documents and data produced by Defendant; (7) reviewed, responded to, and briefed two motions to dismiss; (8) briefed and argued discovery motions; (9) conferred with experts to model damages; (10) attended mediation, where we negotiated a comprehensive class action settlement; (11) drafted and filed a motion for preliminary approval of the settlement and

supporting memorandum and exhibits; and (12) drafted and filed this motion for attorneys' fees, costs and expenses.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 5, 2022 at Tampa, Florida.

By: John A. Yanchunis
John A. Yanchunis, Esq.