

**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 CARI CAMPEN LAUFENBERG IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES, COSTS,
AND SERVICE AWARDS**

1. I, Cari Campen Laufenberg, declare as follows:

2. I am a member in good standing of the State Bar of Washington and am admitted to practice in this Court. I am a Partner of the law firm Keller Rohrback L.L.P. This Declaration is made in support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs, and Service Awards and is submitted in support of the time and expenses reported by my firm, Keller Rohrback. I have personal knowledge of the matters set forth herein and could competently testify thereto.

3. I was appointed by the Court as Interim Co-Lead Counsel for Plaintiffs and Class Counsel for the Settlement Class¹ in this matter. ECF No. 79 at 1; ECF No. 80 at 2-4; ECF No. 249 at 4.

4. 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, ultimately resulting in 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,

¹ Unless otherwise noted, all capitalized terms are defined in the Settlement Agreement, which is attached as Exhibit 1 to the Declaration of Daniel S. Robinson in Support of Motion for Preliminary Approval of Class Action Settlement ("Robinson MPA Declaration"), ECF No. 243.

and will continue that commitment in resolving this case and administering the Settlement.

Total Time and Lodestar

5. Over more than four years of heavily-contested litigation, Plaintiffs' Counsel devoted more than 11,491 hours to securing this relief, from appointment through January 31, 2021.

6. This time included researching, drafting, and amending the consolidated complaint; briefing and oral argument in support of Plaintiffs' opposition to 21st Century's motion to dismiss; conducting Court-ordered discovery and a Rule 30(b)(6) deposition of 21st Century's corporate designee; regularly communicating with named Plaintiffs to keep them updated as to case status and next steps; pursuing claims on behalf of Settlement Class Members in the Bankruptcy Action and reaching a settlement agreement with the 21st Century Bankruptcy Entities through which Plaintiffs were able to continue litigating the Data Breach Action; pursuing the interests of Settlement Class members in the Declaratory Action, including filing and opposing cross motions for summary judgment; and negotiating a favorable settlement for the Class over the course of two years, including three mediation sessions with two independent mediators.

7. In my experience, many of these tasks are typical of this sort of litigation, and all were necessary to the successful prosecution and resolution of Plaintiffs' claims.

8. Class Counsel requests that the Court award \$3,750,000 for attorneys' fees and costs, in accordance with the terms of the Settlement reached between Plaintiffs and 21st Century. I believe that the requested fees are appropriate in light of the risks faced and the results achieved for the Settlement Class.

9. The requested fees, net of costs, are \$3,443,535.54, which represents a negative multiplier of 59.77% of the fees Plaintiffs' Counsel actually incurred in this matter, reflected in a lodestar of \$5,760,993.00.

10. As set forth below, Plaintiffs' Counsel have submitted affidavits describing the hours reasonably incurred in this litigation, which are attached hereto as **Exhibit D**.

11. Class Counsel is prepared to submit for *in camera* review Plaintiffs' Counsel's detailed time records, consisting of contemporaneous logs, with separate entries for the hours spent on specific tasks, indicating who performed the work, giving a description of the task, and the timekeeper's hourly rate.

12. Class Counsel also requests that the Court award \$306,464.46 as reimbursement for Plaintiffs' Counsel's reasonable expenses, which were necessary in relation to this litigation and were submitted, vetted and approved pursuant to Interim Co-Lead Counsel's comprehensive time and expense billing protocol and the Court's Order. *See* ECF No. 80 at 3; ECF No. 81 at 1-2; ECF No. 92 at 15-16.

13. As set forth below, Plaintiffs’ Counsel have submitted affidavits describing the expenses reasonably incurred in this litigation, which are attached hereto as **Exhibit D**.

14. Class Counsel is prepared to submit for *in camera* review Plaintiffs’ Counsel’s detailed records of the expenses reasonably incurred in this litigation.

Attorneys’ Fees and Expenses

15. As Interim Co-Lead Counsel, Daniel Robinson of Robinson Calcagnie, Inc. and I, in coordination with Co-Liaison Counsel, Robert C. Gilbert of Kopelowitz Ostrow Ferguson Weiselberg Gilbert, prepared a comprehensive time and expense billing protocol and reporting forms (ECF No. 92 at 15-16; *see also* ECF No. 79 at 2; ECF No. 80 at 3; ECF No. 81 at 1-2) requiring firms to submit monthly billing statements regarding time spent and expenses incurred in this litigation. These billing statements required that any time reported be specifically described and assigned to a discreet category of work (such as Pre-Trial Pleadings and Motions, Case Analysis/Strategy, or Document Production and Review).

16. As part of this time and expense billing protocol, Interim Co-Lead Counsel adopted the following schedule of hourly rates to be utilized by all those who have performed authorized work in this litigation:

Partners	Standard hourly rate not to exceed \$675.00
Of Counsel	Standard hourly rate not to exceed \$500.00
Associates	Standard hourly rate not to exceed \$400.00
Paralegals	Standard hourly rate not to exceed \$175.00

ECF No. 92 at 16. Further, although not specified by the schedule of hourly rates set forth in ECF No. 92, Class Counsel has also limited the hourly rates of contract attorneys not to exceed \$175.00. In my judgment, this schedule of hourly rates was conservative at the time it was established more than four years ago, and these rates are likely to be significantly lower than the hourly rates currently charged by Plaintiffs' Counsel and approved by courts in other matters, and also lower than or comparable to the hourly rates charged by other law firms involved in similar complex litigation.

17. Class Counsel took measures to litigate this case efficiently. As Interim Co-Lead Counsel, Mr. Robinson and I oversaw and directed the work of all Plaintiffs' Counsel to ensure efficiency, lack of duplication, and to limit the lodestar to the extent possible. We achieved this by assigning discreet tasks to attorneys and ensuring that no two attorneys were performing work on the same task, eliminating overlap and catch-up work as much as possible. We also worked to divide discovery tasks among the firms as much as possible. Moreover, whenever possible, partners assigned tasks to associate level attorneys and to paralegals who bill at lower hourly rates, or to other employees whose time Class Counsel does not seek to recover.

18. Class Counsel also communicated proactively among firms to ensure that no duplicate work would occur. Throughout the litigation, Mr. Robinson and I sought to reach consensus with each other to manage the administration and work division in this case in a systematic and efficient manner with members of the Plaintiffs' Steering Committee and other Plaintiffs' Counsel, coordinating work assignments

through conference calls, working to avoid duplication of efforts or unnecessary work undertaken by Plaintiffs' Counsel, and ensuring that the skills and talents of counsel were put to use in an efficient and effective manner that maximized what each firm and attorney could contribute in a non-redundant way.

19. In anticipation of the filing of the fee motion, Class Counsel retained attorney and expert John A. Yanchunis of Morgan & Morgan, P.A. to perform a review and evaluation of the timesheets and expense reports. Class Counsel also asked Mr. Yanchunis to identify potential issues or concerns with respect to the attorneys' fees and costs they seek.

20. Before submitting this declaration, Class Counsel reviewed Plaintiffs' Counsel's time reports to ensure that the lodestar did not include hours that were excessive, redundant, or otherwise unnecessary.

21. Based on discussions Class Counsel had with Mr. Yanchunis, Mr. Robinson and I oversaw the implementation of the following guidelines across all time and expense submissions:

- Confirming billing rates are consistent with the schedule of hourly rates;
- Ensuring pre-appointment time and expenses were not included;
- Ensuring all time reported was authorized by Interim Co-Lead Counsel;
- Ensuring that hotel and meal expenses were consistent with applicable U.S. General Services Administration rates;

- Removing *de minimis* billers with fewer than 10 hours (except for two Plaintiffs' Steering Committee members with fewer than 10 hours); and
- Ensuring that no excessive or duplicative billing was included.

22. Mr. Robinson and I have reviewed all time and expense submissions from firms seeking a fee award and reimbursement of expenses to ensure these guidelines were followed and to make additional reductions where appropriate.

23. Based on my review of the materials described above as well as my extensive experience with comparable class action cases, the number of hours expended by Plaintiffs' Counsel in the Litigation are commensurate with a case of this scope, complexity, and duration.

24. Based on my review of the expense submissions of Plaintiffs' Counsel, the expense submissions presented here are consistent with expenses I would expect given the tasks that were performed as well as the duration, complexity, and intensity of this case, and were reasonably necessary for the continued prosecution and resolution of this Litigation.

The Data Breach Action

25. Litigating this case to a successful resolution required substantial commitments of time and resources from Plaintiffs' Counsel.

26. A significant amount of Plaintiffs' Counsel's time was spent researching, drafting, and amending a robust complaint against 21st Century. Following 21st Century's announcement of the Data Breach in March 2016, thirteen actions were

filed in the Middle District of Florida, two actions in the Northern District of California, one action in the Central District of California, as well as additional actions filed in state courts.

27. 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.

28. On November 16, 2016, the Court 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 Co-Liaison Counsel; Kent G. Whittemore of The Whittemore Law Group, P.A., as Local Counsel; and a Steering Committee. ECF No. 79; ECF No. 80. The members of the Steering Committee are Matthew B. George of Kaplan Fox & Kilsheimer LLP, Kenneth G. Gilman of Gilman Law, LLP, Thomas V. Girardi of Girardi | Keese, Eric A. Grover of Keller Grover LLP, Julie Braman Kane of Colson Hicks Eidson, P.A., Steven S. Maher of The Maher Law Firm, PA, Charles PT Phoenix of Rhodes Tucker, and Linh Vuong of Girard Gibbs LLP (for whom Daniel C. Girard of Girard Sharp LLP was later substituted). *Id.*; ECF No. 134.

29. Plaintiffs' Counsel communicated with and vetted Plaintiffs, evaluated potential causes of actions, and filed a Consolidated Class Action Complaint on January 17, 2017, 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.

30. Plaintiffs' Counsel spent substantial time successfully opposing 21st Century's motion to dismiss the complaint, which ultimately laid the groundwork for settlement negotiations. On February 21, 2017, 21st Century moved to dismiss the Complaint. ECF No. 116. Plaintiffs' Counsel expended significant time researching and drafting the opposition brief, which Plaintiffs filed on April 21, 2017. ECF No. 142. At the motion to dismiss hearing on May 16, 2017, the Court ordered supplemental briefing on the issue of damages, and Plaintiffs' Counsel researched and drafted a supplemental opposition brief, which was filed on May 22, 2017. ECF No. 156.

The Bankruptcy Action

31. Plaintiffs' Counsel and Class Representatives devoted considerable time and resources pursuing the interests of Settlement Class Members in the Bankruptcy Action. On May 25, 2017, after the Parties submitted additional supplemental briefing on the motion to dismiss, but before the Court had issued its Order, the 21st Century Bankruptcy Entities initiated the Bankruptcy Action, thereby automatically staying the Data Breach Action and the Declaratory Action. ECF Nos. 158-159.

32. Plaintiffs hired Lowenstein Sandler LLP as bankruptcy counsel to advocate for the Class in the Bankruptcy Action, who filed individual proofs of claim on behalf of each of the Plaintiffs and Settlement Class Members in coordination with Plaintiffs' Counsel, opposed the Debtor's motion to disallow these proofs of claim, and moved for class certification under Bankruptcy Rule 7023, or, in the alternative, sought relief from the automatic stay to proceed with the underlying litigation to the extent of available insurance. *Bankruptcy Action*, ECF No. 503.

33. On November 20, 2017, following extensive multi-week negotiations, Plaintiffs reached an agreement with the 21st Century Bankruptcy Entities ("Bankruptcy Settlement") whereby, *inter alia*, the automatic stay would be lifted to allow the Actions to proceed, subject to (1) Plaintiffs' agreement to limit any monetary recovery to certain insurance policies; and (2) the 21st Century Bankruptcy Entities' agreement to assign the rights to seek and receive coverage under these policies to Plaintiffs, which the bankruptcy court approved on December 11, 2017. *Bankruptcy Action*, ECF No. 825-1. On account of the Bankruptcy Settlement, if this case proceeded to trial, Plaintiffs' ultimate recovery would be limited to that of available insurance, because of which, the maximum amount that Plaintiffs could obtain as damages would be less than \$32 million. *See* Status Conference Tr. at 10:9-24, Feb. 13, 2018 (as of February 13, 2018, the available policy limits on one of the insurance policies was "between 1.5 and 1.7" million dollars); *Declaratory Action* ECF Nos. 128-

2 at 19, 128-3 at 21, 128-4 at 3 (each of the disputed policies in the Declaratory Action had policy limits of \$10 million, for a total of \$30 million).

34. After the automatic stay of the Data Breach Action was lifted, Plaintiffs then took additional Court-ordered discovery, including a 30(b)(6) deposition of 21st Century's corporate designee, and filed their Amended Consolidated Class Action Complaint on July 30, 2018. ECF No. 191. Following additional supplemental briefing (ECF Nos. 195, 199), the Court denied 21st Century's motion to dismiss on March 3, 2019, holding that Plaintiffs sufficiently alleged an Article III injury in fact. ECF No. 207.

The Declaratory Action

35. Plaintiffs' Counsel's zealous advocacy in the Declaratory Action was also essential to obtaining meaningful relief for Settlement Class Members. Through the Bankruptcy Settlement, the named Plaintiffs obtained an assignment of rights to 21st Century's interest in the insurance policies at issue in the Declaratory Action. *Bankruptcy Action*, ECF No. 825-1. Plaintiffs' Counsel vigorously represented the interests of named Plaintiffs (who were named as defendants in the Declaratory Action) as well as 21st Century in the Declaratory Action, answering the complaint, asserting counterclaims, and briefing opposing cross motions for summary judgment, resolution of which was pending when the Parties agreed to settle. *Declaratory Action* ECF Nos. 130-145.

Settlement and Administration

36. On February 13, 2018, this Court held a Status Conference with parties from the Data Breach and Declaratory Actions. The Court ordered the parties to engage in mediation following the Status Conference and to file a written notice advising of the outcome of the mediation within seven days of the mediation. ECF No. 175. In advance of the mediation, Plaintiffs' Counsel submitted mediation materials which included a lengthy mediation brief and a detailed settlement proposal, which required many hours of legal research, drafting, and consultation. Class Counsel also sought estimates for class notice and administration costs from several potential settlement administrators. On April 26, 2018, the Parties attended mediation with mediator Rodney A. Max, Esq., which was ultimately unsuccessful.

37. On April 3, 2019, Plaintiffs and 21st Century filed a joint motion to stay the Data Breach Action pending mediation and a determination on the duty to defend in the Declaratory Action. ECF No. 210. The Court 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. The Court also proposed Hon. Layn Phillips (Ret.) of Phillips ADR as mediator and ordered that a mediation report be filed within seven days of mediation. ECF No. 214.

38. In advance of mediation with Judge Phillips, Class Counsel submitted updated mediation materials including a lengthy mediation brief and a detailed

settlement proposal, which required many hours of legal research, drafting, and consultation. Class Counsel also sought updated estimates for class notice costs from several potential settlement administrators as well as bids from several service providers to ensure that Settlement Class Members received a superior credit monitoring and identity-theft protection product.

39. The Parties engaged in vigorous arm's-length settlement negotiations before Judge Phillips and Michelle Yoshida of Phillips ADR, including in-person private mediation sessions on August 9, 2019 and October 17, 2019. Over the course of mediation, Plaintiffs' Counsel spent many hours strategizing further negotiations, considering revised settlement provisions, and negotiating with counsel for 21st Century. The Parties ultimately reached an agreement in principle to resolve the Data Breach and Declaratory Actions.

40. After the essential terms of the Settlement had been determined, the Parties engaged in further challenging negotiations but ultimately memorialized their agreement in a Memorandum of Understanding and filed a Joint Status Report with the Court regarding the agreement on April 14, 2020. 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.

41. 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.

42. Plaintiffs’ Counsel then spent significant time researching and drafting the motion for preliminary approval and materials in support thereof, including declarations in support of the motion from Class Counsel and named Plaintiffs. At the same time, Plaintiffs’ Counsel engaged in further challenging negotiations with counsel in the Data Breach and Declaratory Actions to finalize the settlement agreements in those matters. Class Counsel also reviewed draft materials from the Settlement Administrator, including the short-form notice, long-form notice, and

claim form. Plaintiffs filed the preliminary approval motion on August 12, 2020. ECF No. 242.

43. Once the motion for preliminary approval had been filed, Class Counsel began receiving and responding to inquiries from interested putative class members. These inquiries increased when the Settlement Administrator issued the notice following the grant of preliminary approval. To date, Class Counsel has responded to numerous inquiries by telephone and email from Settlement Class members.

44. Since this Court granted preliminary approval of the Settlement on November 2, 2020, ECF No. 249, Class Counsel has worked with Angeion, the Court-appointed Settlement Administrator, to ensure that the notice and claims processes proceed smoothly. Class Counsel worked with Angeion to finalize the claim form and notice materials as well as drafting and editing the website content, frequently asked questions, and IVR script for the toll-free number.

45. Class Counsel has also researched and drafted the motion for final approval of the Settlement and materials in support thereof.

46. The Settlement represents the result 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. The Parties did not negotiate attorneys' fees and costs nor the Plaintiffs' service awards until after the Parties had agreed upon all substantive elements of the Settlement. The time that it took to resolve significant details of the Settlement and the

hard-fought disagreements between the Parties demonstrate that the proposed Settlement is the product of arm's-length and heavily disputed negotiations.

47. Class Counsel will continue to expend time and effort to ensure that Settlement Class Members are able to file claims and receive benefits from the Settlement, although the fees requested do not include the significant time that is likely to be expended on these future efforts.

Keller Rohrback's Time and Lodestar

48. Keller Rohrback L.L.P.: The individuals of Keller Rohrback who worked on this matter are listed in **Exhibit A**, along with years in practice, hourly rates, hours spent from November 15, 2016 through January 31, 2021, and total lodestar. I hereby attest that the billing rates used on the attached **Exhibit A** conform to or are significantly lower than the professional rates at Keller Rohrback at the time the work was performed, subject to the schedule of hourly rates set by Co-Lead Counsel in this matter. *See* ECF No. 92 at 15-16. As set forth below, further detail regarding the litigation and trial experience of our professionals can be found in Keller Rohrback's resume attached hereto as **Exhibit C**.

49. The detailed descriptions of the time spent by the attorneys and other professionals of Keller Rohrback in this litigation were prepared from contemporaneous, daily time records prepared and maintained by Keller Rohrback and submitted, vetted, and approved by the Class Counsel pursuant to the comprehensive time and expense billing protocol and reporting forms disseminated to

all Plaintiffs' Counsel (ECF No. 92 at 15-16) and the Court's Order (ECF No. 80 at 3; ECF No. 81 at 1-2). Detailed time records, consisting of contemporaneous logs, with separate entries for the hours spent on specific tasks, indicating who performed the work and giving a description of the task, are available for the Court's review should the Court desire such records.

Keller Rohrback's Total Hours and Total Lodestar

50. From November 15, 2016 through January 31, 2021, my firm spent more than 5,072.1 hours to successfully prosecute and resolve Plaintiffs' claims.

51. This time included researching, drafting, and amending the consolidated complaint; briefing and oral argument in support of Plaintiffs' opposition to 21st Century's motion to dismiss; conducting Court-ordered discovery and a Rule 30(b)(6) deposition of 21st Century's corporate designee; regularly communicating with named Plaintiffs to keep them updated as to case status and next steps; pursuing claims on behalf of Settlement Class Members in the Bankruptcy Action and reaching a settlement agreement with 21st Century Bankruptcy Entities through which Plaintiffs were able to continue litigating the Data Breach Action; pursuing the interests of Settlement Class Members in the Declaratory Action, including filing and opposing cross motions for summary judgment; and in negotiating a favorable settlement for the class over the course of two years, including three mediation sessions with two independent mediators.

52. Keller Rohrback's total hours figure does not include time spent on the Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs, and Service Awards nor on further claims administration, time which Keller Rohrback has not included in its submission.

53. The total lodestar for Keller Rohrback is \$2,464,116.50.

54. Keller Rohrback bases its rates upon the experience and skill of the attorney or paralegal performing the work. Keller Rohrback sets rates through periodic review of the rates charged by other law firms involved in similar complex litigation, after a thorough review of costs, prevailing rates, and other market indicia, and are subject to annual review and increases. The rates sought herein are the same as or less than rates used by Keller Rohrback in comparable class actions and other complex litigation, and are the same as, comparable to, or less than rates submitted by Keller Rohrback and accepted by other courts in other complex class actions for purposes of determining a reasonable fee under the lodestar method. *See, e.g.*, Order Granting Class Counsel's Motion for Attorneys' Fees, Reimbursement of Expenses & Plaintiffs' Service Awards ¶ 3, *Beach v. JPMorgan Chase Bank*, No. 17-cv-563 (S.D.N.Y. Oct. 7, 2020), ECF No. 232 (awarding then-current attorneys' rates between \$400 and \$1035); Final Judgment & Approving Class Action Settlement at 15, *Spires v. Schools*, No. 16-616 (D.S.C. Sept. 5, 2018), ECF No. 152 (awarding then-current attorneys' rates between \$230 and \$940); *Glaberson v. Comcast Corp.*, No. CV 03-6604, 2015 WL 5582251, at *15 (E.D. Pa. Sept. 22, 2015) (approving Keller Rohrback L.L.P.'s then-

current attorneys' rates); *Pelletz v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1326–28 (W.D. Wash. 2009) (same); *In re Polaroid*, No. 03 CIV. 8335 (WHP), 2007 WL 2116398, at *3 (S.D.N.Y. July 19, 2007) (same); *In re WorldCom, Inc. ERISA Litig.*, No. 02 CIV. 4816 (DLC), 2004 WL 2338151, at *8 (S.D.N.Y. Oct. 18, 2004) (same).

55. Keller Rohrback's hourly rates sought herein are on par with or less than the hourly rates sought in litigation by other plaintiffs' firms handling multistate data-breach class actions.

56. Before submitting this declaration, I reviewed Keller Rohrback's time reports to ensure that the lodestar did not include hours that were excessive, redundant, or otherwise unnecessary.

57. Keller Rohrback litigated this case on a purely contingent basis and has yet to be compensated for their success in achieving comprehensive relief for the Settlement Class despite 21st Century's vigorous defenses, the challenges of the Bankruptcy Action, and the insurance coverage dispute in the Declaratory Action.

Keller Rohrback 's Costs and Expenses

58. Attached hereto as **Exhibit B** is an itemized description of expenses/charges ("expenses") totaling \$135,955.87, which were necessary in relation to this Litigation and submitted, vetted and approved pursuant to Interim Co-Lead Counsel's comprehensive time and expense billing protocol and the Court's Order. *See* ECF No. 80 at 3; 81 at 1-2; ECF No. 92 at 15-16. Keller Rohrback advanced these reasonable expenses, knowing that if our efforts were unsuccessful, we would not

receive payment or other reimbursement for these expenses. The expenses pertaining to this Litigation are reflected in the books and records of Keller Rohrback. These books and records are prepared from expense vouchers, check records, and other documents and are an accurate record of the expenses.

59. These costs are attributable to ordinary and necessary costs such as filing fees, expert fees, document organization, travel, and engaging a mediator.

60. Mr. Robinson and I have reviewed these costs to ensure that they are not excessive or unnecessary.

Keller Rohrback's Experience

61. Successfully resolving the present case required an understanding of the complex, technical subject matter of data security, industry best practices, and the mechanisms of a data breach, particularly in the healthcare context. Similarly, an understanding of large class actions was essential to developing damages theories appropriate to this litigation.

62. I and my firm have extensive experience in consumer class-action litigation, including data privacy litigation, as set forth in my firm's current resume, a true and correct copy of which is attached hereto as **Exhibit C**.

63. I have been appointed to numerous leadership positions in federal courts across the country, including serving as Plaintiff's Interim Lead Class Counsel in *In re EpiPen ERISA Litigation* in the District of Minnesota and as an appointed member of leadership committees including: *In Re: Experian Data Breach Litigation* in the Central

District of California, *In Re: VTech Data Breach Litigation*, in the Northern District of Illinois, Eastern Division, and *In Re: 100% Grated Parmesan Cheese Marketing and Sales Practices Litigation*, also in the Northern District of Illinois, Eastern Division.

64. I am counsel for Plaintiffs in *Fox v. Iowa Health System*, No. 18-CV-00327JLP (W.D. Wis.), an action against Iowa Health System (UnityPoint Health) on behalf of approximately 1.4 million individuals in Wisconsin, Iowa, and Illinois, whose protected health information was compromised as a result of data breaches that occurred on at least two separate occasions between November 2017 and March 2018. The parties have reached a settlement, which the court has preliminarily approved, and the final fairness hearing is scheduled for February 19, 2021.

65. My firm also has served as lead counsel, co-lead counsel, or in leadership roles in other data privacy litigation as well as many other types of consumer class-action litigation. For example, I was one of the key attorneys fulfilling Keller Rohrback's duties as Co-Lead Counsel in *Corona v. Sony Pictures Entertainment, Inc.*, No. 14-9600 (C.D. Cal.), where plaintiffs successfully recovered important injunctive and monetary relief.

66. My Co-Lead Counsel, Daniel S. Robinson of Robinson Calcagnie, Inc., also has significant experience leading data breach consumer class action lawsuits, as set forth in his Declaration filed herewith.

Plaintiffs' Counsel's Declarations

67. Attached hereto as **Exhibit D** are declarations from Plaintiffs' Counsel describing the hours and expenses they reasonably incurred in this litigation as well as their experience in consumer class-action litigation, including copies of their firms' current resumes.

A. Attached hereto as **Exhibit D.1** is the Declaration of Aaron Brody in Support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs and Service Awards.

B. Attached hereto as **Exhibit D.2** is the Declaration of Joshua H. Eggatz in Support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs and Service Awards.

C. Attached hereto as **Exhibit D.3** is the Declaration of Michael S. Etkin in Support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs and Service Awards.

D. Attached hereto as **Exhibit D.4** is the Declaration of Neil B. Fineman in Support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs and Service Awards.

E. Attached hereto as **Exhibit D.5** is the Declaration of Matthew B. George in Support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs and Service Awards.

F. Attached hereto as **Exhibit D.6** is the Declaration of Robert C. Gilbert in Support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs and Service Awards.

G. Attached hereto as **Exhibit D.7** is the Declaration of Daniel C. Girard in Support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs and Service Awards.

H. Attached hereto as **Exhibit D.8** is the Declaration of Mark S. Goldman in Support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs and Service Awards.

I. Attached hereto as **Exhibit D.9** is the Declaration of Eric A. Grover in Support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs and Service Awards.

J. Attached hereto as **Exhibit D.10** is the Declaration of Julie Braman Kane in Support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs and Service Awards.

K. Attached hereto as **Exhibit D.11** is the Declaration of Steven R. Maher in Support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs and Service Awards.

L. Attached hereto as **Exhibit D.12** is the Declaration of Charles PT Phoenix in Support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs and Service Awards.

M. Attached hereto as **Exhibit D.13** is the Declaration of Jody Westbrook Flowers in Support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs and Service Awards.

N. Attached hereto as **Exhibit D.14** is the Declaration of Kent G. Whittemore in Support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs and Service Awards.

Service Awards

68. Class Counsel also requests that the Court approve service awards of \$2,500 to each of the fourteen (14) named Plaintiffs and Class Representatives, or the executors of their estates, to compensate for the time and effort they spent representing the best interests of the Settlement Class. Although modest, the service awards recognize the significant contributions of the named Plaintiffs to this Litigation, the Bankruptcy Action, and the Declaratory Action, which were essential to procuring this Settlement.

69. Throughout the Action, named Plaintiffs and Class Representatives diligently represented and pursued the interests of the Settlement Class. Class Representatives provided extensive information regarding the harms they suffered as a result of the Data Breach, including providing all necessary paperwork and documents. The proposed Class Representatives also remained in contact with Plaintiffs' Counsel throughout the Litigation, promptly responding to our inquiries for further information and communicating with Plaintiffs' Counsel to keep up to date on

the status of the Litigation. Each of the proposed Class Representatives also communicated with Plaintiffs' Counsel regarding the terms of the Settlement and reviewed the Settlement Agreement. *See* Exhibit 1 to the Declaration of Cari Campen Laufenberg in Support of Motion for Preliminary Approval of Class Action Settlement, ECF No. 244.

Settlement Value & Claims Rate

70. The Settlement Value includes not only the \$7.85 million non-reversionary Settlement Fund, but also the retail value to the Settlement Class of the Credit Monitoring and Insurance Services. The Credit Monitoring and Insurance Services retail to the general public for \$19.99 per month, or \$16.67 per month if purchased annually. *See Total Plan, Identity Guard*, <https://www.identityguard.com/plans/total> (last visited February 10, 2021). As such, the value of these services to the Settlement Class is at least \$8,632,022.06 for every 1% of Class Members that elect to receive this benefit, before excluding the cost of the Credit Monitoring and Insurance Services.

71. As of February 10, 2021—within 30 days of the January 8, 2021 Notice Date—a total of 33,800 claims have been received. This amounts to a response rate of 1.6% of the over 2 million Class Members, to date. Of the 33,800 claims that have been submitted, 12,263 have been reviewed, of which 9,042 or 73.7% include a claim for Credit Monitoring and Insurance Services (approximately 0.4% of the Settlement Class). Since not all of the submitted claims have yet been reviewed, based on the fact

that 73.7% of claims that have been reviewed include a claim for Credit Monitoring and Insurance Services, claims for Credit Monitoring and Insurance Services are 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. Moreover, as approximately three quarters of the claims period remains for claims to be submitted by the May 10, 2021 Claims Deadline, the number of claims for Credit Monitoring and Insurance Services is likely to increase significantly beyond the number of claims received to date.

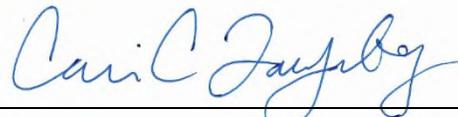
72. Based on my experience and research with respect to other similar data breach settlements, including as set forth below, a one percent (1%) claims rate is consistent with or lower than the claims rates in similar data breach settlements, including *In re: Banner Health Data Breach Litigation*, No. 16-cv-02696-SRB, ECF No. 195 at 1 (D. Ariz. 2019), in which the claims rate to date is greater than or equal to approximately 1.3%; *In re: Anthem, Inc. Data Breach Litigation*, No. 15-md-02617-LHK, ECF No. 1007 at 4 (N.D. Cal. 2017), in which the claims rate was approximately 1.7%; and *In re: Experian Data Breach Litigation*, No. 15-cv-01592AG, ECF No. 309 at 17 (C.D. Cal. 2018), in which the claims rate was greater than or equal to approximately 2.91%. *See* Robinson MPA Decl. Ex. 1.

73. Accordingly, after taking into account the \$517,000 cost of the Credit Monitoring and Insurance Services, the retail value of the Credit Monitoring and Insurance Services will significantly exceed \$8,115,022.06, based on the conservative

estimate that the claims for Credit Monitoring and Insurance Services are likely to exceed 1% of the Settlement Class. Based on this conservative estimate of the value of the Credit Monitoring and Insurance Services, taken together with the \$7.85 million non-reversionary Settlement Fund, the monetary value of the Settlement Benefits is likely to significantly exceed \$15,965,022.06.

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

Executed this 10th day of February, 2021 at Seattle, Washington.



Cari Campen Laufenberg