

THE HONORABLE MAUREEN McKEE  
Noted for Hearing: March 28, 2023  
Without Oral Argument

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

MICHAEL BERGESON, individually and on  
behalf of others  
similarly situated,

Plaintiff,

v.

VIRGINIA MASON MEDICAL CENTER,

Defendants.

NO. 22-2-09089-8 SEA

**DECLARATION OF DAVID K. LIETZ  
IN SUPPORT OF PLAINTIFF'S  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

1  
2 I, David K. Lietz being competent to testify, make the following declaration:

- 3 1. I am an adult, I have personal knowledge of the facts stated herein, and I am competent to  
4 so testify.
- 5 2. I am currently a partner of the law firm Milberg Coleman Bryson Phillips Grossman, PLLC  
6 (“Milberg”). I am counsel at Milberg for the proposed Settlement Class.<sup>1</sup> I submit this  
7 declaration in support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class  
8 Action Settlement (“Motion for Preliminary Approval”). Except as otherwise noted, I have  
9 personal knowledge of the facts set forth in this declaration and could testify competently  
10 to them if called upon to do so. A true and correct copy of the Settlement Agreement  
11 (“Settlement Agreement”) is attached to the Motion for Preliminary Approval as **Exhibit**  
12 **1**. Included with the Agreement are true and correct copies of following exhibits:

13 **Exhibit A: Claim Form**

14 **Exhibit B: Long Notice**

15 **Exhibit C: Short Notice**

16 **Exhibit D: [Proposed] Preliminary Approval Order**

17 **Exhibit E: [Proposed] Final Order and Judgment**

18 **Counsel Qualifications**

- 19
- 20
- 21 3. I am a 1991 graduate of Georgetown University Law Center. I have been licensed to  
22 practice law in the District of Columbia since 1991, am a member of the bars of numerous  
23 federal district and appellate courts, and have decades of litigation and class action  
24 experience. I have moved for admission to practice *pro hac vice* in this matter.
- 25 4. I have represented and am currently representing plaintiffs in more than 100 class action  
26 lawsuits in state and federal courts throughout the United States. Both I and my firm

1 carry on a national and international class action law practice. With respect to data privacy  
2 cases, I am currently litigating more than seventy-five cases across the country involving  
3 violations of the privacy violations, data breaches, and ransomware attacks.

4 5. Since March 14, 2020, I have been appointed class counsel in a number of data breach or  
5 data privacy cases, including:

- 6 a. *Kenney et al. v. Centerstone of America, Inc.*, Case No. 3:20-cv-01007 (M.D.  
7 Tenn.) (appointed co-class counsel in data breach class action settlement  
8 involving over 63,000 class members; final approval granted August 2021);
- 9 b. *Baksh v. Ivy Rehab Network, Inc.*, Case No. 7:20-cv-01845-CS (S.D. N.Y.) (class  
10 counsel in a data breach class action settlement; final approval granted Feb.  
11 2021);
- 12 c. *Mowery et al. v. Saint Francis Healthcare System*, Case No. 1:20-cv-00013-SRC  
13 (E.D. Mo.) (appointed class counsel; final approval granted Dec. 2020);
- 14 d. *Chatelain et al. v. C, L and W PLLC d/b/a Affordacare Urgent Care Clinics*, Case  
15 No. 50742-A (42nd District Court for Taylor County, Texas) (appointed class  
16 counsel; settlement valued at over \$7 million; final approval granted Feb. 2021);
- 17 e. *Jackson-Battle v. Navicent Health, Inc.*, Civil Action No. 2020-CV-072287  
18 (Superior Court of Bibb County, Georgia) (appointed class counsel in data breach  
19 case involving 360,000 patients; final approval granted Aug. 2021);
- 20 f. *Bailey v. Grays Harbor County Public Hospital District et al.*, Case No. 20-2-  
21 00217-14 (Grays Harbor County Superior Court, State of Washington) (appointed  
22 class counsel in hospital data breach class action involving approximately 88,000  
23 people; final approval granted Sept. 2020);
- 24 g. *Chacon v. Nebraska Medicine*, Case No. 8:21-cv-00070-RFR-CRZ (D. Neb.)  
25 (appointed class counsel in data breach settlement, final approval granted  
26 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 (appointed class counsel  
in data breach case, final approval granted September 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)

1 (Mr. Lietz appointed Settlement Class Counsel; final approval granted October  
2 2021);

3 j. *Carr et al. v. Beaumont Health et al.*, Case No. 2020-181002-NZ (Circuit Court  
4 for the County of Oakland, Michigan) (Mr. Lietz appointed co-class counsel in  
data breach case involving 112,000 people; final approval granted October 2021);

5 k. *Klemm et al. v. Maryland Health Enterprises Inc.*, Case No. C-03-CV-20-022899  
6 (Circuit Court for Baltimore County, Maryland) (appointed class counsel; final  
7 approval granted November 2021);

8 l. *Cece et al. v. St. Mary's Health Care System, Inc. et al.*, Civil Action No.  
9 SU20CV0500 (Superior Court of Athens-Clarke County, Georgia) (appointed  
10 Settlement Class Counsel in data breach case involving 55,652 people; final  
approval granted April 2022);

11 m. *Powers, Sanger et al v. Filters Fast LLC*, Case 3:20-cv-00982-jdp (appointed co-  
12 lead Settlement Class Counsel; final approval granted July 2022);

13 n. *Garcia v. Home Medical Equipment Specialists, LLC*, Case No. D-202-cv-2021-  
14 06846 (appointed class counsel; final approval granted June 2022);

15 o. *Baldwin et al. v. National Western life Insurance Company*, Case No. 2:21-cv-  
16 04066 (W.D. Mo.) (appointed co-class counsel; final approval granted June  
2022);

17 p. *Hashemi, et. al. v. Bosley, Inc.*, Case No. 21-cv-00946-PSG (RAOx) (C.D. CA)  
18 (appointed co-class counsel; final approval granted November 2022);

19 q. *Paras et al. v. Dental Care Alliance*, Civil Action No. 22EV000181 (State Court  
20 of Fulton County, Georgia (appointed co-class counsel; final approval granted  
September 2022);

21 r. *James v. CohnReznick LLP*, Case No. 1:21-cv-06544 (S.D.N.Y.), (appointed as  
22 co-class counsel; final approval granted September 2022);

23 s. *Purvis, et al v. Aveanna Healthcare, LLC*, Case No. 1:20-cv-02277-LMM (N.D.  
24 Ga.) (appointed class counsel; final approval granted October 2022);

25 t. *Kolar v. CSI Financial Services LLC dba ClearBalance*, Case No. 37-2021-  
26 00030426-CU-NP-CTL (Superior Court of San Diego County, California)  
(appointed co-lead class counsel, final approval granted January 2023);

- 1 u. *In re: California Pizza Kitchen Data Breach Litigation*, Master File No.: 8:21-cv-  
2 01928-DOC-KES (C.D. CA) (appointed settlement class counsel; final approval  
3 granted February 2023);
- 4 v. *Snyder v. Urology Center of Colorado, P.C.*, Case No. 2021CV33707 (2nd  
5 District Court, Denver County, Colorado) (appointed settlement class counsel;  
6 final approval granted October 2022);
- 7 w. *Steen v. The New London Hospital Association, Inc.*, Civil Action No. 217-2021-  
8 CV-00281 (Merrimack Superior Court, New Hampshire) (appointed class  
9 counsel; final approval granted January 2023);
- 10 x. *Gonshorowski v. Spencer Gifts LLC*, Docket Number ATL-L-000311-22  
11 (Superior Court of New Jersey, Law Division, Atlantic County (appointed Class  
12 Counsel; final approval granted March 2023);
- 13 y. *Nelson et. al v. Bansley & Kiener, LLP*, Civil Action No. 2021CH06274 (Ill. 1st  
14 Jud. Cir. Crt., Cook Cnty.) (appointed class counsel; final approval granted  
15 November, 2022);
- 16 z. *Henderson et al. v. San Juan Regional Medical Center*, Case No. D-1116-CV-  
17 2021=01043 (11<sup>th</sup> Jud. Dist. Court, San Juan County, NM) (appointed class  
18 counsel; final approval granted March 2023);
- 19 aa. *Cathy Shedd v. Sturdy Memorial Hospital, Inc.*, Civ. Action No: 2173 CV 00498  
20 (Mass. Sup. Ct. Dept.) (appointed class counsel; final approval granted February  
21 2023);
- 22 bb. *Pagan et al. v. Faneuil, Inc.*, Civil Action No. 3:22-cv-297 (E.D. Va.)(appointed  
23 class counsel; final approval granted February 2023);
- 24 cc. *Hawkins et al. v. Startek, Inc.*, Case No. 1:22-cv-00258-RMR-NRN (USDC  
25 CO)(appointed class counsel; preliminary approval granted October 21, 2022);
- 26 dd. *McManus v. Gerald O. Dry, P.A.*, Case No. 22 CVS 001776  
(N.C. Superior Court for Cabarrus County (appointed settlement class counsel;  
preliminary approval granted November 16, 2022);
- ee. *McHenry v. Advent Health Partners, Inc.*, Case No. 3:22-cv-00287 (USDC MD  
TN)(appointed class counsel; preliminary approval granted December 6, 2022),
- ff. *Lopez v. San Andreas Regional Center*, Case NO. 21CV386748 (Sup. Ct. CA,  
Santa Clara County) (appointed settlement class counsel; preliminary approval  
granted December 13, 2022), and;

1           gg. *Charlie, et al. v. Rehoboth McKinley Christian Health Care Services*, Civil No  
2           21-652 SCY/KK (USDC NM) (appointed class counsel, preliminary approval  
3           granted January 2023).

4           6. I am also lead counsel on the following cases that are on the cutting edge of Article III  
5           federal court jurisdiction in data breach litigation—*Charlie v. Rehoboth McKinley*  
6           *Christian Healthcare Services*, Civ. No. 21-652 SCY/KK, 2022 WL 1078553 (D.N.M.  
7           April 11, 2022); *Purvis v. Aveanna Healthcare, LLC*, 563 F. Supp. 3d 1360 (N.D. Ga.  
8           2021); *Baldwin v. Nat'l W. Life Ins. Co.*, No. 2:21-CV-04066-WJE, 2021 WL 4206736, at  
9           \*1 (W.D. Mo. Sept. 15, 2021) and *McCreary v. Filters Fast LLC*, No. 3:20-CV-595-FDW-  
10          DCK, 2021 WL 3044228 (W.D.N.C. July 19, 2021).

11          7. For my substantial efforts in advancing the state of the law in data breach and cyber-security  
12          litigation, in April 2022 I was named to Law360's 2022 Cybersecurity & Privacy Editorial  
13          Board. This 12-person editorial board includes some of the most accomplished attorneys in  
14          the country in the cybersecurity and data breach legal field, and it is a high honor for me to  
15          be included on this board.

16          8. I have been appointed as class counsel in other consumer class action cases and have tried  
17          consumer class action cases to verdict before a jury, most recently in *Baez v. LTD Financial*  
18          *Services*, Case No: 6:15-cv-1043-Orl-40TBS (MD Fla.).

19          9. My experience with class actions also includes a leadership role in a Massachusetts  
20          WalMart wage abuse class action, national HMO litigation, the Buspirone MDL, and  
21          Louisiana Norplant litigation.

22          10. In addition to my class action experience, I have substantial appellate experience,  
23          successfully briefing and arguing multiple cases before a number of federal appellate  
24          courts, including *Home Depot v. Jackson* at the U.S. Court of Appeals for the Fourth  
25          Circuit, and served as part of the successful brief-writing and oral advocacy team for *Home*  
26

1 *Depot v. Jackson*, 139 S. Ct. 1743, 1744, 204 L. Ed. 2d 34 (2019) at the United States  
2 Supreme Court.

3 11. Prior to concentrating my practice on consumer class action litigation, I litigated critical  
4 injury and wrongful death actions arising from commercial incidents, such as tractor trailer  
5 incidents, industrial explosions, a subway collision, and commercial airplane crashes. A  
6 representative list of my critical injury and wrongful death cases include:

- 7     ▪ Represented the family of the deceased conductor of the Washington  
8 Metropolitan Area Transit Authority subway train that collided with another  
9 Metro train in 2009.
- 10    ▪ Represented the family of a fatality victim of the 2006 Greyhound bus crash near  
11 Elizabethtown, New York.
- 12    ▪ Represented six victims (four deceased, two injured) of a massive fog related  
13 pileup on the Pennsylvania Turnpike in 2003.
- 14    ▪ Represented three victims (two deceased, one injured) of the 2002 Interstate 40  
15 Bridge Collapse, where a tugboat and barge hit an interstate highway bridge near  
16 Webbers Falls, Oklahoma and caused several vehicles to plunge into the Arkansas  
17 River.
- 18    ▪ Represented the family of one victim of the 2000 Alaska Airlines Flight 261  
19 crash, where an MD-83 with a cracked jackscrew nosedived into the water off  
20 Point Mugu, California.
- 21    ▪ Represented the victims (one deceased, one critically injured) of a 2000 incident  
22 where a tractor trailer rear ended a line of stopped traffic near Hopkinsville,  
23 Kentucky.
- 24    ▪ Represented a critically burned victim of the 1998 explosion at the State Line  
25 Energy plant in Hammond, Indiana, where a massive coal dust explosion ripped  
26 through the power plant, causing power shortages all over the city of Chicago,  
Illinois.
- Represented the families of four victims of the 1996 ValuJet Flight 592 crash,  
where a DC-9 developed a cargo hold fire and crashed into the Everglades near  
Miami, Florida.
- Represented the family of a victim of a 1994 crane collapse in Laughlin, Nevada,  
when a mobile truck crane toppled across the parking lot of a casino.

12. I negotiated several million+ dollar settlements, served as lead counsel in multiple civil  
actions, tried a number of cases to verdict in both jury and bench trials, and argued cases  
before federal district and appeals courts, and numerous state courts. I have lifetime  
verdicts and settlements in excess of \$100 million, and consistently achieved settlements  
in the highest quartile of tort and mass tort cases. I have litigated against some of the largest

1 transportation-related companies in the US, including Greyhound, Goodyear, Cessna,  
2 Textron, and the Washington Metropolitan Area Transit Authority (WMATA).

3 13. My work on this matter includes: investigating the cause and effects of the Virginia Mason  
4 Medical Center (“Virginia Mason” or “Defendant”) Data Incident, interviewing potential  
5 clients, evaluating the potential class representatives, contributing to the evaluation of the  
6 merits of the case before filing the Class Action Complaint filed by Plaintiff Michael  
7 Bergeson; conducting legal research; the settlement term sheet, the settlement agreement,  
8 the relevant notices of settlement, and the instant Motion for Preliminary Approval;  
9 conducting extensive research into data security incident and its causes and effects,  
10 conducting further extensive research into data security practices and standards in the  
11 healthcare industry, communicating with defense counsel; engaging in extensive  
12 settlement negotiations with Defendant over the course of weeks after the mediation; and  
13 updating and handling questions from our class representative.

14 14. I conferred with my colleagues about strategy and case status while being mindful to avoid  
15 duplicative efforts within my firm.

16 15. In addition to my personal qualifications, I bring the support and resources of Milberg to  
17 this case on behalf of the putative class.

18 16. Milberg pioneered federal class action litigation and is widely recognized as a leader in  
19 defending the rights of victims of corporate and other large-scale wrongdoing, repeatedly  
20 taking the lead in landmark cases that have set groundbreaking legal precedents, prompting  
21 changes in corporate governance, and recovering over \$50 billion in verdicts and  
22 settlements.

23 17. Milberg is and has been one of the nation’s most prominent class action law firms since its  
24 founding in 1965. Milberg continues to break new ground in cybersecurity and data privacy  
25 cases, including taking a co-lead counsel role in the high-profile *In re: Blaukbaud, Inc.*  
26 *Customer Data Security Breach Litigation* (MDL 2972). Milberg has and is litigating class



1 actions against huge technology companies like TikTok, Blackbaud, Adobe, and Google.

2 18. My experience and Milberg's data breach experience compare favorably with that of any  
3 law firm in the country. The firm has ample resources (both financial and personnel, with  
4 over 100+ attorneys at the firm) to fully and adequately represent the interests of the  
5 proposed class here.

6 19. I am, and my firm is, fully aware of the financial and human resources that will be required  
7 to bring this case to a successful conclusion and the Court should have no reservations that  
8 my firm has and is willing to commit those resources for the benefit of the plaintiff class.

9 20. I personally have never used third-party funding on any data breach case, nor failed to meet  
10 my assessment obligations in any case. Neither I nor Milberg intends to use any third-party  
11 litigation funding for this case.

12 21. My experience coupled with my firms' resources, will allow me to skillfully litigate this  
13 type of case in the best interests of Plaintiffs and the putative class.

14 22. Not only does my law firm have the resources to effectively prosecute this case, but it is  
15 also committed to utilizing them to do so.

16 23. Milberg is a well-established law firm that employs numerous attorneys who represent  
17 plaintiffs in complex and class action litigation. Milberg can and will devote the necessary  
18 financial resources to this case.

19 24. My years of experience representing individuals in complex class actions—including data  
20 breach actions—contributed to an awareness of Plaintiffs' settlement leverage, as well as  
21 the needs of Plaintiffs and the proposed Settlement Class.

22 25. I believe that our client would ultimately prevail in the litigation on a class-wide basis.  
23 However, I am also aware that a successful outcome is uncertain and would be achieved,  
24 if at all, only after prolonged, arduous litigation with the attendant risk of drawn-out  
25 appeals.

1 26. In the sections that follow, I will detail the hard-fought negotiations that resulted in the  
2 Agreement now before the Court for preliminary approval. As described below, the  
3 Settlement provides significant relief to Members of the Settlement Classes, and I strongly  
4 believe that it is favorable for the Settlement Class. It is, in the opinion of the undersigned,  
5 fair, reasonable, adequate, and in the best interests of the Settlement Class Members,  
6 and is and worthy of preliminary approval.

7 **Initial Investigation and Communications**

8 27. From January 16, 2022 through January 20, 2022, cybercriminals infiltrated Virginia  
9 Mason Medical Center’s (“VMMC” or “Defendant”) network, and accessed highly  
10 confidential and protected information (“PII”) and protected health information (“PHI”)  
11 (together “Private Information.”).

12 28. The PII of approximately 1,523 individuals was potentially compromised.

13 29. Our preliminary investigation showed the following facts, alleged more fully in  
14 Plaintiff’s operative Complaint, which I describe upon information and belief:

- 15 a. VMMC is a health – care provider that provides medical services to patients in  
16 the city of Seattle and throughout the Seattle metropolitan area.<sup>1</sup>
- 17 b. VMMC is part of the larger Virginia Mason Franciscan Health, which is one of  
18 the largest healthcare providers in the greater Seattle area.<sup>2</sup>
- 19 c. In the ordinary course of receiving treatment and health care services from  
20 VMMC, patients are required to provide sensitive personal and private  
21 information such as: dates of birth; demographic information; Social Security  
22 numbers; information relating to individual medical history; insurance  
23 information and coverage; information concerning an individual’s doctor, nurse  
24  
25

26 <sup>1</sup> Pl.’s Class Act. Compl. ¶ 1, filed on or about June 15, 2022 (“Compl.”).

<sup>2</sup> Compl. ¶ 26.

1 or other medical providers; photo identification; employer information; and  
2 other information that may be deemed necessary to provide care.

3 d. The Data Breach at issue occurred between January 16, 2022 and January 2022,  
4 2022, when unauthorized person(s) accessed VMMC's computer network.

5 e. The information accessed during Data Breach included: names, demographic  
6 information, dates of birth, driver's license numbers, Social Security numbers  
7 health insurance information, medical information, other protected health  
8 information as defined in HIPAA, and additional PII and PHI.

9 f. VMMC provided notice to affected individuals of the Data Breach on or about  
10 May 26, 2022, nearly six months after the data breach was discovered.

11 30. The compromised email accounts were thought to have contained the Private  
12 Information of approximately 1,523 individuals.

13 **Procedural Posture**

14 31. Plaintiff filed his initial complaint on June 15, 2022, bringing causes of action for:  
15 (1) violation Washington State Uniform Health Care Information Act ("UHCIA"); (2) violation of  
16 the Washington State Consumer Protection Act ("CPA"); (3) Negligence; (4) Negligence per se;  
17 (5) Breach of Express Contract; (6) Breach of Implied Contract; (7) Breach of Implied Covenant  
18 of Good Faith and Fair Dealing; (8) Breach of Confidence; (9) Unjust Enrichment; (10) Breach of  
19 Fiduciary Duty.<sup>3</sup>

20 32. Shortly after filing their complaint, the Parties, by and through their respective  
21 counsel, began discussing the possibility for early resolution.

22 33. The Parties agreed that an early resolution of the above-captioned litigation was  
23 warranted.

24 34. Over the next few months, Plaintiff and VMMC, through their respective counsel,  
25 engaged in extensive arm's length settlement negotiations.

26 \_\_\_\_\_  
<sup>3</sup> Compl., at Doc. No. 1.

1 35. Negotiations included a significant exchange of information, allowing both parties  
2 to evaluate the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses.

3 36. In early 2023, the Parties reached an agreement as to the material terms of the  
4 Settlement.

5 37. Over the next six weeks or so, the Parties diligently drafted, negotiated, and  
6 finalized the Settlement Agreement, Notice Forms, and agreed upon a Claims Administrator.

7 38. The Settlement Agreement (“Agr.”) was finalized by the Parties in March 2023.

8 **The Settlement Agreement**

9 ***Settlement Benefits***

10 39. The Settlement negotiated on behalf of the Class provides for three separate forms  
11 of relief: (1) direct monetary relief to Class Members for reimbursement of actual ordinary and  
12 extraordinary expenses stemming from the Data Incident; (2) two years of credit monitoring and  
13 identity theft insurance provided by *myTrueIdentity*, and (3) equitable relief in the form of  
14 information security enhancements.<sup>4</sup>

15 40. The Settlement Class includes all persons who were sent written notification by  
16 VMMC that their personally identifiable information was potentially compromised as the result of  
17 the Data Incident. The Settlement Class specifically excludes: (i) all Class Members who timely  
18 and validly request exclusion from the Settlement Class; (ii) the Judge assigned to evaluate the  
19 fairness of this settlement; and (iii) any other person found by a court of competent jurisdiction to  
20 be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity  
21 occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.<sup>5</sup>

22 41. Payments to Class Members are divided into two separate categories:

- 23 a. The first category provides for reimbursement of ordinary expenses up to \$500  
24 per Settlement Class Member, for out-of-pocket expenses incurred as a result  
25

26 <sup>4</sup> See Agr. ¶ 34

<sup>5</sup> Agr. ¶ 6.

1 of the Data Incident including bank fees, long distance phone charges, cell  
2 phone charges (only if charged by the minute), data charges (only if charged  
3 based on the amount of data used), postage, or gasoline for local travel; fees for  
4 credit reports, credit monitoring, or other identity theft insurance product  
5 purchased. Settlement Class Members can also be reimbursed for up to three  
6 hours of lost time, at a rate of \$20 per hour. Claims for reimbursement of lost  
7 time can be combined with claims for Reimbursement of Out-of-Pocket Losses,  
8 however those claims are subject to a combined cap of \$500.<sup>6</sup>

9 **b.** The second category provides for reimbursement of extraordinary expenses, up  
10 to \$2,500 per Settlement Class Member, incurred between January 16, 2022  
11 and the end of the Claims Period for out-of-pocket more likely than not to have  
12 been incurred due to the Data Incident.<sup>7</sup>

13 42. In addition to the monetary relief, VMMC has, and will continue to implement data  
14 security enhancements. Defendant will provide confidential confirmatory discovery regarding  
15 these enhancements to Plaintiff's Counsel no later than 30 days from the date the Preliminary  
16 Approval Order is entered.<sup>8</sup>

17 43. The benefits are provided in exchange for a release of claims reasonably related to  
18 the Data Incident.

19 *Notice and Claims Process*

20 44. The Parties agreed to use Postlewaite & Netterville ("P&N"), as the Notice  
21 Specialist and Claims Administrator in this case.

22 45. VMMC has agreed to pay for providing Notice to the Settlement Class.<sup>9</sup>

23  
24  
25 <sup>6</sup> Agr. ¶ 34.

26 <sup>7</sup> Agr. ¶ 34(c).

<sup>8</sup> Agr. ¶ 34(e).

<sup>9</sup> Agr. ¶ 41.

1           46.     The Notice and Claim Forms negotiated by the Parties are clear and concise and  
2 inform Settlement Class Members of their rights and options under the Settlement, including  
3 detailed instructions on how to make a claim, object to the Settlement, or opt-out of the  
4 Settlement.<sup>10</sup>

5           47.     The current and agreed upon Notice Plan calls for Notice to be provided to  
6 Settlement Class Members via mail to the last known postal address VMMC has on file for each  
7 Settlement Class Member, by or before 30-days after entry of Preliminary Approval.<sup>11</sup>

8           48.     The Claims Administrator will mail a Postcard Summary Notice directly to each of  
9 the approximate 1,523 Class Members.

10          49.     The Claims Administrator will also be responsible for creating a Settlement  
11 Website, and shall maintain and update the Website throughout the Claims Period. The Website  
12 will include copies of the Complaint, Settlement Agreement, Motion for Preliminary Approval,  
13 Preliminary Approval Order, Settlement Long-Form Notice, Claim Form, motions for Class  
14 Counsel's attorneys' fees, expenses, Motions for Final Approval, and Order and Final Judgment.  
15 The website shall also provide applicable Settlement deadlines and answers to frequently asked  
16 questions.<sup>12</sup>

17          50.     A toll-free help line shall be made available to provide Settlement Class Members  
18 with additional information about the Settlement.<sup>13</sup>

19          51.     The timing of the Claims Process is structured to ensure that all Class Members  
20 have adequate time to review the terms of the Settlement Agreement, compile documents  
21 supporting their claim, and decide whether they would like to opt-out or object.

22          52.     Class Members will have 90 days from the Notice Deadline to submit their Claim  
23 Form to the Claims Administrator, either by mail or online.<sup>14</sup>

24 \_\_\_\_\_  
<sup>10</sup> See Agr. ¶ 40, Exs. A, B, C.

25 <sup>11</sup> Agr. ¶ 40(a).

26 <sup>12</sup> Agr. ¶ 40(d).

<sup>13</sup> Agr. ¶ 40(e).

<sup>14</sup> Agr. ¶ 5.

1 53. The Claims Administrator is given the authority to assess the validity of claims,  
2 and to ask for additional documentation.<sup>15</sup> Should any Class Member wish to dispute the amount  
3 offered after making a claim, there is a process by which he or she can do so.<sup>16</sup>

4 54. Any Class Member who wishes to opt-out of the Settlement will have until 60 days  
5 after the date the Court enters a Preliminary Approval Order to provide written notice that they  
6 would like to be excluded from the Settlement Class.<sup>17</sup>

7 55. Similarly, Class Members who wish to object to the terms of the Settlement  
8 Agreement must do so in writing, and file such writing with the clerk of Court within 60 days from  
9 the date on which the Preliminary Approval Order is entered. The written objection must also be  
10 served concurrently on Class Counsel and Counsel for VMMC.<sup>18</sup>

11 ***Attorneys' Fees, Costs, and Plaintiff's Service Award***

12 56. The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses  
13 and/or incentive award to Representative Plaintiff, until after the substantive terms of the  
14 Settlement had been agreed upon, other than that VMMC would pay reasonable attorneys' fees,  
15 costs, expenses, and a service award to Representative Plaintiff as may be agreed to by VMMC  
16 and Proposed Settlement Class Counsel and/or as ordered by the Court, or in the event of no  
17 agreement, then as ordered by the Court.

18 57. VMMC has agreed to pay attorneys' fees and litigation costs in the amount of up  
19 to \$100,000, as approved by the Court.<sup>19</sup>

20 58. The Settlement Agreement also provides for a reasonable service award to Plaintiff  
21 in the amount of \$1,500.<sup>20</sup>

22  
23 \_\_\_\_\_  
24 <sup>15</sup> Agr. ¶ 43.

<sup>16</sup> *Id.*

<sup>17</sup> Agr. ¶ 19.

<sup>18</sup> Agr. ¶ 45.

<sup>19</sup> Agr. ¶ 35.

<sup>20</sup> Agr. ¶ 36.

1           59.     The service award is meant to compensate Plaintiff for her efforts which include  
2 maintaining contact with counsel, assisting in the investigation of the case, remaining available for  
3 consultation throughout mediation and for answering counsel’s many questions.

4           60.     Plaintiff will seek the Court’s approval of the requested attorneys’ fees, costs and  
5 service award through separate motion.

6                                   \*   \*   \*   \*   \*

7           I declare under penalty of perjury of the laws of State of Washington and the United States  
8 that the foregoing is true and correct, and that this declaration was executed in Washington, D.C.  
9 on this 15th day of March, 2021.

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13                                   */s/*David K. Lietz  
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15                                   David K. Lietz  
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