

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

IN RE: 21ST CENTURY ONCOLOGY
CUSTOMER DATA SECURITY
BREACH LITIGATION

Case No. 8:16-md-2737-MSS-AEP

This Document Relates to All Cases

MDL No. 2737

**DECLARATION OF DANIEL S. ROBINSON IN SUPPORT OF UNOPPOSED
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

I, Daniel S. Robinson, declare as follows:

1. I am an attorney duly licensed to practice before all courts of the State of California and am admitted to practice in this Court. I am a partner at Robinson Calcagnie, Inc. (“RC”), and am one of the Class Counsel appointed by the Court in this Action. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto. I submit this Declaration in support of Plaintiffs’ Motion for Final Approval of Class Action Settlement.

THE SETTLEMENT MERITS FINAL APPROVAL

2. Given the advanced stages of the litigation, the strength and weaknesses of the case, the risks inherent in complex class action litigation, the reaction of the Class Members to the Settlement, and based on my extensive experience in complex class actions involving data breach cases similar to this Action, I believe that the Settlement is fair, reasonable, and adequate, and merits final approval.

3. As explained in my declaration in support of the concurrently filed Plaintiffs’ Motion for Class Representative Service Awards and for Attorneys’ Fees and Expenses, I have been appointed to leadership positions in numerous state and federal courts, including in other data breach cases and in complex and multi-district product liability and consumer class action litigation.

4. My Co-Class Counsel, Cari Campen Laufenberg of Keller Rohrback, L.L.P., also has significant experience leading data breach consumer class action lawsuits, as further outlined in her declaration in support of the concurrently filed

Plaintiffs' Motion for Class Representative Service Awards and for Attorneys' Fees and Expenses.

5. Plaintiffs' Counsel vigorously and zealously represented the interests of the proposed Settlement Class from the inception of this hard-fought litigation until the present. Defendants 21st Century Oncology Investments, LLC and 21st Century Oncology of California, a Medical Corporation (collectively, "21st Century") vigorously defended against Plaintiffs' claims throughout the course of this Litigation.

6. This Action was a challenging one. 21st Century announced a data breach in March 2016, whereby, on or about October 3, 2015, over 2.1 million 21st Century patients' personal and health information, including their names, Social Security numbers, physicians' names, diagnoses, treatment information, and insurance information, may have been compromised (the "Data Breach"). 21st Century is a global, physician-led provider of integrated cancer care services, and is one of the largest radiation oncology providers in the United States.

7. The Settlement was achieved after more than four years of hard-fought litigation, including briefing, oral argument, and a decision on 21st Century's motion to dismiss, 21st Century's filing for voluntary bankruptcy relief under Chapter 11 of the United States Bankruptcy Code ("Bankruptcy Action"), a separate litigation concerning available insurance coverage ("Declaratory Action"), limited Court-ordered discovery, a Rule 30(b)(6) deposition of 21st Century's corporate designee, and more than two years of mediation with two independent mediators. With this Settlement, Plaintiffs have secured a significant recovery for Settlement Class

Members that is in line and consistent with other data breach settlements, despite the numerous challenges Plaintiffs in this case faced.

8. The Settlement is the product of substantial investigation, litigation, and arm's-length negotiation; and, most importantly, is in the best interests of Plaintiffs and the Class. Despite my strong belief in the merits of this litigation and likelihood of success as trial, I nonetheless believe that the benefits to Plaintiffs and the Class pursuant to the agreed upon terms substantially outweigh the risks of continuing to litigate the claims—namely, the delay that would result before Plaintiffs and Class Members receive any benefits should the action proceed to class certification or trial, the possibility of a negative outcome at class certification or trial, and the possibility of a negative outcome post-certification or post-trial should 21st Century appeal a class certification or judgment in favor of the Class. This Settlement provides significant benefits now that address a myriad of past losses as well as the risk of future harm to the Class Members, is in the best interest of all putative Class Members, and merits final approval.

9. Pursuant to the Settlement, 21st Century will pay \$7,850,000 into a Settlement Fund that will be used to provide Credit Monitoring and Insurance Services and cash payments to the 2,157,574 21st Century patients who are identified on the Settlement Class List, including Plaintiffs, who were notified that their personally identifiable information and/or protected health information may have been disclosed in the Data Breach (the “Class”). Excluded from the Class are Persons who properly

execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period.

10. The \$7.85 million non-reversionary Settlement Fund will be used to provide Participating Settlement Class Members with the following Settlement Benefits: (i) a two-year subscription to comprehensive credit monitoring and identity theft protection through Identity Guard's Total Plan, which may be deferred by two years; (ii) a cash payment of up to \$40 for two hours of time spent related to the Data Breach; (iii) an additional cash payment of up to \$260 for up to thirteen additional hours of documented time fairly traceable to the Data Breach; and (iv) reimbursement of up to \$10,000 for documented losses and/or expenditures fairly traceable to the Data Breach. 21st Century also acknowledges that it has undertaken significant steps to improve its data security practices and procedures.

11. The value of the Settlement, which consists of a \$7.85 million non-reversionary Settlement Fund and the value of Credit Monitoring and Insurance Services, will likely exceed \$12.5 million. The \$7.85 million Settlement Fund will be used to provide the benefits set forth above, as well as a robust class notice, settlement administration, and any Service Awards and Fee Award and Costs approved by the Court.

12. The Settlement Fund alone comes up to \$3.64 for each of the 2,157,574 Class Members (after the Settlement Class List was deduplicated by Angeion), which compares favorably to other data breach settlements (*e.g.*, *In re Anthem, Inc. Data Breach Litigation*, No. 5:15-MD-02617-LHK (N.D. Cal. 2017) (\$1.39), *In re The Home Depot*,

Inc. Customer Data Security Breach Litigation, No. 1:14-md-02583-TWT (N.D. Ga. 2016) (\$.51 to \$.68), *In re Target Corp. Customer Data Security Breach Litigation*, No. 0:14-md-02522-PAM (D. Minn. 2015) (\$.15), and *In re Experian Data Breach Litigation*, No. 8:15-cv-01592-AG (C.D. Cal. 2015) (\$1.47), but does not factor in the actual Settlement value here, which includes the value of the Credit Monitoring and Insurance Services.

13. The Credit Monitoring and Insurance Services are for sale to the public for \$19.99 per month, or \$16.67 per month if purchased annually. (ECF No. 247 ¶ 8.) If 1% of the Settlement Class (21,575.74 Class Members) elects to receive this benefit, the value of this benefit to the Settlement Class is at least \$8,632,022.06 ($21,575.74 \times \16.67 (retail price per month) $\times 24$ months = \$8,632,022.06).

14. After taking into account the cost of the Credit Monitoring and Insurance Services (\$517,000), if one percent (1%) of the Settlement Class Members elect to receive the Credit Monitoring and Insurance Services, the value of this benefit to the Settlement Class would be \$8,115,022.06 (\$8,632,022.06 minus \$517,000), and the total Settlement value would be \$15,965,022.06 (\$8,115,022.06 plus \$7.85 million).

15. To date, according to Angeion, 33,800 Claim Form submissions have been received (a participation rate of 1.6%), and of the 12,263 Claim Form submissions reviewed, 9,042 Settlement Class Members (0.42%) have elected to receive the Credit Monitoring and Insurance Services benefit. With this participation rate, the value of the Credit Monitoring and Insurance Services benefit is \$3,100,523.36 and the total value of the Settlement is in excess of \$10.9 million. The Claims Deadline is May 10, 2021, and it is anticipated that the number of claims for the Credit Monitoring and

Insurance Services benefit will significantly increase between now and then. Once all Claim Form submissions have been reviewed, the claims for Credit Monitoring and Insurance Services is likely to exceed 1% of the Settlement Class, because 73.7% of the 33,800 claims received to date is approximately 24,911 claims, which represents approximately 1.2% of the Settlement Class.

THE COMMENCEMENT OF THE LITIGATION

16. Following 21st Century's announcement of the Data Breach in March 2016, thirteen actions were filed in the Middle District of Florida, two in the Northern District of California, one in the Central District of California, and other actions were filed in state courts. On October 6, 2016, the Judicial Panel on Multidistrict Litigation entered a Transfer Order centralizing the federal actions in the Middle District of Florida before the Honorable Mary S. Scriven. (ECF No. 1.)

17. On November 16, 2016, Judge Scriven appointed Cari Campen Laufenberg of Keller Rohrback, L.L.P. and Daniel S. Robinson of Robinson Calcagnie, Inc. as Interim Co-Lead Counsel; Robert C. Gilbert of Kopelowitz Ostrow Ferguson Weiselberg Gilbert and Jodi Westbrook Flowers of Motley Rice LLC as Plaintiffs' Liaison Counsel; Kent G. Whittemore of The Whittemore Law Group, P.A., as Local Counsel; and a Plaintiffs' Steering Committee comprised of Thomas V. Girardi, Charles P.T. Phoenix, and the law firms of Kaplan, Fox & Kilsheimer, LLP, Girard Gibbs, LLP, Gilman Law, LLP, The Maher Law Firm P.A., Keller Grover, LLP, and Colson Hicks Eidson (collectively, "Plaintiffs' Counsel"). (ECF Nos. 79, 80.)

18. On January 17, 2017, Plaintiffs filed a Consolidated Class Action Complaint, alleging that 21st Century breached its duties to Plaintiffs by failing to maintain reasonable and adequate security measures to protect its patients' personal and health information from unauthorized access and disclosure, allowing their information to be compromised, obtained, and misused by unauthorized persons. (ECF No. 100.)

19. On February 21, 2017, 21st Century moved to dismiss the Complaint. (ECF No. 116.) At the motion to dismiss hearing on May 16, 2017, the Court ordered supplemental briefing on the issue of damages, ordered 21st Century to provide Plaintiffs with certain limited discovery, and permitted depositions to be taken of 21st Century's witnesses and FBI personnel with personal knowledge as to what information had been acquired. Through this and other discovery, Plaintiffs' Counsel obtained sufficient information and documents to evaluate the strengths and weaknesses of Plaintiffs' claims.

THE BANKRUPTCY ACTION AND DECLARATORY ACTION

20. On September 26, 2016, an insurance coverage declaratory action commenced in the United States District Court for the Middle District of Florida, in which certain insurance carriers sought a declaration that they have no duty to defend or indemnify 21st Century against claims resulting from the Data Breach ("Declaratory Action") (*The Charter Oak Fire Ins. Co., et al. v. 21st Century Oncology Investments, LLC, et al.*, Case No. 8:17-cv-00582).

21. On May 25, 2017, after the Parties argued and submitted additional supplemental briefing to the Court on Defendants' motion to dismiss, but before the Court issued its order, Defendant 21st Century Oncology Investments, LLC and other 21st Century entities ("21st Century Bankruptcy Entities") filed for voluntary bankruptcy relief under Chapter 11 of the United States Bankruptcy Code, thereby automatically staying the Data Breach Action and the Declaratory Action.

22. Plaintiffs hired Lowenstein Sandler LLP as bankruptcy counsel to advocate for the Class in the Bankruptcy Action, filed proofs of claim on behalf of each of the Plaintiffs and other members of the Class, opposed the Debtor's motion to disallow these proofs of claim, and moved for class certification under Bankruptcy Rule 7023, or, in the alternative, relief from the automatic stay to proceed with the underlying litigation.

23. On November 20, 2017, following extensive, multi-week negotiations, Plaintiffs reached an agreement with the 21st Century Bankruptcy Entities whereby, *inter alia*, the automatic stay would be lifted to allow the Data Breach Action and Declaratory Action to proceed, subject to (1) Plaintiffs' agreement to limit any monetary recovery to certain insurance policies; and (2) 21st Century Bankruptcy Entities' agreement to assign 21st Century Bankruptcy Entities' rights to seek and receive coverage under these policies to Plaintiffs. The bankruptcy court approved this agreement on December 11, 2017. (*Bankruptcy Action*, ECF No. 825-1.)

**ADDITIONAL DISCOVERY, OUTCOME OF 21ST CENTURY'S MOTION
TO DISMISS, AND SETTLEMENT NEGOTIATIONS**

24. On February 13, 2018, this Court held a Status Conference with parties from the Data Breach Action and the Declaratory Action. The Court ordered the parties to promptly engage in mediation following the Status Conference, to file a written notice advising the Court of the outcome of the mediation within seven days of the mediation, and, in the event that the mediation fails to resolve matters, the Court would enter a schedule for the Data Breach Action and Declaratory Action. (ECF No. 175.) Following the submission of mediation briefs and several calls with mediator Rodney A. Max, Esq., the Parties attended mediation on April 26, 2018, which was unsuccessful.

25. Following additional Court-ordered discovery, including an FRCP 30(b)(6) deposition of 21st Century's corporate designee, Plaintiffs filed their Amended Consolidated Class Action Complaint on July 30, 2018. (ECF No. 191.) Following additional supplemental briefing by the Parties (ECF Nos. 195, 199), the Court issued its order denying 21st Century's motion to dismiss the Complaint on March 3, 2019, holding that Plaintiffs sufficiently alleged an Article III injury in fact based on an increased risk of identity theft. (ECF No. 207.) The Court also held that Plaintiffs sufficiently alleged an injury in fact based on the time and money they spent protecting themselves from the increased risk of identity theft. The Court also denied 21st Century's motion to dismiss for failure to state a claim. On April 1, 2019, 21st Century answered the Complaint. (ECF No. 209.)

26. On April 3, 2019, Plaintiffs and 21st Century filed a joint motion to stay the proceeding pending mediation and a determination on the duty to defend in the Declaratory Action. (ECF No. 210.) The Court then issued an order on May 3, 2019, staying the Data Breach Action for ninety-days to allow for mediation, but denied staying the proceeding pending a decision on the duty to defend in the Declaratory Action. (ECF No. 214.) Motions for Summary Judgment were filed and fully briefed by both parties in the Declaratory Action in June and July 2019. (ECF Nos. 137-145.) The Court also proposed the Honorable Layn Phillips (Ret.) of Phillips ADR as the mediator and ordered that a mediation report be filed within seven days of mediation. The Parties engaged in vigorous arm's length settlement negotiations before Judge Phillips and neutral Michelle Yoshida of Phillips ADR, including two in-person private mediation sessions on August 9, 2019 and October 17, 2019, as well as subsequent discussions with the mediators. The Parties reached an agreement to resolve the Data Breach and Declaratory Actions. On April 14, 2020, following months of additional discussion on the terms of the agreement, the Parties memorialized their agreement in a Memorandum of Understanding and filed a Joint Status Report with the Court. (ECF No. 234.) In addition, on August 12, 2020, the parties in the Declaratory Action signed a Settlement and Release Agreement to resolve the claims in the Declaratory Action.

27. The Settlement represents the result of months of arm's-length, informed, and adversarial negotiations between Plaintiffs and 21st Century through their counsel, both directly between the Parties and in consultation with Judge Phillips and

Michelle Yoshida. In the context of these negotiations, Plaintiffs' Counsel carefully considered the merits and risks of litigating compared to settling and applied their extensive knowledge of the applicable facts, legal theories, and defenses. Plaintiffs' Counsel were fully prepared to proceed with the litigation rather than accepting a settlement that was not in the best interests of the Settlement Class. The time that it took to work out significant details of the Settlement, the hard-fought disagreements between the Parties, and the vigorous negotiations facilitated by the mediators demonstrate that the proposed Settlement is the product of arm's-length and heavily-disputed negotiations. The Parties did not negotiate attorneys' fees and costs or Service Awards until after they had agreed upon all substantive elements of the Settlement.

28. Since the parties attended the first mediation, including after an agreement in principal was reached, Class Counsel obtained numerous bids from and negotiated with third-party administrators and credit monitoring and insurance providers to get the most benefits and the best deal for the Class. After soliciting competing bids in an effort to achieve the best deal for the class for administration of the Settlement, Class Counsel negotiated an agreement with Angeion Group ("Angeion"), under which Angeion agrees to cap its fees and costs to no more than \$1.148 million regardless of the claim filing rate. These figures include all costs associated with class member data management, legal notification, telephone support, claims administration, and disbursements and tax reporting, and providing other services necessary to implement the Settlement. Class Counsel also solicited competing bids from providers of credit monitoring and insurance providers,

ultimately negotiating for Identity Guard to provide the Settlement's Credit Monitoring and Insurance Services at a cost of \$517,000, with an option to purchase additional months of its services at a rate of \$24,000 per month for all Class Members electing to receive that benefit to be paid with any residual funds.

29. Class Counsel prepared and filed the Settlement and Motion for Preliminary Approval (ECF Nos. 242-247), which the Court granted on November 2, 2020 (ECF No. 249, the "Preliminary Approval Order").

30. Since then, Class Counsel worked with Angeion to ensure the notice and claims process went smoothly for the Class Members. Class Counsel revised the website to make sure it was correct and user-friendly, reviewed weekly reports from and conferred with Angeion about the claims process, and responded to inquiries from Class Members.

31. Class Counsel will continue to expend significant efforts to communicate with Class Members, ensure that the offered benefits are received by Class Members, and respond to any objections that may be filed, including potential appeals.

32. Plaintiffs and their counsel have incurred significant costs and risks, working tirelessly to prosecute the claims against 21st Century. Plaintiffs' Counsel have adequately and vigorously represented Plaintiffs and the proposed Settlement Class, have performed extensive work in identifying and investigating the claims at issue in this action, have successfully overcome a motion to dismiss, and have engaged in more than two years of settlement negotiations, successfully negotiating a robust settlement that provides significant relief to the Settlement Class. Plaintiffs' Counsel

have committed their full resources to representing Plaintiffs and the Settlement Class, and will continue that commitment in resolving this case and administering the Settlement.

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

Executed this 10th day of February 2021, at Newport Beach, California.



Daniel S. Robinson

CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2021, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

Dated: February 10, 2021

By: Daniel S. Robinson
Daniel S. Robinson