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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

IN RE: PREMIERA BLUE CROSS
CUSTOMER DATA SECURITY BREACH
LITIGATION

Case No. 3:15-md-2633-SI

**DECLARATION OF KIM D. STEPHENS
IN SUPPORT OF PLAINTIFFS' MOTION
FOR FINAL APPROVAL AND MOTION
FOR AWARD OF ATTORNEYS' FEES
AND REIMBURSEMENT OF EXPENSES**

I, Kim D. Stephens, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. I am a principal at the law firm of Tousley Brain Stephens, PLLC in Seattle, Washington. I am one of the attorneys personally involved in the litigation of this matter and served as court-appointed Interim Lead Plaintiffs' Counsel and Settlement Class Counsel in this case. I submit this declaration in support of Plaintiffs' Motion for Final Approval of Class Action Settlement, and in support of Plaintiffs' Motion for an Award of Attorneys' Fees, Litigation Expenses, and Service Awards.

2. This declaration addresses the following topics: Section I addresses the work that Plaintiffs performed in this case; Section II addresses the facts and negotiations leading up to the proposed settlement; Section III addresses the strengths of the proposed settlement; Section IV

addresses Tousley Brain Stephens PLLC's attorneys' fees and expenses; and Section V addresses the total attorneys' fees and expenses that Plaintiffs reasonably expended in litigating this case.

I. Work Performed by Plaintiffs in this Case

3. Tousley Brain Stephens, along with other counsel for Plaintiffs, vigorously and zealously represented the interests of the proposed Class from the inception of this litigation to the present. As described in more detail below, Plaintiffs' Counsel researched, prepared, and filed two consolidated class action complaints; litigated two rounds of motions to dismiss; litigated three formal discovery motions and one motion for discovery sanctions against Premera; reviewed tens of thousands of documents; deposed more than two dozen Premera witnesses; prepared and produced 20 plaintiffs for depositions, responded to numerous discovery requests; and fully briefed class certification and three related *Daubert* motions. The proposed Settlement is the result of the significant litigation efforts over more than four years of hard-fought litigation.

A. Coordination of Litigation Efforts.

4. As detailed in Plaintiffs' First Amended Consolidated Class Action Complaint (Dkt. 75), on or about March 17, 2015, Premera announced a data breach of its computer network, which compromised the confidential information of approximately 8.86 million¹ individuals. Following Premera's announcement, Plaintiffs filed over 40 lawsuits related to the data breach throughout the county. Following a petition to transfer, the Judicial Panel on Multidistrict Litigation transferred and consolidated the proceedings in this Court.

5. On August 7, 2015, after considering all leadership applications, the Court appointed Tousley Brain Stephens, PLLC as Interim Lead Plaintiffs' Counsel. The court also

¹ The Class size was reduced through deduplication, from an estimated 10.6 million to 8,855,764. (See Azari Decl., Dkt. 280, ¶ 10).

appointed Stoll Berne Interim Liaison Counsel. On October 6, 2015, the Court also appointed our proposed Plaintiffs' Steering Committee ("PSC") consisting of three additional Plaintiffs' firms. (Dkt. 43.) Together, this leadership team has considerable experience litigating complex class actions, including other privacy and data breach cases.

6. Litigating this case to a successful resolution required substantial commitments of time and resources from Lead and Liaison Counsel, Counsel on the PSC, and other Plaintiffs' Counsel. We made every effort to litigate this complex case efficiently and effectively.

7. The Court set monthly Status Conferences during which the parties discussed the progress of the case and sought guidance on various issues in the litigation. Lead and Liaison Counsel met and conferred prior to each conference to streamline any pending disputes and ensure issues were ripe for presentation to the Court.

8. I held weekly telephone conferences with Liaison Counsel and members of the PSC, which were crucial to streamlining litigation efforts and enabling Plaintiffs to move the case forward efficiently and diligently. Through these conferences, we updated PSC members on case developments, obtained input on strategic decisions, assigned tasks, and set deadlines. Prior to these weekly calls, we circulated a written agenda, followed by a written task list to ensure all work assignments were tracked and completed in a timely manner.

9. For the most part, we kept the work in this case assigned to attorneys and staff at one of the five law firms assigned to a leadership position in this case. This allowed us to concentrate the work amongst a core group of counsel with an in-depth knowledge of the case. Since their appointment, Lead Counsel, Liaison Counsel, and members of the PSC Counsel collectively spent 14,999 hours litigating this case (for a collective lodestar on the PSC alone of

\$8,528,411.45 at current market rates). Class Counsel also updated non-PSC Firms about the status of the litigation as the need arose.

10. As Lead Counsel, I exercised sound billing judgment to ensure that only justifiable, common benefit time is included in the claimed lodestar submitted to this Court. In order to do so, I set express time and expense guidelines intended to cover all activities in the lawsuit and set forth requirements for Plaintiffs' Counsel to report common benefit time. I required all firms to keep contemporaneous billing records and to submit time and expense records on a monthly basis. I also carefully defined the time and expenses that firms could bill in a detailed letter I sent to all Plaintiffs' Counsel. I strictly enforced these guidelines to ensure that any hours Plaintiffs' Counsel billed were solely for efforts spent on matters common to all claimants, and to minimize duplicative work or billing. I obtained hours reports from each Plaintiffs' Counsel every month, and I, along with Messrs. Dubanevich and Dennett, reviewed the bills, made reductions to time and expenses, and submitted monthly reports to the Court.

11. Following the leadership appointment, Class Counsel spearheaded collaborative efforts to vet all prospective Plaintiffs for inclusion in the Consolidated Complaint and preserve documents. Class Counsel prepared a plaintiff vetting questionnaire and worked cooperatively and efficiently with other Plaintiffs' Counsel to review the underlying complaints, Plaintiffs' documents, and questionnaires, and conduct vetting interviews of well over 50 potential class representatives. Based on this process, Class Counsel selected the Plaintiffs named in the Consolidated Complaint. This extensive process was necessary to make sure that the purported nationwide class and state subclasses were represented by devoted Class Representatives with valid claims and the appropriate commitment to pursue them. Class Counsel researched, prepared,

and filed a Consolidated Complaint on October 6, 2015 (Dkt. 44), and a First Amended Consolidated Complaint on September 30, 2016 (Dkt. 75).

B. Overview of the Litigation.

12. From the very inception of this case, Premera fiercely contested every phase of litigation. Premera consistently denied Plaintiffs' core allegations and challenged Plaintiffs' legal theories. Early on, Premera moved twice to dismiss Plaintiffs' Consolidated Complaint. After extensive briefing and oral argument, the Court granted in part and denied in part Premera's motions.

13. One of the key issues in this litigation was exfiltration. Premera hotly disputed whether hackers had exfiltrated any data in the breach. Even before Plaintiffs filed this case, Premera claimed there was no evidence to prove the hackers removed or "exfiltrated" any of Plaintiffs' data from Premera's systems. (*See, e.g.*, Dkt. 60 at 54:20–56:2 ("The notice that was sent to affected persons says very specifically that there is no evidence that any information was taken out of the systems.")) Because Premera made this one of the primary issues in the case, Plaintiffs spent significant time and effort to uncover evidence of exfiltration through various discovery methods, including depositions, document discovery, and a forensic review of Premera's network servers aided by experts.

14. Having conducted in-depth discovery of the technical aspects of Premera's systems and having worked closely with an experienced IT security expert, we were able to identify evidence that was missing from Premera's records. We filed a motion for sanctions against Premera for the destruction of a key computer and specific log data that could have documented further evidence of exfiltration. (Dkt. 182.) The Court granted the motion in part and awarded evidentiary sanctions which, *inter alia*, precluded any expert working for Premera from testifying

that the destroyed computer and logs did not contain evidence of exfiltration. (Dkt. 224.)

15. Through extensive discovery and work with cybersecurity experts, Class Counsel developed a deep understanding of Premera's highly complex IT systems, the numerous technical and administrative controls involved in Premera's data security system, and the failures and deficiencies that made its systems vulnerable and led to the breach. Through this discovery, we were able to create a well-supported argument that Premera's deficient data security was a common course of conduct that satisfied Rule 23's commonality and predominance requirements for class certification. (*See* Dkt. 156, at 18–53.) Finally, our fulsome understanding of Premera's IT security system structure and its deficiencies allowed us to negotiate intelligently for comprehensive and effective injunctive relief as a part of this Settlement.

16. Throughout the litigation, Premera also contested Plaintiffs' damages theories. Plaintiffs worked with several experts to support our "benefit of the bargain" and "lost value of PII" theories of damages. In September 2018, Premera filed a partial summary judgment motion challenging Plaintiffs' "benefit of the bargain" damages theory. (Dkt. 175.) This motion remains pending.

17. Before reaching this Settlement, the Parties also fully briefed Plaintiffs' Motion for Class Certification. In this motion, Plaintiffs sought to certify a nationwide class under Washington law, and a California subclass. (Dkt. 156–174, 190–197, 218–220.) Plaintiffs also filed, and the Parties fully briefed, motions to exclude expert testimony from three of Premera's experts. (Dkt. 211–217.) The Court heard oral argument on the motion to certify and motions to exclude on November 15, 2018. All four of these motions remain pending.

C. Discovery.

18. During the course of the litigation, the Parties engaged in significant discovery. Obtaining some of that discovery, however, was a hard-fought battle. Throughout the litigation, Premera vigorously contested the scope of discovery we served on it, requiring Plaintiffs to present several informal and formal discovery disputes before the Court.

19. One of the first disputes Premera raised was over the proposed list of custodians and search terms that would be searched and produced. This dispute reached an impasse and required Court intervention in April 2017. At the Court's direction, the Parties implemented a technology-assisted review ("TAR") process to identify a set of relevant and responsive documents for Premera to produce in the case. This TAR process shifted the bulk of the workload from Premera to Plaintiffs, who were required to expend significant time and effort to train the TAR software. Premera provided Plaintiffs with access to the database containing Premera's unreviewed documents in August 2017. Over the following three months, Plaintiffs devoted hundreds of hours of attorney time to training the TAR software, reviewing over 7,000 documents simply to work towards a document production set from Premera. Following the TAR process, and further guidance from the Court to resolve disputes arising after the TAR process was complete, Premera produced over 1.5 million pages of documents.

20. Given the massive quantity of documents to review, and the significant delay in obtaining these documents from Premera, Class Counsel brought in attorneys from other Plaintiffs firms in the MDL to assist with the massive document review and coding process. With looming deadlines in the case, Class Counsel required assistance from firms outside the PSC to accelerate the document review phase of discovery. These other Plaintiffs' firms proceeded under strict

billing protocols set by Class Counsel and were subject to diligent oversight from the PSC to ensure that document review progressed efficiently and promptly.

21. I, along with Liaison Counsel and PSC Counsel set and capped billable rates for all document review work as follows:

- Non-employee contract attorneys: billable rate may not exceed 3 times hourly compensation
- Staff Attorneys: \$300 per hour
- Associate Attorneys or Partners:
 - 1- 2 years in practice: \$350 per hour
 - 2-4 years in practice: \$375 per hour
 - 5-6 years in practice: \$400 per hour
 - 6 or more years in practice: \$450 per hour

22. Class Counsel expended significant time and resources reviewing and analyzing Premera's document production and privilege logs. Overall, counsel for Plaintiffs spent over 5,000 hours reviewing and analyzing tens of thousands of documents. In addition to seeking informal resolution of discovery disputes from the Court, Plaintiffs were forced to prepare and file two discovery motions: including motions regarding Defendant's privilege logs and whether a third-party forensic report regarding Premera's breached servers constituted attorney-work product. (Dkt. 110, 231.) These motions resulted in the appointment of a Special Master, several hearings, and two decisions compelling production.

23. In late 2018, Premera moved to compel production of personal computers and tablets from specific Plaintiffs. We zealously defended against this motion in order to protect the privacy of the named Plaintiffs. Plaintiffs successfully briefed and defeated Premera's motion after

arguing the requested devices presented privacy concerns that did not meet Rule 34's proportionality requirements.

24. Plaintiffs continued their discovery efforts through extensive deposition testimony. Collectively, the Parties took more than 50 depositions. Plaintiffs' took over fifteen depositions of Premera's employees (some multiple times)—including Premera's EVP of Operations and IT, Senior Manager of Information Security, VP of IT Infrastructure, Manager of Security Operations, and Chief Information Security Officer—and three 30(b)(6) depositions of Premera's Manager of IT Compliance and Senior ECOM Manager. Many of these deponents were no longer employed by Premera and they had to be deposed where they had relocated. Plaintiffs also took depositions of Premera's four expert witnesses. To promote efficiency, all of these depositions were taken by Lead Counsel, Liaison Counsel, or PSC firms, who already had in depth knowledge of the case.

25. Defendants also insisted on deposing each Named Plaintiff, and each of Plaintiffs' four testifying expert witnesses. Plaintiffs prepared for and defended 24 depositions of the named Plaintiffs and Plaintiffs' experts. Many of these depositions required Counsel to travel to the location of the witnesses.

26. Plaintiffs subpoenaed several third parties seeking documents and testimony from entities such as Coalfire Systems, Inc. and FireEye, Inc., cyber security consulting firms hired by Premera. Plaintiffs also subpoenaed Accuvant and Verizon, third party firms Premera hired to perform IT security audits.

27. The information Class Counsel obtained through party and non-party depositions was critical to obtaining a comprehensive understanding of how and why the data breach occurred and to preparing for their class certification motion, discovery motions, anticipated future motions practice and trial.

D. Efforts of Representative Plaintiffs

28. Each of the Representative Plaintiffs did everything required of him or her to represent the best interests of the Class in this Litigation. In addition to the efforts Representative Plaintiffs undertook in retaining their respective counsel, and investigating and preparing their initial complaints, each Representative Plaintiff went through a rigorous vetting process with Class Counsel before Class Counsel selected them as representatives in this case.

29. During the case, Representative Plaintiffs assisted Plaintiffs' Counsel in responding to requests for production and interrogatories from Premera. Each Representative Plaintiff prepared for a deposition and gave testimony in this case.

30. Each of the Class Representatives also communicated with Plaintiffs' Counsel regarding the terms of the Settlement and reviewed the Settlement Agreement. Their efforts throughout this litigation were essential to bringing about the Settlement.

II. Settlement Negotiations

31. Premera was not willing to discuss settlement until after the parties had completed briefing class certification.

32. While Plaintiff's Motion for Class certification was fully briefed and pending, the Parties engaged in extensive, arm's-length settlement negotiations. These negotiations included three all-day sessions of mediation with the Honorable Jay C. Gandhi (Ret.) of JAMS on October 26, 2018, and January 24 and 25, 2019. Two of these sessions included the additional assistance of Peter K. Rosen, Esq. of JAMS. Two of these mediation sessions began at 10 a.m. and went past midnight. These negotiations included not only Plaintiffs and Premera, but several of Premera's insurers, as well.

33. After three full-day mediations, we still had not reached a deal. Negotiations continued over multiple follow up emails and telephone conferences brokered by Judge Gandhi and Mr. Rosen..

34. In the evening of Valentine's Day, February 14, 2019, the Parties reached a preliminary agreement on the terms of a nationwide settlement. Numerous additional negotiations occurred relating to finalizing the Settlement Agreement in the following months. The Parties exchanged numerous drafts of the Settlement Agreement to negotiate various details regarding the structure of the settlement and notice plan in order to maximize the benefits to the class. The parties had to again consult Judge Gandhi to resolve disputes arising out of documentation of the Settlement. Around this time, the Parties asked the Court to stay any ruling on class certification, to allow the Parties to reach a settlement. Class Counsel negotiated the amount of Service Awards to be applied for independently from the other terms of the proposed Settlement.

35. During the final stages of negotiation, the parties exchanged edits to various notice plan documents which were incorporated into the Settlement Agreement as exhibits. This included preparation of, and multiple rounds of edits to, the Summary Notice, Long Form Notice, Publication Notice, Claim Form, and press release.

36. On May 29, 2019, the parties executed the final proposed Settlement Agreement. A copy of the Settlement Agreement, along with exhibits thereto, was previously filed with the Court. (Dkt. 273-1.)

37. After executing the Settlement, Class Counsel obtained bids from, and negotiated with, third-party claims administrators and credit monitoring and insurance providers in order to get the most benefits and the best deal for the Class. After soliciting competing bids, Class Counsel negotiated an agreement with Epiq. Under this agreement, Epiq agreed to cap costs for notice and

claims administration at \$4,187,290.00, contingent on notice, claims, call center minutes, email, and distribution activity falling at or below estimated volumes.

38. Class Counsel worked closely with Epiq before and following Preliminary Approval to finalize the various notice and claim forms to make sure they were legally sufficient and easy for class members to understand. Since this Court granted Preliminary Approval of the Settlement, Class Counsel has worked with the Settlement Administrator, Epiq, to ensure that notice and claims processes proceeded smoothly. We regularly conferred with Epiq regarding the progress of the notice plan and claims response and responded to inquiries from Class Members about the claims process. In response to common inquiries from class members, Tousley Brain Stephens worked with Epiq to make updates to the settlement website. We will continue to expend time and effort to ensure that Class Members are able to file claims and receive benefits from the Settlement.

39. Class Counsel also negotiated a competitive bid with Identity Guard to provide Credit Monitoring and Insurance Services for the class at a capped wholesale cost. Under the terms of the deal we negotiated, if 1% or less of the entire Settlement Class enrolls in the credit monitoring and insurance services, the cost to the class are capped at \$2,184,000.00, and if more than 1% enrolls, the total cost are capped at \$2,730,000.00.

III. The Proposed Settlement Is Favorable to the Class.

40. I believe that the proposed Settlement provides extraordinary benefit to the class. By settling now, the class can take advantage of remedies that, as a practical matter, would not be available or would potentially be worth less if the case had to be litigated through trial to a final judgment.

41. The injunctive relief provides substantial relief to the class. Because Premera still retains databases containing all of the same sensitive class member data that it did at the time of the breach, ensuring Premera adequately protects this data going forward was a principal part of the negotiated relief for the class. Because Class Counsel took extensive discovery of Premera's IT security system, we were able to specifically negotiate enhanced security measures that target and remediate the specific deficiencies in Premera's IT security systems that existed at the time of the breach. These injunctive measures are designed to prevent another breach from happening and thereby directly benefit the class.

42. The credit monitoring and identity theft insurance services also provide valuable relief to the Class from any harm that may ensue as a result of this breach. I understand these services have a retail value of \$19.99 per month. Over two years (24 months), the benefits would amount to \$479.76 for each participating class member. Every 1% of class members that enroll generates an additional value to the class of approximately \$42.5 million, before excluding the cost of the services. For the 315,853 class members who have submitted a claim for credit monitoring, (*see* Suppl. Azari Decl. ¶ 12.), this is equivalent to over \$148 million in additional value to the participating class members, after subtracting the \$2,730,000 cost of providing the services. Class counsel projects this number to rise as class members continue to file claims before the March 30, 2020 claims deadline, and as Epiq continues to review the claims already submitted. Moreover, the fact that Class Members may defer the credit monitoring and identity theft insurance services for up to two years if they already have existing credit monitoring services, adds additional benefit to the Class.

43. When compared to other similar data breach cases, this Settlement is an excellent result for Class Members. The cash component of the settlement alone in this case amounts to

\$3.61 per person, which compares favorably to other major national data breach settlements: *In re Anthem, Inc. Data Breach Litig.*, 2018 WL 3960068, at *10 (cash settlement fund of \$115 million for class of 79.15 million individuals, or \$1.45 per person); *In re Yahoo! Inc., Customer Data Breach Security Breach Litig.*, No. 16-md-02752-LHK (N.D. Cal.), Dkt. 369 (cash settlement fund of \$117.5 million for class of 194 million individuals, or \$0.61 per person); *In re: Equifax Inc. Customer Data Security Breach Litig.*, No. 1:17-md-02800-TWT (N.D. Ga.), Dkt. 858 at 11 (cash settlement fund of \$380.5 million for class of 147 million members, or \$2.59 per person); *In re: The Home Depot Inc. Customer Data Security Breach Litig.*, No. 1:14-md-02583, Dkt. 261 at *2–4 (cash fund of \$29 million for 52 million consumers, or \$0.56 per person).

44. The proposed settlement is beneficial to the Class, particularly considering the risks of further litigation. While Plaintiffs are confident in the case they prepared, Plaintiffs faced numerous defenses to liability and damages. Although Plaintiffs largely prevailed at the motion to dismiss phase, Premera continues to deny liability to this day. Premera also continues to dispute exfiltration and challenged Plaintiffs' damages theories by arguing that no plaintiffs were injured since no data appeared on the dark web. (*See Opp. to Class Cert.*, Dkt. 190 at 17, 48.)

45. After extensive discovery efforts, including forensic examination of Premera's servers, Plaintiffs uncovered evidence supporting exfiltration. (*See Class Cert. Motion*, Dkt. 156 at 37–46.) However, each party presented expert testimony disputing key issues regarding exfiltration and whether there was harm to Plaintiffs. Plaintiffs faced a substantial risk of non-recovery from adverse findings on these issues.

46. As set forth in our class certification motion, had the case not settled, Plaintiffs would have sought both equitable and monetary relief for class members. Among other theories, Plaintiffs would have sought monetary relief for the class based on a "benefit of the bargain" theory

that would have isolated the value of adequate data security through an expensive conjoint analysis, designed and conducted by Plaintiffs' conjoint survey expert Peter Rossi. Plaintiffs would also have sought remedies under a "lost value of PII" damages theory. I believe that Plaintiffs' damages theories stood a good chance of succeeding, as we supported our theories with reports from highly qualified experts. While Plaintiffs' theories were sound in principle, their application to data breach litigation was untested beyond the pleading stage. Due to the novelty of Plaintiffs' damages theories, there was a risk that Plaintiffs would prevail on liability but establish only a small figure in damages. The cost to conduct a rigorous conjoint analysis for trial would have likely exceeded half a million dollars.

47. At the time of settlement, Premera had already filed a motion for partial summary judgment regarding Plaintiffs' "benefit of the bargain" damages theories. (Dkt. 175.) Were litigation to continue, Plaintiffs would have had a long road ahead of them. Even if Plaintiffs prevailed on the pending summary judgment motion, Premera likely would have continued to challenge Plaintiffs' ability to prove causation, damages, and the scope of Premera's promise to protect customers' sensitive data through additional summary judgment motions and at trial.

48. Moreover, the Court has yet to rule on Plaintiff's pending motion for class certification, which Premera intensely opposed. While Counsel believe they put forward a strong class certification motion, certification was not guaranteed. Currently, few data breach lawsuits have reached certification. Here, Plaintiffs sought to certify a nationwide class under Washington's CPA based on a well-supported yet untested legal position. Yet, Plaintiffs had to contend with the significant risk that class certification could have been denied in whole or in part due to the nature of this developing area of the law.

49. To date, we have received just one objection. After reviewing the objection, I attempted to call the objector on two occasions, as to discuss his concerns and explain the benefits available to him in the Settlement. The objector has not returned my calls.

50. Tousley Brain Stephens is very proud of this settlement and I recommend its approval to the Court and the Class.

IV. Attorneys' Fees and Expenses of Tousley Brain Stephens, PLLC

51. Tousley Brain Stephens undertook the following tasks in this litigation: act as lead counsel; participate in hundreds of telephone calls with co-counsel and opposing counsel; fact investigation; legal research and writing; draft, review, and revise of hundreds of draft briefs; prepare for and take multiple depositions; respond to discovery requests; review document productions; work with expert; prepare for and provide oral argument to the Court; review, edit and comment on monthly time and expense reports; negotiate with defense counsel regarding discovery and case settlement; work with co-counsel on development of case plan and strategy; pursue third party discovery; participate in mediation; and coordinate and assign tasks to co-counsel. These tasks are typical in litigation and were necessary to the successful prosecution and resolution of the claims.

52. The schedules attached hereto as Exhibit A1 and Exhibit A2 are a summary of time spent by the partners, attorneys and other professional support staff of my firm in this litigation, at my direction and approval, and show lodestar calculations using both historic billing rates and current billing rates from inception of the case through December 2019. For document review work, hourly rates are capped, as described in Paragraph 21. For personnel who are no longer employed by my firm, my firm's lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. These schedules were prepared from

contemporaneous, daily time records prepared and maintained by my firm. The hourly rates are the same as the usual and customary hourly rates charged for services in other actions, except for document review work, as described below.

53. We performed a line-by-line review of each Tousley Brain Stephens time entry in this matter and cut or reduced time where appropriate in the exercise of billing judgment. The time we are submitting is reasonable and necessary for the prosecution of this case. It does not reflect all of the time Tousley Brain Stephens incurred during this matter. Should the Court desire, we will provide the detailed time entries to the Court for an in camera review as they contain details about legal strategy and are protected by the work product and attorney client privileges and should remain confidential.

54. I hereby attest that the attached time schedules (Exhibit A1 and Exhibit A2) conform to the Document Review rates and billing guidelines, discussed in paragraphs 10 and 21.

55. The total number of hours my firm expended on this litigation from inception through December 2019 is 6,179.50 hours. My firm expended 374.90 hours prior to my appointment as Interim Lead Counsel and 5,804.60 hours after my appointment as Interim Lead Counsel.

56. The total lodestar for my firm using historic billing rates is \$3,653,312.00. My firm's pre-appointment of Lead Counsel lodestar using historic billing rates is \$219,085.00. My firm's post-appointment of Lead Counsel lodestar using historic billing rates is \$3,434,227.00.

57. The total lodestar for my firm using current billing rates as December 2019 is \$3,752,392.50. My firm's pre-appointment of Lead Counsel lodestar using current billing rates is \$234,330.50. My firm's post-appointment of Lead Counsel lodestar using current billing rates is \$3,518,062.00.

58. Attached to my declaration as Exhibit B is a summary of expenses totaling \$330,322.57, which we necessarily incurred to prosecute this litigation. My firm's total expenses pre-appointment of Lead Counsel total \$6,083.43 and post-appointment of Lead Counsel is \$324,239.14. The expenses pertaining to this action are reflected in the books and records of my firm. These books and records are prepared from expense vouchers, check records and other documents and are an accurate record of the expenses incurred.

59. Tousley Brain Stephens PLLC has extensive experience in class action litigation and has prosecuted numerous multi-million dollar class actions, including cases in the areas of consumer protection, product liability, securities, and data breaches such as this case. Some of our more significant class cases include the following:

- Tousley Brain Stephens PLLC was appointed co-lead counsel in the *In re Louisiana-Pacific Inner Seal Siding* class action, which with initial funding of \$275 million, was one of the largest product liability class action settlements in the United States. In November 1998, this settlement was augmented by additional commitments for a total amount in excess of \$500 million, over \$240 million of which was paid to Washington residents.
- Tousley Brain Stephens PLLC was co-lead counsel in the *Richison v. American Cemwood Corp.* litigation related to defective shingles, which created a guaranteed \$105 million settlement fund for a national class in the first phase of the litigation. The second phase of the litigation against Cemwood's insurers created an additional \$85 million settlement fund for the class.
- Tousley Brain Stephens PLLC served as co-lead counsel in the *Behr Wood Sealants* settlement, which created a national settlement fund of up to \$107.5 million, plus \$25 million in attorneys' fees, for the settlement class.
- Tousley Brain Stephens PLLC was appointed sole class counsel in *Johnson v. Amgen Boulder, Inc.* to represent a national class that invested approximately \$50 million to fund the development of a genetically engineered molecule with the world's largest biotechnology company. That case settled for payments totaling \$82 million. The settlement was approved by Judge Rothstein.

- Tousley Brain Stephens PLLC was co-lead counsel in the national product liability class action against Weyerhaeuser Company in San Francisco Superior Court, *Williams et al. v. Weyerhaeuser Company*, the settlement of which Weyerhaeuser values at approximately \$85 million.
- Tousley Brain Stephens PLLC was appointed sole class counsel in *Wolf et al. v. Asiamerica et al.*, a securities fraud action against an international leveraged buy-out corporation that settled for approximately 120% of the class's investment, plus attorneys' fees and costs. The settlement was approved by Judge Dwyer.
- Tousley Brain Stephens PLLC served as sole class counsel in *Barrett v. PABCO*, a national roofing shingles products liability case, which settled on an unlimited claims-made basis in 2006. That settlement more than doubled the value of compensation available to homeowners under a Washington State Attorney General Consent decree, and opened claims to every qualified homeowner in the nation, including those who were not original purchasers of the roofing product at issue.
- Tousley Brain Stephens PLLC was also co-lead counsel in *Grays Harbor Christian School v. Carrier Corporation* where we successfully represented over 3 million national consumers who alleged Carrier Corporation sold defective, high efficiency furnaces. The case settled on a national and international basis when Carrier agreed to compensate consumers for past failures and fix the alleged defect for free in the future. The settlement was approved by Judge Leighton.
- Tousley Brain Stephens PLLC was co-lead counsel in *Nelson v. Appleway Chevrolet, Inc.*, 160 Wn.2d 173 (2007), where we successfully represented purchasers of vehicles, parts, and services against automobile dealers in Washington who illegally charged and collected B&O tax. Class members received a full refund of the illegally charged taxes.
- Tousley Brain Stephens PLLC served as co-lead counsel in *Cole v. Wells Fargo Bank N.A.*, where we successfully resolved claims for a national class of consumers who were charged excessive fees on their accounts by obtaining full refunds, with interest, for class members. The settlement was approved by Judge Lasnik.
- Tousley Brain Stephens PLLC served as co-lead counsel in *Zwicker v. General Motors, Inc.*, a consumer case related to defective speedometers. The settlement, valued in excess of \$100 million, benefitted a national class of 4.2 million consumers who were entitled to get their speedometers fixed for free. The settlement was approved by Judge Coughenour.
- Tousley Brain Stephens PLLC served as co-lead counsel in *Spafford v. EchoStar Communications, Inc.*, representing a class of Washington consumers subjected to automatic dialing and announcing device solicitations in violation of Washington's

Consumer Protection Act. This settlement included injunctive relief and was approved by Judge Jones.

- Tousley Brain Stephens PLLC was co-lead counsel in *Pelletz v. Weyerhaeuser Company and Advances Environmental Technologies, Inc.*, representing a national class of consumers related to defective composite decking. The settlement involved free replacement decking and mold remediation and was approved by Judge Coughenour.
- Tousley Brain Stephens PLLC served as co-lead counsel in *Delay v. Hurd Millwork Company*, representing a multi-state settlement class involving defective windows, which also settled successfully for replacement windows.
- Tousley Brain Stephens PLLC served as Liaison Counsel in *In re: Washington Mutual Mortgage Backed Securities Litigation* for a class of purchasers of certain mortgage backed securities sold by Washington Mutual subsidiaries. The case settled for \$26 million shortly before trial and was approved by Judge Pechman.
- Tousley Brain Stephens PLLC served as co-lead counsel in *Ross v. Trex Company, Inc.* for a national class of consumers who purchased defective Trex® decking and railing. The case settled on a claims made basis entitling class members to replacement product and a labor allowance.
- Tousley Brain Stephens PLLC is serving as co-lead class counsel in *Billy Glenn v. Hyundai Motor America*, for a national class of consumers who purchased Hyundai vehicles with defective and exploding sunroofs. The nationwide settlement is valued in excess of \$135 million.
- Tousley Brain Stephens PLLC served as lead counsel in *Ikuseghan v. Multicare Health System*, USDC Western District of Washington at Tacoma, No. 3:14-cv-05539-BHS, representing a nationwide class in resolving claims under the Telephone Consumer Protection Act (TCPA).
- Tousley Brain Stephens PLLC is served as co-lead counsel in *Armon et al. v. Washington State University*, a data breach lawsuit brought in Washington State Court (King County Superior Court Case No. 17-2-23244-1 SEA), which is a data breach lawsuit. The judge in that case recently granted final approval of a settlement.

60. I was the lead counsel for Tousley Brain Stephens PLLC, and I litigated all of the foregoing cases except *Louisiana-Pacific Inner Seal Siding*. Cumulatively, these cases have afforded well over a billion dollars in class relief.

61. In addition, Tousley Brain Stephens PLLC has been lead or co-lead counsel in numerous other consumer product liability, securities, and employment cases. For example, Tousley Brain Stephens PLLC was appointed co-lead counsel for trial in Stanislaus County, California, of the *Nature Guard Cement Roofing Shingles Cases* regarding the durability of Louisiana-Pacific's Nature Guard roofing shingles, co-lead counsel in the consumer class fraud case of *Odom v. Microsoft et al.* in King County Superior Court, sole lead counsel in *Trimble et al. v. Holmes Harbor Sewer District et al.*, an Island County Superior Court case which certified for trial a class of over 300 investors misled by an illegal \$20 million bond issue, and co-lead counsel in a wage and hour employment case in *Kirkpatrick et al. v. Ironwood Communications, Inc.* I was also trial counsel for *McAdams v. Monier Lifetiles, LLC*, a class action in Placer County, California, which resulted in a state wide judgment for purchasers of Monier roof tiles in California.

62. The firm's rates have been approved as reasonable and appropriate by numerous U.S. District Court judges in similar matters, as well as Superior Court judges in King County. Most recently the court in *Armon et al. v. Washington State University*, a data breach lawsuit brought in Washington State Court (King County Superior Court Case No. 17-2-23244-1 SEA), approved our current rates as "reasonable and in line with the prevailing rates in the community for complex class action litigation." (November 8, 2019 Final Approval Order at 10.)

63. Similarly, in *Glenn v. Hyundai*, U.S. District Court for the Central District of California, Case Number 8:15-cv-02052, approved our current rates after finding "Class Counsel's hourly rates are reasonable and in line with the prevailing rates in the community for complex class action litigation."

64. I am one of Tousley Brain Stephens PLLC's senior litigators. I received my law degree (with honors) in 1981 from the University of Washington, and served as a judicial extern clerk for the Honorable Eugene A. Wright, Ninth Circuit Federal Court of Appeals. After that clerkship, I joined Haggard, Tousley & Brain, the predecessor to Tousley Brain Stephens PLLC. I concentrate my practice in complex commercial and class action litigation with special emphasis on consumer, securities, financial, construction products, and business law matters. I have been appointed special attorney general to handle cases for the state of Washington, lead counsel to manage both state and federal class actions, and have extensive experience litigating multiple plaintiff, multi-district and class action cases involving securities fraud, environmental contamination, products liability, data breach, anti-trust and consumer fraud issues in state and federal courts.

65. In this matter, I contributed extensive strategic guidance to the plaintiffs' team on diverse topics including initial liability theories, damages-modeling, risk assessment, and discovery planning. I also spent considerable time planning settlement approaches and negotiating the settlement. Following the Court's order granting Preliminary Approval, I worked with the settlement administrator to track the progress of notice and respond to inquiries from class members. In October 2019, I was contacted by local television media, and granted an interview to summarize Settlement benefits and claims procedures.

66. Jason Dennett graduated from the University of Oregon law school in 2000 and served as a judicial extern for the Honorable Ann Aiken, U.S. District Court, District of Oregon. Mr. Dennett's litigation background is diverse, including securities, partnership disputes, shareholder oppression, trust litigation, and numerous trials and arbitrations. However, Mr.

Dennett's current practice concentrates in the area of class action litigation, with an emphasis on consumer products and data privacy.

67. Mr. Dennett worked with outside consultants and an expert in network security to conduct discovery of Premera's security systems, and to evaluate and negotiate with Premera's counsel regarding the injunctive relief that requires Premera to implement security measures as a part of the settlement. He also worked closely with outside consultants regarding plaintiffs' damages theories. He also gave strategic guidance to the plaintiffs' team on diverse topics including initial liability theories, damages-modeling, risk assessment, and discovery planning.

68. Cecily Shiel is a 2015 graduate of the University of Washington, where she was chief managing editor of the Washington Law Review. She served as a judicial extern to the Honorable Robert S. Lasnik of the U.S. District Court for the Western District of Washington and the Honorable Bradley A. Maxa of the Washington Court of Appeals – Division II. She served as a law clerk to Justice Charlie Wiggins of the Washington Supreme Court. Ms. Shiel concentrates her practice on class action litigation.

69. Rebecca Solomon is a 2012 graduate of the University of Texas School of Law, where she served as the New Media Editor for the Texas International Law Journal and was a member of the National Security Clinic. Ms. Solomon served as a judicial law clerk to the Hon. W. Royal Furgeson of the Northern District of Texas. Following Judge Furgeson's retirement from the bench, Rebecca had the pleasure of continuing her clerkship assisting the other judges of the Northern District of Texas. Ms. Solomon concentrates her practice on complex and class action litigation.

70. Ms. Shiel and Ms. Solomon provided legal research support for the class certification briefing team, as well as on other legal research and briefing tasks. Ms. Shiel also

worked closely on various discovery matters, reviewed documents, and assisted with work related to Plaintiffs' experts and damages theories and this settlement.

71. Tousley Brain Stephens PLLC's work in this case was at all times entirely contingent on the outcome.

V. Plaintiffs' Attorneys' Fees and Expenses

72. Liaison Counsel, Keith Dubanevich, my colleague, Jason Dennett, and I oversaw and directed the work of all Plaintiffs' Counsel (including the work performed by firms serving on the court-appointed Plaintiffs' Steering Committee). We performed this task by assigning specific tasks and projects to specific attorneys involved in the litigation, taking care to eliminate overlap and catch-up work as much as possible. We divided discovery tasks among Plaintiffs' firms to ensure efficiency, lack of duplication, and to minimize lodestar and expenses as much as possible.

73. Since the Court appointed me as Interim Lead Counsel and Mr. Dubanevich as Interim Liaison Counsel, we required Plaintiffs' Counsel to submit monthly billing statements regarding all time spent on and all expenses incurred in this litigation. I set specific requirements at the outset for documenting and reporting time. Specifically, we required that all Plaintiffs firms submit time and expense records no later than the 15th of each month. We also required all Plaintiffs firms submit their time and expenses incurred from August 7, 2015 up to and including August 31, 2015 to Plaintiffs' Lead Counsel no later than September 15, 2015, and then on a monthly basis thereafter.

74. We established guidelines that we would only submit time and expense reports to the Court for work authorized in advance in writing and informed counsel we would likely not consider, compile or include time and expense records submitted two months late, except for good

cause shown. This was to ensure Plaintiffs' Counsel kept contemporaneous records and to ensure the accuracy of all monthly reports submitted to the Court.

75. We also required that all expenses submitted for reimbursement were reasonable and necessary to the litigation of the matter.

76. Each month, Keith Dubanevich, Jason Dennett, and I reviewed all time and expense submissions from the PSC and the Plaintiffs' firms as they were submitted. Further, all such submissions were later reviewed by Class Counsel and were subject to reductions when appropriate. For example, any time submission which included billing rates higher than those set forth in Paragraph 21 herein were reduced to comport with the limited billing rates for document review work. In total we disallowed over 1,100 hours of time during our review.

77. Class Counsel conducted further review in preparation for filing this motion, and made further reductions to the pre-appointment time. Specifically, I disallowed pre-appointment time for firms not appointed to a leadership position by the Court, and further reduced pre-appointment time to reduce any billing for duplicative work incurred in the litigation prior to consolidation. I cut an additional 1,641 hours of pre-appointment time from the lodestar figures submitted to the Court. With these additional hours, Counsel has disallowed over 1,741 hours in this litigation.

78. The following chart summarizes the fees and expenses reported for all Plaintiffs' Counsel, including fees and expenses of Class Counsel.

Firm	Hours	Historic Lodestar	Current Lodestar	Expenses
Interim Lead Counsel & Settlement Class Counsel				
Tousley Brain Stephens, PLLC	6,179.50	\$3,653,312.00	\$3,752,392.50	\$330,332.57
Interim Liaison Counsel & Settlement Class Counsel				
Stoll Berne	2,838.35	\$1,127,705.25	\$1,214,594.75	\$193,602.71
Plaintiffs' Steering Committee Firms & Settlement Class Counsel				
Hausfeld	1,677.10	\$930,752.00	\$1,062,659.00	\$174,964.61
Ahdoot & Wolfson, PC	2,321.60	\$1,568,442.30	\$1,740,298.30	\$188,021.29
Lockridge Grindal; Nauen P.L.L.P.	2,716.40	\$1,186,727.50	\$1,216,092.50	\$142,849.97
Plaintiffs' Firms				
Badgley Mullins Turner	0.30	\$45.00	\$48.00	\$817.85
Barrack, Rodos & Bacine	316.40	\$147,566.50	\$153,635.00	\$22,859.76
Cafferty Clobes Meriwether & Sprengel	291.10	\$123,947.50	\$139,550.00	\$30,079.00
Carlson Lynch LLP	434.40	\$181,582.50	\$196,097.50	\$23,237.66
Caroselli Beachler & Coleman	8.32	\$4,551.50	\$5,380.00	\$2,241.23
Chimicles Schwartz Kriner & Donaldson-Smith LLP	1.50	\$956.25	\$956.25	\$1,637.69
Cohen & Malad, LLP	551.30	\$80,661.50	\$181,407.00	\$21,119.44
Edelson PC	895.41	\$313,179.60	\$484,033.25	\$20,000.00
Eggnatz Pascucci, P.A.	2.30	\$997.50	\$1,265.00	\$411.20

Emerson Firm, PLLC	37.70	\$29,920.50	\$29,920.50	\$0.00
Federman & Sherwood	126.90	\$63,601.00	\$63,601.00	\$10,378.26
Feinstein Doyle Payne & Kravec, LLP	31.60	\$17,084.00	\$18,551.00	\$20,045.98
Girard Gibbs	15.60	\$9,418.00	\$12,280.00	\$1,389.28
Goldman Scarlato & Penny, P.C.	9.70	\$6,773.00	\$7,032.50	\$263.53
Kantrowitz, Goldhammer & Graifman, PC	309.72	\$163,154.50	\$190,400.00	\$25,967.18
Kazerouni Law Group, APC	0.2	\$60.00	\$80.00	\$431.99
Landye Bennett Blumstein LLP	4.00	\$1,980.00	\$2,180.00	\$1,836.35
Law Offices of Clifford A. Cantor, P.C.	12.10	\$6,050.00	\$7,260.00	\$3,984.18
Lieff Cabraser Heimann & Bernstein, LLP	154.60	\$90,159.50	\$95,771.50	\$14,635.26
Millberg Phillips Grossman LLP	25.00	\$13,465.00	\$14,770.00	\$4,502.29
Nelson Boyd, PLLC	2.20	\$960.00	\$960.00	\$716.24
Stull, Stull & Brody	1,556.83	\$738,312.35	\$747,302.35	\$24,417.86
The Grant Law Firm, PLLC	8.71	\$4,627.00	\$4,922.50	\$258.47
Weitz & Luxenberg, P.C.	52.26	\$18,034.00	\$19,909.00	\$1,765.33
Zimmerman & Wallace	21.90	\$6,965.00	\$6,965.00	\$0.00

Zwerling, Schachter & Zwerling, LLP	11.70	\$8,421.50	\$8,421.50	\$797.41
Totals:	20,615.30	\$10,499,392.25	\$11,378,705.90	\$1,247,389.03

79. In total, all firms work worked on this matter billed a total of 20,615.30 hours. This included 643.60 hours prior to the appointment of Interim Lead Counsel, and 19,971.70 hours following the appointment of Interim Lead Counsel. These totals do not include the significant amount of time cut from our lodestar as a matter of billing discretion, as discussed above. Nor do these figures include the significant amount of time required to review billing records in preparation for this fee petition or the time required to draft the fee petition and supporting declarations.

80. Collectively, Plaintiffs' Counsel have devoted 20,615.30 hours to litigating this case, with a reasonable lodestar as of December 31, 2019 of \$10,499,392.25 calculated at historic rates. When those rates are adjusted to market rates, current as of December 31, 2019, the total reasonable lodestar is \$11,378,705.90.

81. Additional work will be required before this litigation is complete. Class Counsel must still: (1) prepare for and attend the final approval hearing, including drafting of the reply papers and responses to objections (if any); (2) continue to respond to the many inquiries from Class Members; (3) oversee the Settlement through final approval of distribution of the common fund; (4) oversee the claims administration process, including addressing any claim review issues; and (5) handle any appeals. None of this is reflected in the current lodestar figures listed above.

82. The total incurred expenses to date in this litigation amount to \$1,247,389.03.

83. Attached hereto as exhibits are declarations from the following Plaintiffs' firms supporting the lodestar and expense figures detailed above.

Exhibit	Firm
Exhibit C-1	Stoll Berne
Exhibit C-2	Hausfeld
Exhibit C-3	Ahdoot & Wolfson, PC
Exhibit C-4	Lockridge Grindal; Nauen P.L.L.P.
Exhibit C-5	Badgley Mullins Turner
Exhibit C-6	Barrack, Rodos & Bacine
Exhibit C-7	Cafferty Clobes Meriwether & Sprengel
Exhibit C-8	Carlson Lynch LLP
Exhibit C-9	Caroselli Beachler & Coleman
Exhibit C-10	Chimicles Schwartz Kriner & Donaldson-Smith LLP
Exhibit C-11	Cohen & Malad, LLP
Exhibit C-12	Edelson PC
Exhibit C-13	Eggnatz Pascucci, P.A.
Exhibit C-14	Emerson Firm, PLLC
Exhibit C-15	Federman & Sherwood
Exhibit C-16	Feinstein Doyle Payne & Kravec, LLP
Exhibit C-17	Girard Gibbs
Exhibit C-18	Goldman Scarlato & Penny, P.C.
Exhibit C-19	Kantrowitz, Goldhammer & Graifman, PC
Exhibit C-20	Kazerouni Law Group, APC
Exhibit C-21	Landye Bennett Blumstein LLP
Exhibit C-22	Law Offices of Clifford A. Cantor, P.C.

Exhibit C-23	Lieff Cabraser Heimann & Bernstein, LLP
Exhibit C-24	Millberg Phillips Grossman LLP
Exhibit C-25	Nelson Boyd, PLLC
Exhibit C-26	Stull, Stull & Brody
Exhibit C-27	The Grant Law Firm, PLLC
Exhibit C-28	Weitz & Luxenberg, P.C.
Exhibit C-29	Zimmerman & Wallace
Exhibit C-30	Zwerling, Schachter & Zwerling, LLP

84. Each firm listed above prepared and maintained time and expense records, which are available for *in camera* review at the request of the Court.

85. Based on my review of the materials noted above, and my extensive experience with comparable class action cases, the number of hours expended by Lead Counsel, Liaison Counsel, the PSC firms, and other Plaintiffs' firms are commensurate for a case of this broad scope, extreme complexity, and duration. Counsel received no compensation for their efforts during the course of this litigation.

86. Based on my review of the time and expense submissions of the Lead Counsel, Liaison Counsel, the PSC firms, and other Plaintiffs' firms, the expense submissions presented here are consistent with expenses I would expect given the duration, complexity, and intensity of this case and the tasks that were performed, and were reasonably necessary for the continued prosecution and resolution of this litigation. Such expenses are of the type Counsel would normally charge a fee-paying client.

87. Early on in the litigation, Class Counsel and members of the PSC established a litigation cost fund, held in a separate bank account. Tousley Brain Stephens handled the cost fund

accounting for this case. Lead Counsel contributed \$165,000.00, and Liaison Counsel contributed \$155,000.00, and each member firm serving on the PSC contributed between \$155,000.00 and \$135,000.00 to the cost fund. Certain other Plaintiffs' Counsel made contributions to the cost fund as well. These cost fund assessments are included in the total expense figures for the firms, as listed above.² The total cost fund contributions amounted to \$935,000.00. As present, the cost fund as a balance of \$16,165.56. Funds from the cost fund were used to pay for unreimbursed expenses that were necessarily incurred in connection with the prosecution and resolution of this litigation. We subtracted this positive balance from the total expenses requested in the accompanying Motion.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED this 10th day of January 2020 in Seattle, Washington.

s/ Kim D. Stephens

Kim D. Stephens

Tousley Brain Stephens, PLLC

² Several firms underreported their cost fund contributions in their declarations attached hereto. Tousley Brain Stephens has verified all funds received, and included the full amount of the cost fund contributions listed in this paragraph in the total costs for which Plaintiffs' Counsel seek reimbursement.