

**STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT**

<p>DAVID ANDREONI, individually, and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>RADIOLOGY ASSOCIATES OF ALBUQUERQUE, P.A., d/b/a RAA IMAGING; ADVANCED IMAGING, LLC, d/b/a/ HIGH RESOLUTION,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. D-202-cv-2022-05463</p> <p><b>DECLARATION OF LYNN A. TOOPS IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARD</b></p>
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I, Lynn A. Toops, state:

1. I am a partner of the law firm Cohen & Malad, LLP. I am one of the attorneys for the Plaintiffs and, along with my co-counsel, have been appointed Settlement Class Counsel for the Settlement Class. I submit this declaration in support of Plaintiffs' Motion for Approval of Attorneys' Fees, Expenses, and Service Award. 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. The work of Class Counsel in connection with this action involved investigating the cause and effects of the Data Incident in this case, evaluating the potential class representative, evaluating of the merits of the case before filing; conducting legal research; conducting extensive research into data security incidents and their causes and effects, conducting further extensive research into data security practices and standards across e-Commerce platforms and industries; drafting and filing the Complaint; litigating against defense counsel who have extensive data

breach litigation experience; preparing and filing a response and opposition to Defendant's significant motion to dismiss, obtaining information from Defendant regarding the Data Incident and analyzing that information; participating in multiple formal mediations of this case presided; drafting the settlement term sheet, the comprehensive settlement agreement, notices of settlement, a claim form, the Unopposed Motion for Preliminary Approval and supporting memo, and the motion for attorneys' fees; communicating with defense counsel; updating and handling questions from the class representative; and overseeing the successful launching and implementation of the notice program. Class Counsel conferred with each other about strategy and case status while being mindful to avoid duplicative efforts within firms and with co-counsel.

3. The Settlement represents an excellent result for the class in this litigation and was obtained against a well-funded defense, which was represented by a well-regarded law firm that specializes in data breaches.

4. This result is even more remarkable because, although Plaintiff believes in the merits of the claims, this litigation was inherently risky and complex. The claims involve the intricacies of data breach litigation (a fast-developing area in the law), and the Plaintiff faced risks at each stage of litigation.

5. Aside from the potential that either side will lose at trial, Plaintiff would likely need to counter a motion for summary judgment, and both gain and maintain certification of the class. Even if successful with the class certification argument, Plaintiff would face a near inevitable interlocutory appeal attempt. Without a certified class, no class member would likely receive any recovery. And summary judgment, trial, and appeal present significant risks in any case.

6. Class Counsel seeks an award of one-third of the \$3,080,475 non-reversionary Settlement Fund for their work in connection with this matter. Class Counsel are routinely award

one-third of a non-reversionary settlement fund in contingent class action litigation.

7. Counsel also seeks reimbursement of \$16,500 in litigation expenses they advanced, comprised of \$14,500 in mediator fees and \$2,000 in filing and pro hac vice fees.

8. Class Counsel also seeks a \$2,500 incentive award for the named Plaintiff. 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, providing documents and information, reviewing the pleadings, answering counsel's questions, and reviewing the terms of the Settlement Agreement. Plaintiff was not promised any service award, nor did he condition his representation on the expectation of a service award.

9. Since the Court granted preliminary approval, Class Counsel have continued to work with the Claims Administrator regarding claims administration and processing. Based on experience, Class Counsel will spend substantial additional hours (between 50-100 additional hours) seeking Final Approval, defending the Settlement from potential objections, and supervising claims administration and the distribution of proceeds.

10. The value of this settlement is significant and meaningful, given that the Settlement Agreement creates a non-reversionary Settlement Fund, and all Settlement Class Members can claim the full measure of the relief offered.

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

11. Class Counsel prosecuted this case and the related cases on a purely contingent basis. As such, Class Counsel assumed a significant risk of nonpayment or underpayment.

12. This matter has required me, other attorneys at my Firm, and the other Class Counsel 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, as well as the time of the other Class Counsel.

13. Such time could otherwise have been spent on other fee-generating work. Because our Firm and the other Plaintiffs' attorneys 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.

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

15. 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. Therefore, despite the devotion of all Class Counsel to the case and our confidence in the claims alleged against Defendant, there have been many factors beyond our control that posed significant risks.

16. The fees contemplated under Class Counsel's representation agreements for cases in this jurisdiction and elsewhere generally fall within the one-third to 40% range. Class Counsel's fees were not guaranteed—the retainer agreements counsel had with Plaintiff did not provide for fees apart from those earned on a contingent basis, and, in the case of class settlement, approved by the court.

17. Had Defendant prevailed on the merits, on class certification, or on appeal, Class Counsel might have recovered nothing for the time and expense we invested in representing the Settlement Class.

18. In the opinion of the undersigned and other Class Counsel, the attorneys' fees and expenses requested are fair and reasonable, under the facts and circumstances of this case.

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I declare under penalty of perjury of the laws of New Mexico that the foregoing representations are true.

Dated: April 16, 2024

/s/ Lynn A. Toops  
Lynn A. Toops