

**SUPERIOR COURT OF BIBB COUNTY  
STATE OF GEORGIA**

KATHY JACKSON-BATTLE  
and  
JESSICA RAMIREZ, *et al.*,

Plaintiffs,

vs.

NAVICENT HEALTH, INC.,

Defendant.

Civil Action No. 2020-CV-072287

**DECLARATION OF DAVID K. LIETZ  
IN SUPPORT OF PLAINTIFFS'  
MOTION FOR APPROVAL OF  
ATTORNEYS' FEES, COSTS, AND  
SERVICE AWARDS**

I, David K. Lietz, being competent to testify, make the following Declaration:

1. I am currently a partner of the law firm Mason Lietz & Klinger LLP (“MLK”), which was founded on March 16, 2020. I am one of the lead attorneys for Plaintiffs and have been appointed Class Counsel for the Settlement Class. I submit this Declaration in support of Plaintiffs’ Motion for Approval of 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.

2. All attorneys named Class Counsel in this matter—me, Gary E. Mason, and Gary M. Klinger—are now partners at Mason Lietz & Klinger LLP. Combined, Class Counsel have extensive experience prosecuting complex class actions. My experience, and that of my partners, is described in MLK’s Firm Resume, attached as Exhibit 2 to my Declaration submitted in support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement, filed on January 27, 2021.

3. My years of experience representing individuals in complex class actions—including data breach actions—contributed to an awareness of Plaintiffs’ Settlement leverage, as well as the needs of Plaintiffs 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. It is my individual opinion, and that of the other Class Counsel, based on our substantial experience, the Settlement provides significant relief to the Settlement Class.

### **The Settlement Agreement**

4. The Settlement Agreement in this case provides for both monetary and equitable relief for Settlement Class Members.

5. The total cash value of the Settlement negotiated significant, and includes up to \$972,000,000 in ordinary reimbursements, extraordinary reimbursements, and lost time; approximately \$190,000 in Notice and Settlement Administration costs, \$250,000 in attorneys' fees and costs (subject to court approval), and \$2,000 in total Service Awards to the Class Representatives (subject to court-approval).

6. Additionally, the Settlement Agreement provides for equitable relief in the form of enhancements to Defendant's data security systems structured to ensure Settlement Class Members' data is better safeguarded in the future. Such improvements in similar cases have cost defendants hundreds of thousands of dollars.

7. The Settlement Agreement provides for a reasonable Service Award to Plaintiffs in the amount of \$1,000 each, and for combined attorneys' fees and costs in the amount of \$250,000, to be paid separate and apart from any recovery to Settlement Class Members.

8. The Service Award is meant to compensate Plaintiffs for their efforts which include maintaining contact with counsel, assisting in the investigation of the case, remaining available for consultation throughout mediation and for answering counsel's many questions.

9. As of the date of filing, I have received no objections to either the Settlement Agreement in general or to the proposed attorneys' fees, costs (the amount of which was made known to the Class via the Court-approved notice program) in particular.

### **The Contingent Nature of the Case**

10. My Firm took on this case on a purely contingent basis. As such, the firm assumed a significant risk of nonpayment or underpayment.

11. 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.

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

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

14. Litigation is inherently unpredictable and therefore risky. Here, that risk was very real, due to the rapidly evolving nature of case law pertaining to data breach litigation, and the state of data privacy law in Georgia. Without providing a summary of Georgia law, the Georgia Supreme Court's *McConnell II* (*Dep't of Lab. v. McConnell*, 305 Ga. 812 (2019) (*McConnell II*)), decision casts real doubt on the question of whether any duty to protect confidential data exists in Georgia. Therefore, despite my Firm's devotion to the case and our confidence in the claims

alleged against Defendant, there have been many factors beyond our control that posed significant risks.

15. Class Counsels' fees were not guaranteed—the retainer agreement counsel had with Plaintiffs did not provide for fees apart from those earned on a contingent basis, and, in the case of Class Settlement, approved by the Court.

### **The Costs Incurred**

16. Due to the early stage of litigation, costs incurred by Plaintiffs are low. Plaintiffs' current costs are \$8,160.54, and include filing fees, service fees, and costs of mediation. These costs are reasonable, and necessary for the litigation.

17. Of this total, MLK incurred \$3,839.36 in costs. Upon information and belief, the remaining \$4,321.18 in costs were incurred Morgan & Morgan. *See* Decl. of John Yanchunis ¶ 14 (“Yanchunis Decl.”), filed herewith.

18. Upon information and belief, Notice in this case has been provided as agreed upon and as approved by the Court's Preliminary Approval Order and will be reported on more extensively in Plaintiffs' Motion for Final Approval of Class Action Settlement. Overall, the Notice and Settlement Administration is projected to cost approximately \$190,000, all of which is to be borne by Defendant separate and apart from any funds available to Settlement Class Members.

19. As of Friday, June 4, 2021, the Settlement Administrator reports receiving zero requests for exclusion. MLK has similarly received no requests for exclusion.

20. As of Friday, June 4, 2021, the Settlement Administrator reports receiving zero objections to the Settlement or to the request for fees, costs, and service awards. MLK has similarly received no objections to the Settlement Agreement.

21. I strongly believe that the Settlement Agreement is favorable for the Settlement Class. In the opinion of the undersigned and other Class Counsel, the Settlement is fair, reasonable, adequate, and worthy of final approval.

\* \* \* \* \*

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

/s/ David K. Lietz  
David K. Lietz (*admitted pro hac vice*)  
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*Attorney for Plaintiffs and the Class*