

CAUSE NO. 202161470

ARTHUR DEKENIPP,	:	IN THE DISTRICT COURT OF
individually and on behalf of all others	:	
similarly situated,	:	
	:	
	:	
Plaintiff,	:	
	:	HARRIS COUNTY, TEXAS
v.	:	
	:	
GASTROENTEROLOGY CONSULTANTS, P.A.,	:	
	:	
Defendant.	:	295TH JUDICIAL DISTRICT
_____	:	

I, Gary E. Mason, being competent to testify, make the following declaration:

1. I am currently a partner of the law firm Mason LLP. I am appointed Class Counsel for the Settlement Class, and submit this declaration in support of Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Service Awards. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

**Counsel Qualifications**

2. Myself, as well as the other attorneys at Mason LLP have substantial experience handling consumer class actions, including data breach cases, as well as other complex litigation. The firm’s attorneys have represented plaintiffs in more than 100 class action lawsuits in state and federal courts throughout the United States.

3. Specifically, Class Counsel have extensive experience prosecuting complex class actions, especially in the area of data breach litigation. It is noteworthy that in just the last couple of years, I (either individually or as a member of my firm) have served as class counsel and/or worked successfully to obtain final resolution in numerous data breaches class actions including:

- a. *Bailey v. Grays Harbor County Public Hospital District et al.*, Case No. 20-2-00217-14 (Grays Harbor County Superior Court, State of Washington) (Mr. Mason appointed class counsel in hospital data breach class action; final approval granted Sept. 2020);
- b. *Mowery et al. v. Saint Francis Healthcare System*, Case No. 1:20-cv-00013-SRC (E.D. Mo.) (Mr. Mason appointed class counsel; final approval granted Dec. 2020);
- c. *Baksh v. Ivy Rehab Network, Inc.*, Case No. 7:20-cv-01845-CS (S.D.N.Y.) (Mr. Mason appointed class counsel in a data breach class action settlement; final approval granted Feb. 2021);
- d. *Chatelain et al. v. C, L and W PLLC d/b/a Affordacare Urgent Care Clinics*, Case No. 50742-A (42<sup>nd</sup> District Court for Taylor County, Texas) (data breach class action settlement valued at over \$7 million; final approval granted Feb. 2021);
- e. *Kenney et al. v. Centerstone of America, Inc.*, Case No. 3:20-cv-01007 (M.D. Tenn.) (data breach class action settlement involving over 63,000 class members; final approval granted August 2021);
- f. *Jackson-Battle v. Navicent Health, Inc.*, Civil Action No. 2020-CV-072287 (Superior Court of Bibb County, Georgia) (data breach case involving 360,000 patients; final approval granted Aug. 2021);
- g. *Chacon v. Nebraska Medicine*, Case No. 8:21-cv-00070-RFR-CRZ (D. Neb) (data breach settlement, final approval granted September 2021);
- h. *Richardson v. Overlake Hospital Medical Center et al.*, Case No. 20-2-07460-8 SEA (King County Superior Court, State of Washington) (Ms. Perry appointed class counsel in data breach class action involving approximately 109,000 individuals, final approval granted Sept. 2021);
- i. *Martinez et al. v. NCH Healthcare System, Inc.*, Case No. 2020-CA-000996 (Circuit Court of the Twentieth Judicial Circuit in and for Collier County, Florida) (data breach class action settlement, final approval granted Oct. 2021);
- j. *Carr et al. v. Beaumont Health et al.*, Case No. 2020-181002-NZ (Circuit Court for the County of Oakland, Michigan) (data breach class action involving 112,000 people; final approval granted Oct. 2021);
- k. *Klemm et al. v. Maryland Health Enterprises Inc.*, Case No. C-03-CV-20-022899 (Circuit Court for Baltimore County, Maryland) (Mr. Mason appointed class counsel, final approval granted November 2021);
- l. *North et al. v. Hunt Memorial Hospital District*, Case No. 89642 (196th Dist. Tex.) (data breach class action, final approval granted Dec. 2021);

- m. *Cece et al. v. St. Mary's Health Care System, Inc. et al.*, Civil Action No. SU20CV0500 (Superior Court of Athens-Clarke County, Georgia) (Ms. Perry appointed class counsel in data breach case involving 55,652 people; final approval granted April 2022).

4. Apart from data breach and privacy class actions, I was recently appointed to serve as Co-Lead Counsel in *SoClean, Inc., Marketing, Sales Practices and Products Liability Litigation*, MDL No. 3021 (W.D. Pa.). I also currently serve as Court-appointed Co-Lead Counsel in *In re Hill's Pet Nutrition, Inc. Dog Food Prods. Liab. Litig.*, No. 2:19-md-02887-JAR-TJJ, MDL No. 2887, a consumer class action in which resolved with a \$12.5 million common fund and I am Court-appointed Co-Lead Counsel in *In re DevaCurl Hair Prods. Litig.*, No. 1:20-cv-01234-GHW (S.D.N.Y.), which was resolved by the creation of a \$5.2 million settlement fund. Additional notable cases I have litigated include:

- a. *In re Swanson Creek Oil Spill Litig.*, No. PJM-00-1429 (D. Md.) (Lead Counsel) (Messetti, J.) (Mr. Mason was Lead Counsel in a case arising from the largest oil spill in history of State of Maryland. The case was resolved on a class-wide basis for area property owners with the creation of a \$2.25 million settlement fund).
- b. *Kendrick v. Standard Fire Ins. Co.*, No. 06-141-DLB (E.D. Ky.) (Lead Counsel). (Mr. Mason served as Lead Counsel in a class action against eleven insurance companies alleging improper collection of local government premium taxes. After the class was certified by the Hon. David L. Bunning, see *Kendrick v. Standard Fire Ins. Co.*, No. 06-141-DLB, 2010 U.S. Dist. LEXIS 135694 (E.D. Ky. Sept. 30, 2010), & *aff'd on appeal*, *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532 (6th Cir. 2012) (Stranch, J.), in an oft-cited opinion (235 citations to date), all defendants settled by creating settlement funds and directly refunding its insureds. Judge Bunning can be reached at the USDC, Eastern District of Kentucky, 35 W. 5th St., Covington, KY 41011 or at (859) 392-7907).
- c. *Galanti v. Goodyear Tire & Rubber Co.*, No. 3:03-cv-00209-SC (D.N.J.) (Co-Lead Counsel) (I served as Co-Lead Counsel in a class action against Goodyear alleging that the tubing it supplied for certain radiant heating systems was defective. The Hon. Stanley Chesler approved a \$330 million settlement fund. Judge Chesler may be reached at USDC, District of New Jersey, Clarkson S. Fisher Federal Building and U.S. Courthouse, 402 State St., Trenton, NJ 08608 or at (973) 645-3136).

d. *Hobbie v. RCR Holdings II, LLC*, No. 2:10-cv-01113-EEF (E.D. La.) (Co-Lead Counsel) (I served as Co-Lead Counsel in a class action against various manufacturers of Chinese drywall and the builder of a 354-unit condominium built with Chinese drywall. The Hon. Eldon E. Fallon approved a settlement for complete remediation at cost of over \$30 million. Judge Fallon may be reached at the USDC, Eastern District of Louisiana, U.S. Courthouse, 500 Poydras St., New Orleans, LA 70130 or at (504) 589-754).

5. Mason LLP also serves as Court-appointed Liaison Counsel in *In re U.S. Off. of Pers. Mgmt. Data Security Breach Litig.*, 266 F. Supp. 3d 1 (D.D.C. 2017).

6. My years of experience representing individuals in complex class actions—including data breach actions—contributed to an awareness of Plaintiff’s settlement leverage, as well as the needs of Plaintiff and the proposed Settlement Class. I believe that our clients would ultimately prevail in the litigation on a class-wide basis. However, I am also aware that a successful outcome is uncertain and would be achieved, if at all, only after prolonged, arduous litigation with the attendant risk of drawn-out appeals.

7. The Settlement in this matter provides all Settlement Class Members with immediate relief of real value. Each Settlement Class Member is eligible to submit a claim for three different categories of relief totaling up to \$4,500 *plus* credit monitoring per class member—up to (1) \$500 in ordinary expense reimbursements including compensation of up to three hours of lost time at \$20 per hour; (2) up to \$4,000 in reimbursement for extraordinary losses; and (3) 18-months of IdentityForce RapidResponse ID (IdentityForce RapidResponse Premium for Social Security Subclass Members. Agr. § 2.1-2.3.

8. It is my individual opinion, and that of my co-counsel, based on our substantial experience, the settlement provides significant relief to the Members of the Class and warrants the Court’s approval.

### **Contingent Nature of Action**

9. My firm took on this case on a purely contingent basis.

10. This matter has required me, and other attorneys at my firm, to spend time on this litigation that could have been spent on other matters. At various times during the litigation of this class action, this lawsuit has consumed significant amounts of my time and my firm's time, which is a small firm consisting of only four attorneys.

11. Such time could otherwise have been spent on other fee-generating work. Because I undertook representation of this matter on a contingency-fee basis, I shouldered the risk of expending substantial costs and time in litigating the action without any monetary gain in the event of an adverse judgment.

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

13. Litigation is inherently unpredictable and therefore risky. Here, that risk was very real, due both to the rapidly evolving nature of data breach class actions, and the limited scope of Defendant's finances.

14. Therefore, despite my devotion to the case and my confidence in the claims alleged against Defendant, there have been many factors beyond my control that posed significant risks.

### **Careful Assignment of Work**

15. The attorneys at my firm, and that of my Co-Counsel, have made every effort to litigate efficiently by reducing duplication of effort and assigning work to the lowest billing timekeepers where feasible.

16. In addition, we worked carefully to divide tasks, ensure efficient case management, and prevent duplication of efforts. Only where it was necessary to have involvement of multiple attorneys did such involvement occur.

**Lodestar, Fees, and Expenses**

17. My regular practice, and that of my local co-counsel Ellzey & Associates, PLLC, (“Ellzey”) is to maintain contemporaneous time records.

18. As of June 20, 2022, my firm and Ellzey have incurred combined fees of \$124,202.

19. The hourly rates at Mason LLP reflect our experience. Fee requests based on our rates have been approved in the State of Texas (*see Chatelain et al. v. C, L, and W PLLC, d/b/a Affordacare Urgent Care Clinics*, Case No. 50742-A (42<sup>nd</sup> Dist. Tex.)) as well as in other Courts across the country (*see Hill, et al v. Canidae Corporation*, No. 5:20-cv-1374 (C.D. Cal., Sept. 29, 2021) (approving Mr. Mason’s rate of \$875 per hour and all rates submitted by Mason LLP (formerly known as Mason Lietz & Klinger LLP)); *Newman v. Metropolitan Life Ins. Co.*, No. 1:20-2016-cv-03530 (N.D. Ill., Jan. 16, 2020) (same); *In re Adobe Systems Inc. Privacy Litig.*, No. 5:13-cv-05226 (N.D. Cal. 2015)). Our billable rates are also consistent with those charged by similarly experienced and skilled attorneys in nationwide class action practices across the country.

20. Through July 20, 2022, my firm has worked a total of 136 hours on this case, incurring fees of \$96,542.50. Our lodestar is broken down as follows:

<b>Name</b>	<b>Position</b>	<b>Hourly Rate</b>	<b>Number of Hours</b>	<b>Total</b>
Gary E. Mason	Partner	\$875	31.1	\$27,212.00
David Lietz	Partner	\$800	23.3	\$18,640.00
Gary M. Klinger	Partner	\$800	1.3	\$1,040.00
Danielle L. Perry	Partner	\$700	67.9	\$47,530.00
Taylor Heath	Paralegal	\$170	4.8	\$816.00

Sandra Martin	Paralegal	\$170	4.7	\$799.00
Jenni Suhr	Paralegal	\$170	1.5	\$255.00
Carol Corneilse	Client Specialist	\$125	2	\$250.00

21. I estimate that Mason LLP’s lodestar will increase by approximately \$20,000 by the close of this action in connection with drafting the final approval motion, preparing for argument at the final approval hearing, and miscellaneous matters, including responding to class member inquiries and claims administration.

22. Upon information and belief, through July 20, 2022, Ellzey has worked a total of 24.2 hours on this case, incurring fees of \$7,660.00. Attorneys and professionals from Ellzey have attended the preliminary approval hearing, reviewed briefs, and handled filings. Ellzey’s lodestar is broken down as follows:

<b>Name</b>	<b>Position</b>	<b>Hourly Rate</b>	<b>Number of Hours</b>	<b>Total</b>
Jarrett Ellzey	Partner	\$585	9	\$5,265.00
Leigh Montgomery	Associate	\$350	2.2	\$770.00
Alice Newlin	Paralegal	\$125	13	\$1,625.00

23. Prior to taking on Plaintiff’s case, my firm thoroughly researched Defendant’s practices and Plaintiff’s legal claims by, among other things, conducting an independent investigation and researching relevant data privacy statutes. This information was critical to my understanding of the nature of the Data Incident, the scope of potential damages and remedies, and the potential risks and benefits of continued litigation.

24. Myself, and other attorneys at my firm, have devoted significant time and resources to this case to date, including:

- a. Conducting an investigation into the facts regarding Plaintiff's claims and class members claims;
- b. Researching law relevant to, and preparing Plaintiff's class action complaint;
- c. Researching law relevant to a response to Defendant's motion to dismiss, and Plaintiff's consolidated amended complaint;
- d. Preparing for and attending mediation with Rodney A. Max of Upchurch White & Max, including attending a pre-mediation teleconference, researching and preparing a detailed mediation statement, and attending a full day mediation;
- e. Negotiating and preparing the Parties' class action settlement agreement, along with the proposed class notice and claim form;
- f. Negotiating with settlement administration companies to secure the best notice plan practicable;
- g. Preparing Plaintiff's motion for preliminary approval of the class action settlement and preparing a detailed declaration in support;
- h. Working with the Settlement Administrator to ensure the timely completion of Notice and processing of claims;
- i. Appearing before the Court on the motion for preliminary approval of the modified Settlement;
- j. Closely monitoring evolving law regarding data security and its potential impacts on the case;
- k. Conferring with Plaintiff throughout the case.



25. I also anticipate completing additional work throughout settlement administration, including responding to class member inquiries and answering any questions they have about the Settlement.

26. Additionally, I anticipate spending additional time drafting Plaintiff's motion for final approval and attending the hearing scheduled by the Court.

27. Upon request, I can provide detailed contemporaneous records to the Court for review.

28. All books and records in this case regarding costs expended were maintained in the ordinary course of business, from expense vouchers and check records. I have reviewed the records of costs expended in this matter.

29. Through September 17, 2021, Mason LLP has incurred \$8,855.92 in reasonable expenses necessary to the litigation, which include filing fees, research expenses, mediation costs and the costs of traveling to the hearing. I expect to incur limited additional costs in traveling to and appearing at the Final Approval Hearing.

30. The class has been provided notice of Plaintiff's intent to seek \$150,000 in attorneys' fees and costs. The Settlement Administrator will detail such notice in its declaration, to be filed with Plaintiff's motion for final approval.

### **Service Awards**

31. The Settlement Agreement provides for a reasonable service award to Plaintiffs in the amount of \$2,500 per Plaintiff. GCPA has agreed to pay the service award outside of and separate from the Settlement Payment. Agr. § 7.3.

32. The service award is meant to compensate Plaintiff for his efforts on behalf of the Settlement Class, including assisting in the investigation of the case, reviewing the pleadings,

maintaining contact with counsel, remaining available for consultation throughout the mediation, reviewing the Settlement Agreement, and answering counsel's many questions.

\* \* \* \* \*

I declare under penalty of perjury of the laws of the State of Texas and the United States that the foregoing is true and correct, and that this declaration was executed in Washington, DC. on this 20th day of July, 2022.

*s/ Gary E. Mason*  
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*Attorney for Plaintiff and the Class*