

EXHIBIT A

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

KEVIN VANDERMARK)
individually and on behalf of all others)
similarly situated,)
)
Plaintiffs,)

Index No. 153365/2023

v.)

MASON TENDERS DISTRICT COUNCIL)
WELFARE FUND; MASON TENDERS)
DISTRICT COUNCIL ANNUITY FUND;)
and MASON TENDERS DISTRICT)
COUNCIL OF GREATER NEW YORK)
)
Defendant.)

**DECLARATION OF DAVID LIETZ IN SUPPORT OF PLAINTIFF’S UNOPPOSED
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

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

1. I am currently a partner of the law firm of Milberg Coleman Bryson Phillips Grossman, PLLC (“Milberg”). I am one the lead attorney for Plaintiff and seek appointment as Class Counsel for the proposed Settlement Class. I submit this declaration in support of Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement. 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. A true and correct copy of the Settlement Agreement (“Agreement” or “Agr.”) is attached hereto as **Exhibit 1**. Included with the Agreement are the following sub-exhibits:

Exhibit A: Claim Form

Exhibit B: Long Notice

Exhibit C: Short Notice**Exhibit D: Proposed Preliminary Approval Order****Exhibit E: Proposed Final Approval Order**

1. I am a 1991 graduate of Georgetown University Law Center. I have been licensed to practice law in the District of Columbia since 1991, am a member of the bars of numerous federal district and appellate courts, and have decades of litigation and class action experience.

2. I have represented and am currently representing plaintiffs in more than 100 class action lawsuits in state and federal courts throughout the United States. Both I and my firm carry on a national and international class action law practice. With respect to data privacy cases, I am currently litigating more than seventy-five cases across the country involving violations of privacy violations, data breaches, and ransomware attacks.

3. Since March 14, 2020, I (either individually or as a member of my law firm) have been appointed class counsel in a number of data breach or data privacy cases, including:

- a. *Kenney et al. v. Centerstone of America, Inc.*, Case No. 3:20-cv-01007 (M.D. Tenn.) (appointed co-class counsel in data breach class action settlement involving over 63,000 class members; final approval granted August 2021);
- b. *Baksh v. Ivy Rehab Network, Inc.*, Case No. 7:20-cv-01845-CS (S.D. N.Y.) (class counsel in a data breach class action settlement; final approval granted Feb. 2021);
- c. *Mowery et al. v. Saint Francis Healthcare System*, Case No. 1:20-cv-00013-SRC (E.D. Mo.) (appointed class counsel; final approval granted Dec. 2020);
- d. *Chatelain et al. v. C, L and W PLLC d/b/a Affordacare Urgent Care Clinics*, Case No. 50742-A (42nd District Court for Taylor County, Texas) (appointed class counsel; settlement valued at over \$7 million; final approval granted Feb. 2021);
- e. *Jackson-Battle v. Navicent Health, Inc.*, Civil Action No. 2020-CV-072287 (Superior Court of Bibb County, Georgia) (appointed class counsel in data breach case involving 360,000 patients; final approval granted Aug. 2021);

- f. *Bailey v. Grays Harbor County Public Hospital District et al.*, Case No. 20-2-00217-14 (Grays Harbor County Superior Court, State of Washington) (appointed class counsel in hospital data breach class action involving approximately 88,000 people; final approval granted Sept. 2020);
- g. *Chacon v. Nebraska Medicine*, Case No. 8:21-cv-00070-RFR-CRZ (D. Neb.) (appointed class counsel in 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) (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) (Mr. Lietz appointed Settlement Class Counsel; final approval granted October 2021);
- j. *Carr et al. v. Beaumont Health et al.*, Case No. 2020-181002-NZ (Circuit Court 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);
- k. *Klemm et al. v. Maryland Health Enterprises Inc.*, Case No. C-03-CV-20-022899 (Circuit Court for Baltimore County, Maryland) (appointed class counsel; final approval granted November 2021);
- l. *Cece et al. v. St. Mary's Health Care System, Inc. et al.*, Civil Action No. SU20CV0500 (Superior Court of Athens-Clarke County, Georgia) (appointed Settlement Class Counsel in data breach case involving 55,652 people; final approval granted April 2022);
- m. *Powers, Sanger et al v. Filters Fast LLC*, Case 3:20-cv-00982-jdp (appointed co-lead Settlement Class Counsel; final approval granted July 2022);
- n. *Garcia v. Home Medical Equipment Specialists, LLC*, Case No. D-202-cv-2021-06846 (appointed class counsel; final approval granted June 2022);
- o. *Baldwin et al. v. National Western life Insurance Company*, Case No. 2:21-cv-04066 (W.D. Mo.) (appointed co-class counsel; final approval granted June 2022);

- p. *Hashemi, et. al. v. Bosley, Inc.*, Case No. 21-cv-00946-PSG (RAOx) (C.D. CA) (appointed co-class counsel; final approval granted November 2022);
- q. *Paras et al. v. Dental Care Alliance*, Civil Action No. 22EV000181 (State Court of Fulton County, Georgia (appointed co-class counsel; final approval granted September 2022));
- r. *James v. CohnReznick LLP*, Case No. 1:21-cv-06544 (S.D.N.Y.), (appointed as co-class counsel; final approval granted September 2022);
- s. *Purvis, et al v. Aveanna Healthcare, LLC*, Case No. 1:20-cv-02277-LMM (N.D. Ga.) (appointed class counsel; final approval granted October 2022);
- t. *Kolar v. CSI Financial Services LLC dba ClearBalance*, Case No. 37-2021-00030426-CU-NP-CTL (Superior Court of San Diego County, California) (appointed co-lead class counsel, final approval granted January 2023);
- u. *In re: California Pizza Kitchen Data Breach Litigation*, Master File No.: 8:21-cv-01928-DOC-KES (C.D. CA) (appointed settlement class counsel; final approval granted February 2023);
- v. *Snyder v. Urology Center of Colorado, P.C.*, Case No. 2021CV33707 (2nd District Court, Denver County, Colorado) (appointed settlement class counsel; final approval granted October 2022);
- w. *Steen v. The New London Hospital Association, Inc.*, Civil Action No. 217-2021-CV-00281 (Merrimack Superior Court, New Hampshire) (appointed class counsel; final approval granted January 2023);
- x. *Gonshorowski v. Spencer Gifts LLC*, Docket Number ATL-L-000311-22 (Superior Court of New Jersey, Law Division, Atlantic County (appointed Class Counsel; preliminary approval granted September 12, 2022);
- y. *Nelson et. al v. Bansley & Kiener, LLP*, Civil Action No. 2021CH06274 (Ill. 1st Jud. Cir. Crt., Cook Cnty.) (appointed class counsel; final approval granted November, 2022);
- z. *Henderson et al. v. San Juan Regional Medical Center*, Case No. D-1116-CV-2021=01043 (11th Jud. Dist. Court, San Juan County, NM) (appointed class counsel; preliminary approval granted October 13, 2022);
- aa. *Cathy Shedd v. Sturdy Memorial Hospital, Inc.*, Civ. Action No: 2173 CV 00498 (Mass. Sup. Ct. Dept.) (appointed class counsel; final approval granted February 2023);

- bb. *Pagan et al. v. Faneuil, Inc.*, Civil Action No. 3:22-cv-297 (E.D. Va.)(appointed class counsel; final approval granted February 2023);
- cc. *Hawkins et al. v. Startek, Inc.*, Case No. 1:22-cv-00258-RMR-NRN (USDC CO)(appointed class counsel; preliminary approval granted October 21, 2022);
- dd. *McManus v. Gerald O. Dry, P.A.*, Case No. 22 CVS 001776 (N.C. Superior Court for Cabarrus County (appointed settlement class counsel; final approval granted March, 2023);
- 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;
- gg. *Charlie, et al. v. Rehoboth McKinley Christian Health Care Services*, Civil No 21-652 SCY/KK (USDC NM) (appointed class counsel, preliminary approval granted January 2023).

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

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

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

7. My experience with class actions also includes a leadership role in a Massachusetts Walmart wage abuse class action, national HMO litigation, the Buspiron MDL, and Louisiana Norplant litigation.

8. In addition to my class action experience, I have substantial appellate experience, successfully briefing and arguing multiple cases before a number of federal appellate courts, including *Home Depot v. Jackson* at the U.S. Court of Appeals for the Fourth Circuit, and served as part of the successful brief-writing and oral advocacy team for *Home Depot v. Jackson*, 139 S. Ct. 1743, 1744, 204 L. Ed. 2d 34 (2019) at the United States Supreme Court.

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

- Represented the family of the deceased conductor of the Washington Metropolitan Area Transit Authority subway train that collided with another Metro train in 2009.
- Represented the family of a fatality victim of the 2006 Greyhound bus crash near Elizabethtown, New York.
- Represented six victims (four deceased, two injured) of a massive fog related pileup on the Pennsylvania Turnpike in 2003.
- Represented three victims (two deceased, one injured) of the 2002 Interstate 40 Bridge Collapse, where a tugboat and barge hit an interstate highway bridge near Webbers Falls, Oklahoma and caused several vehicles to plunge into the Arkansas River.
- Represented the family of one victim of the 2000 Alaska Airlines Flight 261 crash, where an MD-83 with a cracked jackscrew nosedived into the water off Point Mugu, California.
- Represented the victims (one deceased, one critically injured) of a 2000 incident where a tractor trailer rear ended a line of stopped traffic near Hopkinsville, Kentucky.

- Represented a critically burned victim of the 1998 explosion at the State Line Energy plant in Hammond, Indiana, where a massive coal dust explosion ripped 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.

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

11. My work on this matter includes: investigating the cause and effects of Mason Tenders' District Council Welfare Fund, Mason Tenders' District Council Pension Fund, and Mason Tenders' District Council Annuity Fund ("MTDC" or "Defendants,") Data Incident, interviewing potential clients (including Plaintiff Kevin Vandermark), evaluating the potential class representatives, contributing to the evaluation of the merits of the case before filing the Class Action Complaint filed by Plaintiff Kevin Vandermark; conducting legal research; preparing and reviewing detailed mediation statements and other pre-mediation materials; assisting with the drafting and finalizing of the settlement term sheet, the settlement agreement, the relevant notices of settlement, and the instant Motion for Preliminary Approval; conducting research into the data security incident and its causes and effects, conducting further extensive research into Defendants' data security practices and other similar platforms, communicating with defense counsel; preparing for and participating in the all-day mediation; engaging in extensive settlement

negotiations with Defendants over the course of weeks after the mediation; and updating and handling questions from our class representatives. I conferred with my colleagues about strategy and case status while being mindful to avoid duplicative efforts within my firm.

12. In addition to my personal qualifications, I bring the support and resources of Milberg to this case on behalf of the putative class. Milberg pioneered federal class action litigation and is widely recognized as a leader in defending the rights of victims of corporate and other large-scale wrongdoing, repeatedly taking the lead in landmark cases that have set groundbreaking legal precedents, prompting changes in corporate governance, and recovering over \$50 billion in verdicts and settlements. A brief firm biography is attached to this declaration as **Exhibit 2**.

13. Milberg is and has been one of the nation's most prominent class action law firms since its founding in 1965. Milberg continues to break new ground in cybersecurity and data privacy cases, including taking a co-lead counsel role in the high-profile *In re: Blaukbaud, Inc. Customer Data Security Breach Litigation* (MDL 2972) that has established pleading standards and Art. III standing guidelines for data breach cases. Milberg has and is litigating multiple class actions against other companies within the same industry as Creative Services.

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

15. I am, and my firm is, fully aware of the financial and human resources that will be required to bring this case to a successful conclusion and the Court should have no reservations that my firm has and is willing to commit those resources for the benefit of the plaintiffs' class. I personally have never used third-party funding on any data breach case, nor failed to meet my

assessment obligations in any case. Neither I nor Milberg intends to use any third-party litigation funding for this case.

16. My experience coupled with my firms' resources, will allow me to skillfully litigate this type of case in the best interests of Plaintiffs and the putative class. Not only does my law firm have the resources to effectively prosecute this case, but it is also committed to utilizing them to do so.

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

Initial Investigation and Communications

18. This is a putative class action brought by Plaintiff Kevin Vandermark (collectively, "Plaintiffs" or "Class Representatives"), individually and on behalf of all others similarly situated (the "Settlement Class"), against Defendants Mason Tenders' District Council Welfare Fund, Mason Tenders' District Council Pension Fund, and Mason Tenders' District Council Annuity Fund ("MTDC" or "Defendants," and together with Plaintiff, the "Parties"). The action arises out of an alleged cyberattack and data breach, which allowed an unauthorized third-party cybercriminal to view, access, and likely exfiltrate the personally identifiable information ("PII") and protected health information ("PHI") of Plaintiff and members of the Settlement Class who entrusted MTDC with this information from December 2, 2021 through April 18, 2022 (the "Data Breach"). MTDC allegedly detected the intrusion on April 17, 2022 and notified Settlement Class Members about the Data Breach beginning July 7, 2022.

19. After receiving notice that his PII and PHI Personal Information had been impacted by the Data Breach, Plaintiff retained my firm.

20. I and my team vigorously and aggressively gathered all the information that was available regarding MTDC and the alleged Data Breach—including publicly-available documents concerning announcements of the Data Breach and notice of the Data Breach to affected individuals.

21. The initial investigation into the facts and circumstances of the alleged Data Breach revealed that the cyberattack against MTDC likely involved the PII and PHI of more than 20,000 individuals that was contained in MTDC’s computer network.

Procedural Posture

22. After an initial investigation, I, along with other members of my team, filed a Class Action Complaint (the “Complaint”) in the United States District Court for the Southern District of New York on behalf of Plaintiff, individually and on behalf of others similarly situated, on August 11, 2022. Plaintiffs alleged causes of action for: (1) Negligence; (2) Breach of Implied Contract; and (3) Unjust Enrichment. Plaintiffs alleged, among other things, which MTDC failed to take adequate measures to safeguard and protect their and other putative Settlement Class Members’ PII and PHI and failed to disclose that MTDC’s computer systems were susceptible to a cyberattack.

23. On January 31, 2023, Plaintiff voluntarily dismissed the action in the United States District Court for the Southern District of New York pursuant to Fed. R. Civ. P. 41(a) without prejudice and, on April 13, 2023, refiled the action presently pending in this court. Shortly after Plaintiff commenced litigation in the District Court, the Parties concluded that early settlement of this litigation may be warranted and began arm’s length discussions regarding the same.

The Class Settlement

History of Negotiations

24. This Settlement came about as the result of protracted, arms' length negotiations. Throughout the negotiations, Defendant was ably represented by the well-regarded defense firm with experience in cyber-security investigation and litigation.

25. The Parties participated in a mediation with Hon. Wayne Andersen (Ret.) and were able to reach an agreement on all the principal terms of settlement for this matter.

26. Following the conclusion of the mediation the Parties executed a Term Sheet. Since then, the Parties continued to negotiate in good faith and at arms' length, the finer points of the settlement and drafted the Settlement Agreement and accompanying Notice documents and other exhibits.

27. While negotiations were always collegial and professional between the Parties, there is no doubt that the negotiations were also adversarial in nature, with both Parties strongly advocating their respective client's positions.

28. The Settlement Agreement and the various exhibits thereto ("S.A.") were ultimately finalized and signed in May 2023.

The Settlement Classes

29. Under the terms of the Settlement, the Parties agreed to certification of the following Settlement Class for settlement purposes only:

"All persons who were sent written notification by MTDC that their personal information was potentially compromised as the result of the Data Incident."

The Settlement Class is comprised of approximately 40,349 individuals (each, a "Settlement Class Member").

Excluded from the Settlement Class definition are:

(i) all Class Members who timely and validly request exclusion from the Settlement Class; (ii) the Judge assigned to evaluate the fairness of this settlement; and (iii) any other person found by a court of competent jurisdiction to be guilty under

criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads nolo contendere to any such charge.

Settlement Benefits

30. The Settlement provides the 40,349 Settlement Class Members with significant benefits that would not otherwise be available to them unless a settlement was reached. Each Settlement Class Member will be eligible to receive reimbursement for documented monetary losses incurred by him or her as a result of the Data Breach, including compensation for lost time. The overall compensation cap for any Settlement Class Member is \$450.00 for Ordinary Losses, including claims for lost time, and \$2,500.00 for Extraordinary Losses.

31. Compensation for Ordinary Losses. Settlement Class Members who submit timely, valid claims, with supporting documentation (other than claims for Lost Time (defined below), are eligible to receive compensation for unreimbursed ordinary losses for up to a total of 450.00 per Settlement Class Member. Ordinary losses include: (i) unreimbursed costs, expenses, losses or charges incurred a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of class member's personal information; (ii) costs incurred on or after December 2, 2021, associated with purchasing or extending additional credit monitoring or identity theft protection services and/or accessing or freezing/unfreezing credit reports with any credit reporting agency; and (iii) other miscellaneous expenses incurred related to any Ordinary Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges.

32. Lost Time. Settlement Class Members may also make a claim for attested lost time for up to three (3) hours of lost time ("Lost Time"), calculated at \$20/hour, provided that the Settlement Class Member attests that the claimed lost time was spent responding to issues raised by the Data Breach. Claims for Lost Time are subject to the \$450.00 cap on ordinary losses.

33. Compensation for Extraordinary Losses. Settlement Class Members who submit timely, valid claims, with supporting documentation, are eligible to receive claim up to \$2,500.00 per Settlement Class Member for proven monetary losses if: (a) the loss is an actual, documented, and unreimbursed monetary loss; (b) the loss was more likely than not caused by the Data Breach; (c) the loss occurred on or after December 2, 2021; (d) the loss is not already covered by one or more of the normal reimbursement categories; and (e) the Settlement Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss, including, but not limited to, exhaustion of all available credit monitoring insurance and identity theft insurance. The maximum amount any one Claimant may recover for Extraordinary Losses \$2,500.00.

34. Credit Monitoring Services. Settlement Class Members can elect to enroll in TransUnion myTrueIdentity credit monitoring and identity protection services, or other comparable service, for a period of one year by submitting the Claim Form by the Claim Deadline.

35. Injunctive Relief. Plaintiff also negotiated for and received commitments from MTDC that it will continue to provide security for the PII and PHI entrusted to it going forward. MTDC agrees to provide Plaintiff's counsel with a confirmatory discovery including: (1) documentation regarding updated policies and information security enhancements taken by Defendants since the Data Incident; (2) production of the current cybersecurity policies and procedures; and (3) such other documents as necessary to establish to Plaintiff's counsel that Defendants have adopted and implemented additional data security measures to further strengthen the security of its systems.

36. Confirmatory Discovery. MTDC agrees to provide confirmatory discovery on establishing the appropriateness of the settlement terms contemplated under Federal Rule of Civil Procedure 23(b)(1) and its New York state law equivalent.

Release

37. The relief provided to Settlement Class Members in the Lawsuit is tailored to the claims that have been pleaded or could have been pleaded that are related in any way to the activities stemming from the Data Breach.

38. Settlement Class Members who do not exclude themselves from the Settlement Agreement will release claims related to the Data Breach.

Notice

39. This settlement will be administered by Postlethwaite & Netterville APC (“P&N”).

40. MTDC has agreed to pay for the Costs of the Notice and Claims Administration, separate and apart from the benefits to the Settlement Class Members, which is a benefit to the Settlement Class. MTDC and/or its insurer has the resources to pay for the proposed Settlement. The cost of the Notice Program is estimated to be \$76,653.

41. The Notice Program is designed to provide for reasonable notice of the commencement of a class action.

42. Within seven (7) Days of entry of the Preliminary Approval Order and engagement of a Settlement Administrator, MTDC will provide the Settlement Administrator with a list of names, last known addresses, and last known email addresses of the Settlement Class Members. The Settlement Administrator will, by using the National Change of Address (“NCOA”) database maintained by the U.S Postal Service (“Postal Service”) obtain updates, if any, to the mailing addresses.

43. Within thirty (30) Days of entry of the Preliminary Approval Order (the “Notice Deadline”), the Settlement Administrator shall send the Short Form Notice in form substantially

similar to that attached to the Settlement Agreement as Exhibit C to all Settlement Class Members whose email address or mailing address are known to MTDC.

44. If any Notice sent by electronic mail is returned as undeliverable, the Settlement Administrator shall send the Notice by U.S. Mail. Where the undeliverable Notice is returned without a forwarding address, the Settlement Administrator shall make reasonable efforts to ascertain the correct address of the Settlement Class Member and re-mail the Notice.

45. Prior to the mailing of the Short Form Notices, P&N will establish and maintain a dedicated Settlement Website. Subject Court approval, P&N will make available the Settlement Agreement, the Complaint, the Short Form Notices for the Settlement Classes, the Long Form Notice in a form substantially similar to that attached to the Settlement Agreement as Exhibit B, the Claim Form in a form substantially similar to that attached to the Settlement Agreement as Exhibit A, as well as other relevant filings, including Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards for Class Representatives and Plaintiffs' Motion for Final Approval of the Class Action Settlement, to be made available on the Settlement Website.

46. The Settlement Website will allow Settlement Class Members to submit the Claim Form electronically by the Claim Deadline, or to download the Claim Form and submit it by mail to the Settlement Administrator postmarked by the Claim Deadline. The website address and the fact that the Long Form Notice and the Claim Form are available through the Settlement Website will be included in the Notice mailed to Settlement Class Members. The Short Form Notice provides clear, concise information about the Settlement. The Long Form Notice explains the terms of the Settlement Agreement and provides contact information for proposed Settlement Class Counsel, understandable information about the Settlement, including explanations for the

different options available to Settlement Class and Subclass Members. The Settlement Website will be maintained and updated until thirty (30) Days after the Claim Deadline has passed.

47. The Notice Program is intended to reach as many potential Settlement Class Members as possible, is designed to be “reasonable notice of the commencement of a class action.” As such, the Notice Program set forth in the Settlement Agreement comports with N.Y. C.P.L.R. Ch. 8, Art. 9, §§ 904 and 908.

Claims Process

48. The timing of the claims process is structured to ensure that all Settlement Class Members have adequate time to receive Notice, to review the terms of the Settlement Agreement and other relevant documents and decide whether they would like to make a claim or opt-out or object.

49. Individuals in the Settlement Class who are seeking any benefits under the Settlement will have no more than ninety (90) Days from the date Notice is mailed to the Settlement Class Members to complete and submit a claim either submitted online via the Settlement Website or postmarked by postmarked by the Claim Deadline to the Settlement Administrator.

50. The Claim Form is written in plain language to facilitate Settlement Class Members’ ease in completing it.

51. Claims will be subject to review for completeness and plausibility by the Settlement Administrator, and Settlement Class and Subclass Members will have the opportunity to seek review by a third-party Claims Referee, at MTDC’s expense, if they dispute the Settlement Administrator’s initial determination.

52. The 90-day notice period provides ample time for Settlement Class Members to decide whether to make a claim for reimbursement for monetary relief.

Exclusions and Objections

53. Similar to the timing of the claims process, the timing with regard to objections and exclusions is structured to give Settlement Class Members sufficient time to review the Settlement documents—including Plaintiff’s Motion for Attorneys’ Fees, Costs, and Service Awards to Class Representatives, which will be filed fourteen (14) Days prior to the deadline for Settlement Class Members to object or exclude themselves from the settlement.

Exclusions

54. Settlement Class Members who seek to be excluded from the Settlement Class must personally sign and timely submit, complete, and mail a request for exclusion (“Opt-Out Request”) to the Settlement Administrator at the address set forth in the Notice. To be effective, an Opt-Out Request must be postmarked no later than the final date of the Opt-Out Period (the “Opt-Out Date”). The Parties will recommend to the Court that the Opt-Out Period be the sixty (60) Day period beginning upon the date Notice is scheduled to be mailed by the Settlement Administrator.

55. A written opt-out notice must: a) the case name, Vandermark v. Mason Tenders District Council; (b) the Settlement Class Member’s full name, address, and telephone number; (c) the words “Request for Exclusion” at the top of the document; and (d) a declaration stating “I request that I be excluded from the Settlement Class in Vandermark v. Mason Tenders District Council, and do not wish to participate in the settlement. I understand that by requesting to be excluded from the Settlement Class, I will not receive any benefits under the Settlement.”.

56. An Opt-Out Request or other request for exclusion that does not fully comply with these requirements, which is not timely postmarked, or that is sent to an address other than that set

forth in the Notice, will be invalid, and the Settlement Class Member will be bound by the Settlement Agreement, including the Release, and any judgment thereon.

57. Settlement Class Members who opt-out of the class shall not be eligible to receive any Settlement Benefits and shall not be bound by the terms of the Settlement Agreement. They also waive and forfeit any and all rights they may have to object to the Settlement or to participate at the Final Approval Hearing.

58. Requests for exclusion may only be done on an individual basis, and no person may request to be excluded from the Settlement Class through “mass,” “group,” or “class” opt-outs.

Objections

59. Any Settlement Class Member who wishes to object to the Settlement Agreement must submit a timely written notice of his or her objection (“Objection”) by the Objection Date (defined below).

60. The Objection shall: (i) state the case name, Vandermark v. Mason Tenders District Council, (ii) the objecting Settlement Class Member’s full name, current address, and telephone number; (iii) a statement of the specific grounds for the objection, as well as any documentation supporting the objection; (iv) the identity of any attorneys representing the objector; and the signature of the Settlement Class Member or the Settlement Class Member’s attorney.

61. To be timely, an Objection in the appropriate form must be filed with the Clerk of the Court no later than sixty (60) Days from the date Notice is scheduled to be sent by the Settlement Administrator (the “Objection Date”) and mailed or hand delivered concurrently upon Settlement Class Counsel and MTDC Counsel at addresses set forth in the Notice.

62. Any Settlement Class Member who fails to comply in full with the requirements for objecting set forth in this Settlement Agreement, the Notice, and any applicable orders of the

Court shall forever waive and forfeit any and all rights he or she may have to raise any objection to the Settlement Agreement, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing, shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means, and shall be bound by the Settlement Agreement and by all proceedings, orders, and judgments in the Lawsuit.

Service Awards, Fees, and Costs

63. MTDC agrees not to oppose an application by Plaintiffs' counsel for an award of attorneys' fees, costs, and expenses not to exceed \$175,000. This amount was negotiated after the primary terms of the Settlement were negotiated. MTDC shall pay the attorneys' fees, costs, and expenses in addition to any other benefits provided to Settlement Class Members and the Costs of Notice and Claims Administration.

64. Plaintiff shall seek and MTDC agrees not to oppose a Service Award of \$1,500 ("Service Award"). The Service Award is meant to recognize Plaintiff for his efforts on behalf of the Settlement Class, including assisting in the investigation of the case, reviewing the pleadings, remaining available for consultation throughout the mediation and settlement negotiations, answering counsel's many questions, and reviewing the terms of the Settlement Agreement. The Service Award were negotiated after the primary terms of the Settlement were negotiated. The Service Award will be paid separate and apart from any other sums agreed upon under this Settlement Agreement.

65. Settlement Class Counsel will submit a separate motion seeking Plaintiff's Award of Attorneys' Fees, Costs, and Service Awards to Class Representatives fourteen (14)-Days prior to Settlement Class Members' deadline to exclude themselves from the Settlement Class or to object to the Settlement Agreement.

66. I believe Plaintiff has no conflicts of interest with the other members of the Settlement Class, Plaintiff had his Personal Information allegedly comprised in the same Data Breach as the other Class Members, and Plaintiff shares the Settlement Class's interests of maximizing their recovery and preventing future harm.

67. In my opinion, I believe the Settlement is fair, reasonable, and adequate and provides significant benefits for Plaintiff and the Settlement Class Members, and I strongly support the Settlement.

68. 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 Plaintiff 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, based on my substantial experience, that the Settlement provides significant relief to the Settlement Class Members and warrants the Court's preliminary approval.

69. I believe this Settlement is a positive resolution for the Settlement Class and falls comfortably within the range of reasonableness and represents a fair and reasonable discount from the potential recovery. It is also my considered opinion that the Claim Form, Short Notice, and Long Notice accurately and plainly explain the Settlement Benefits and how to obtain them, offer a clear opportunity for members of the Settlement Class to exclude themselves if they so choose, and provide a mechanism for the Settlement Class to share their opinions about the Settlement with the Court.

70. Attached to this Declaration as **Exhibit 2** is Milberg's Firm Resume.

* * * * *

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct, and that this declaration was executed in Washington, D.C. on this 24th day of May, 2023.

/s/ David K. Lietz _____
David K. Lietz (*admitted pro hac vice*)
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