

**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 A. 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 and the state of Texas since 1980.

2. I am one of the attorneys for Plaintiffs and the proposed Settlement Class in this case. I submit this declaration in support of the Motion for Final Approval of the Class Action Settlement.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 was filed with Plaintiffs' Motion for Preliminary Approval. (Doc. 93-1).

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.*, No. 03-61063-JEM, and *Fresco v. R.L. Polk*, No. 0:07-cv-60695-JEM (S.D. Fla.). 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.), and secured a class action settlement for the class in the amount of \$190 million, which was approved

today at the final fairness hearing (the final judgment has not yet been entered). 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 (D. 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 sole 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 final judgment approving the settlement of the claims of a class of consumers in the United States and Israel was recently approved by the Ninth Circuit.

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, Northern District of Illinois, and the District of Nebraska.

11. Plaintiffs request that the Court appoint myself, Ryan J. McGee and Patrick A. Barthle II of my firm, and William 'Billy' Peerce Howard and Amanda J. Allen of the Consumer Protection Firm, as Settlement Class Counsel (collectively, "Class Counsel"). The Court preliminarily granted that request in granting Plaintiffs' Motion for Preliminary Approval. Class Counsel have invested considerable time and

resources into the investigation of the facts underlying the claims and the prosecution of this action. Since the outset of this litigation, the firms have cooperatively and effectively collaborated to prosecute, and ultimately resolve, this case on behalf of their clients and the Class. They have performed work critical to achieving benefits for the Class, including by investigating the facts surrounding the Data Security Incident, researching and analyzing legal claims under state and federal law and common law, preparing and filing the Complaint, motion and discovery practice, participating in meetings with defense counsel to discuss the parties' respective positions, negotiating the proposed Settlement, drafting the motion for and obtaining preliminary approval, overseeing the notice and claims administration, drafting this motion for final approval, and will continue to devote time and resources to see this case to finality.

12. As noted above, and as reflected in our respective resumes and biographies previously filed with the Court in support of Plaintiffs' Motion for Preliminary Approval, Class Counsel are qualified, experienced, and able prosecute this litigation. Class Counsel have a wealth of experience in litigating complex class action lawsuits similar to this one and have extensive knowledge of the applicable law and sufficient resources to commit to the Settlement Class.

13. Throughout the pendency of this case, my co-counsel and I have maintained regular contact with the Plaintiffs to discuss with them the prosecution of the case. With the assistance of counsel, Plaintiffs have been at the helm of this case and continue to be focused on the advancement of the interests and claims of the Class over their own interests. Plaintiffs have always been concerned about obtaining a result

that was best for the Class. Plaintiffs are adequate class representatives with no conflicts of interest.

14. This Action was initiated following Defendant's disclosure that on or about April 9, 2020, it experienced a ransomware attack resulting in potential exposure of sensitive and private Personal Information of certain of its current and former patients (the "Data Security Incident").

15. On June 30, 2020, Plaintiffs filed a proposed class action lawsuit in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, relating to a Data Security Incident. On or about August 3, 2020, Defendant removed this matter to the U.S. District Court for the Middle District of Florida. Thereafter, the parties engaged in extensive motion practice, including Defendant's Motion to Strike Plaintiffs' Amended Initial Disclosures (Doc's 29, 34, 38), Plaintiffs' Motion to Compel Full and Complete Discovery Responses and for Determination of Waiver (Doc's 46, 51, 78), Defendant's Motion to Stay (Doc's 55, 60, 79), Defendant's Motion to Quash (Doc. 58), Plaintiffs' Motion to file Amended Complaint (Doc's 59, 75), and Defendant's Motion to Dismiss (Docs. 89, 91).

16. On November 6, 2020, the parties engaged in mediation with mediator, Rodney A. Max. The parties also exchanged detailed mediation briefs with their respective positions on the merits of the claims and class certification. However, the matter did not resolve during this initial mediation session. On February 18, 2021, the Court entered a stay of this matter pending a decision from the United States Supreme Court in *Transunion v. Ramirez*, as well as a decision from the Eleventh Circuit in *Tsao*

v. Captiva MVP Rest. Partners, LLC, (Doc. 79). On July 14, 2021, Plaintiffs moved to lift that stay, following entry of the Supreme Court's decision in *Transunion* and the Eleventh Circuit's decision in *Tsao*, (Doc. 80), which was granted, (Doc. 82). Following lifting of the stay, Plaintiffs took two depositions, then the parties resumed mediation discussions with Mr. Max. After extensive arm's length settlement negotiations, the parties reached an agreement. The parties now wish to fully and finally resolve their dispute on a class-wide basis, pursuant to terms that were proposed and negotiated between them beginning at the mediation with Mr. Max and finalized by the parties in the weeks following. I can attest that the negotiations between the parties were hard fought, always arms length and were noncollusive.

17. This Settlement Agreement provides for the resolution of all claims and causes of action asserted, or that could have been asserted, against Defendant and the Released Parties (as defined in the Settlement Agreement and provided below) relating to the Data Security Incident, by and on behalf of the Plaintiffs and Settlement Class Members (as defined in the Settlement Agreement and provided below).

18. As discussed in detail in Plaintiffs' Motion for Preliminary Approval (Doc. 93), the Settlement is fair, reasonable, and adequate, and represents an excellent result for the Settlement Class.

19. The Settlement provides for the funding by Defendant of a \$4,000,000.00 Settlement Fund that will be used to pay for all resolution related sums, including: (i) Notice and Administrative Expenses; (ii) Identity Theft Protection Services; (iii) Identity Restoration Services; (iv) Minor Monitoring Services; (v) reimbursement for

Out-of-Pocket Losses and Attested Time; and (iv) Attorneys' Fee Award and Costs; amongst other things. *See* S.A. ¶ 49. Notably, “[n]o portion of the Settlement Fund shall revert or be repaid to Defendant after the Effective Date.” S.A. ¶ 63; *see also id.* ¶ 46.

20. The parties negotiated Class Counsel's attorneys' fees, costs, and expenses only after they had reached an agreement on the benefits afforded to the Settlement Class.

21. Defendant agreed not to oppose Class Counsel's request for a fee award not to exceed \$1,333,333.00, and litigation costs not to exceed \$25,000.00. On July 5, 2022, Plaintiffs filed their unopposed motion for attorneys' fees and costs seeking \$1,333,333.00 in attorneys' fees and \$17,307.21 in litigation costs, which was promptly posted to the Settlement Website. (Doc. 100). That motion was referred to Magistrate Judge Sansone who—after requesting, receiving, and reviewing Class Counsel's detailed time records—recommended approving Plaintiffs' request in full. (Docs. 101, 104). Plaintiffs request that the Court adopt Judge Sansone's report and recommendation. I, as well as my co-counsel, have continued to devote time and resources to the administration of the Notice Program and Settlement. A supplemental declaration with that time will be submitted no later than seven (7) days prior to the Final Fairness Hearing, currently scheduled for September 29, 2022.

22. Throughout the settlement process, my co-counsel and I carefully weighed with the Plaintiffs: (1) the benefits to the Class under the terms of this Settlement Agreement, which provides significant relief to the Class; (2) the quantum

of damages which might have been sustained by individual Settlement Class Members, the likelihood that in the absence of a class action consumers would not pursue individual claims, particularly due to the high cost and expense, including the cost of cyber and damage experts to litigate these claims if pursued in individual litigation, and the fact that the quantum of damages would not justify the retention of an attorney, either on an hourly or contingent basis, to pursue the claims individually; (3) the difficulty in proving and calculating those damages; (4) the attendant risks and uncertainty of litigation, as well as the difficulties and delays inherent in such litigation including the challenges to certification of a class; (5) Defendant's vigorous defense of the litigation and continued denial of the claims contained in the Complaint; (6) the desirability of consummating the present Settlement Agreement to ensure that the Class receives a fair and reasonable Settlement; and (7) providing Settlement Class Members prompt relief.

23. In particular, it is my opinion that the Settlement Agreement provides significant benefits to Settlement Class Members and addresses the type of repercussions sustained by consumers impacted by the Data Security Incident.

24. The relief provided by the Settlement is reasonable and adequate, particularly in light of the risks and delay of trial and associated appeals. At bottom, Plaintiffs faced difficult hurdles certifying a class.

25. Further, the proposed Settlement Class is functionally equivalent to that alleged in the Complaint. The proposed Settlement Class is defined as the:

approximately 647,000 individuals identified on the Settlement Class List, including all individuals residing in the United States who were sent notification by Defendant that their Personal Information was or may have been compromised in the Data Security Incident initially disclosed by Defendant in or about June 2020. Excluded from the Settlement Class are: (1) the judges presiding over this Action, and members of their direct families; (2) the Defendant, its subsidiaries, parent companies, management companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, directors, and employees; (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

26. Plaintiffs seek final approval and certification of this nationwide class.

All members of the proposed Settlement Class are entitled to the same benefits. All Settlement Class Members who do not exclude themselves from the Settlement will be eligible to submit claims. The dollar amounts of these reimbursements may vary, but those differences reflect the differing amounts of losses that Settlement Class Members incurred as a result of the Data Security Incident. Thus, each Settlement Class Member who submits a valid claim will be paid proportionate to the harm they suffered. And all Settlement Class Members are eligible to claim Identity Theft Protection or Minor Monitoring services, and can access identity restoration services even without filing a claim.

27. With the benefit of formal discovery, and the parties' exchange of information in the mediation setting, this provided Class Counsel—along with my prior experience in similar litigation and communications with many consumers in

those cases and the one before the Court—with the ability to make a well informed decision about the litigation risks and the benefits of the Settlement.

28. After investigating the facts and carefully considering applicable law, Plaintiffs and Class Counsel have concluded that it is in the best interests of the Settlement Class Members to enter into the Settlement in order to avoid the uncertainties of litigation and to assure meaningful and timely benefits to the Settlement Class Members. I, along with the Plaintiffs and Class Counsel, respectfully submit that the terms and conditions of this Settlement are fair, reasonable, adequate, and in the best interests of all Settlement Class Members.

29. In particular, it is my opinion that the present Settlement Agreement provides significant benefits to the Settlement Class.

30. The relief provided by the Settlement is reasonable and adequate, particularly in light of the risks and delay with trial and associated appeals.

31. The reaction of the Settlement Class to the Settlement here has been extremely positive. There have been 3,269 claims, no objections, and only one opt-out received. These are powerful indicia that the Settlement is fair, reasonable, adequate and deserves final approval.

32. Given my extensive experience with class action settlements, it is my informed opinion that the Notice Program, with all the attendant forms and as outlined in the Settlement, made every effort to ensure that Class Members were made aware of their right to recovery under the Settlement. As reflected in the Declaration of Cameron Azari, notice of the Settlement was provided directly to at least 92.6% of

Settlement Class Members, and bolstered with the supplemental notice via the Settlement Website and the internet sponsored search listings that provided additional notice of the Settlement and Settlement Website to individuals (including but not limited to Settlement Class Members) who browsed highly visited internet search engines including Google, Bing, and Microsoft.

33. It is my opinion, and that of Class Counsel, that the relief achieved through the Settlement is close to if not the same relief we would have achieved had we taken the case to trial and succeeded.

34. It is my opinion, and that of Class Counsel, that the Settlement is fair, reasonable, and adequate and that the Settlement should be given final approval.

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

Executed on September 8, 2022 at Tampa, Florida.

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