

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

ROBIN FORSLUND, TIMOTHY KELLY,  
MATTHEW MENTING, DONALYN  
NORTH, ROBIN RECTOR, ERIC  
OTTENHEIMER, GAIL ROSSI, and  
GREGORY WILLIAMS, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

R.R. DONNELLEY & SONS COMPANY,

Defendants.

Case No. 1:22-cv-04260

Judge John J. Tharpe, Jr.

**DECLARATION OF GARY M. KLINGER IN SUPPORT OF  
PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT**

I, Gary M. Klinger, being competent to testify, make the following declaration:

1. I am a senior partner of the law firm Milberg Coleman Bryson Philips Grossman, PLLC ("Milberg"). I have been appointed co-class counsel for Plaintiffs in this matter. I submit this declaration in support of Plaintiffs' Motion for Final Approval of the Class Action Settlement and Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs, and Service Award. The contents of this declaration are based upon my own personal knowledge, and I could competently testify to them if called upon to do so.

**Counsel Qualifications**

2. Settlement Class Counsel have extensive experience prosecuting complex class actions. This experience was detailed for the Court in the Motion for Appointment of Interim Class

Counsel (ECF No. 21) and is further described by the individual declarations of Class Counsel submitted herein. My experience, and that of my partners, is described in ECF 61-2.

### **The Settlement Negotiations**

3. Prior to arriving at a settlement agreement, the Parties engaged in informal discovery, including, but not limited to: the putative class size and residence, number of individuals with SSNs impacted, forensic investigation(s) into the Data Incident, and Defendant's insurance coverage and/or ability to pay.

4. The Parties also briefed their respective positions on each side's respective positions on the merits and class certification.

5. Through the information provided by Defendant, we learned that a ransomware attack occurred on or around November 29, 2021, impacting the PII of current and past employees. Based on this information, we are informed by Defendant that the Class is comprised of approximately 81,642 individuals, whose names and mailing addresses are known to Defendant.

6. Over a period of three months, the Parties engaged in settlement negotiations.

7. In the subsequent months, the Parties finalized the Settlement Agreement.

8. While courteous and professional, the negotiations were hard-fought throughout and the settlement process was conducted at arm's length between experienced counsel with an understanding of the strengths and weaknesses of their respective positions in the Lawsuit.

9. The Parties were able to reach an agreement on the substantive terms of the Settlement to include monetary compensation to class members and the adoption of business practice changes related to data security by Defendant.

10. There was nothing collusive about the settlement negotiations or the ultimate Settlement reached.

11. Attorneys' fees, costs, expenses, and service awards were negotiated only after all substantive terms of the Settlement were agreed upon by the Parties.

### **The Settlement**

12. The Settlement provides significant benefits to Class Members. All Settlement Class Members who submit a valid Settlement Claim through the Claim Form and supporting documentation are eligible to receive reimbursement for documented, eligible out-of-pocket expenses incurred by Settlement Class Members as a result of the Data Incident. Defendant will also implement remedial data security measures which will improve its cyber security and ensure that the problem which led to the Security Incident is not repeated.

13. The Settlement in this Litigation provides monetary and equitable forms of relief to Settlement Class Members in a non-reversionary common fund in the amount of \$979,704.

14. All Settlement Class Members who submit a Valid Claim are eligible to receive reimbursement for documented Ordinary Out-of-Pocket Losses and Attested Lost Time. A claim for Lost Time may be submitted up to ten hours at \$25 per hour. Claims for Attested Lost Time are capped at \$250 and fall under the \$750 Ordinary Out-of-Pocket Loss Cap.

15. All Settlement Class Members who submit a Valid Claim are eligible to receive reimbursement for documented Extraordinary Out-of-Pocket Losses not to exceed \$5,000 per Settlement Class Member. Settlement Class Members may submit multiple claims, but the total of all amounts claimed may not exceed \$5,000.

16. Alternatively, Settlement Class Members may receive a cash payment up to \$50 on a claims made basis in lieu of submitting a claim for ordinary or extraordinary losses or lost time.

17. Defendant has agreed to maintain reasonable information security policies (“Business Practice Commitments”) for a period of four years following the effective date. Costs associated with this will be paid by Defendant separate and apart from the Settlement Fund.

18. The Settlement Agreement reached by the parties was negotiated at arms-length, is the result of hard bargaining, and provides all Settlement Class Members with the ability to receive cash payments due to their Private Information potentially being compromised in Defendant’s Data Incident.

19. As illustrated by the following chart, the settlement in this case provides similar or better value than many other recent data breach settlements in cases involving the alleged theft of sensitive, private information that included Social Security Numbers throughout the country:

Case Name	Case Number	Settlement Amount	Class Size	Average Value Per Person
<i>Cochran v. Kroger Co.</i>	No. 5:21-cv-01887 (N.D. Cal.)	\$5,000,000	3,825,200	\$1.31
<i>Thomsen v. Morley Companies, Inc.</i>	No. 1:22-cv-10271 (E.D. Mich)	\$4,300,000	694,679	\$6.19
<i>In re C.R. England, Inc. Data Breach Litigation</i>	No. 2:22-cv-374-DAK (D. Utah)	\$1,400,000	224,572	\$6.23
<i>Reynolds v. Marymount Manhattan College</i>	No. 1:22-cv-06846 (S.D.N.Y.)	\$1,300,000	191,752	\$6.78
<i>Jones et al. v. P2ES Holdings, LLC</i>	No. 23-cv-00408-GPG (D. Colo.)	\$1,250,000	179,659	\$6.96
<i>Julien v. Cash Express, LLC</i>	No. 2022-cv-221 (Putnam Cty., Tenn.)	\$850,000	106,000	\$8.02
<b><i>Forslund et al. v. R.R. Donnelley &amp; Sons Company</i></b>	<b>No. 1:22-cv-04260 (N.D. Ill.)</b>	<b>\$979,704</b>	<b>81,642</b>	<b>\$12.00</b>

### The Strength of Plaintiff’s Case

20. I believe that Plaintiffs have a strong case for liability and damages. My co-counsel and I were prepared to submit evidence supporting Plaintiffs' assertions that Defendant failed to take a number of industry-standard measures to secure its employees and past employees' PII. I also believe that we would be able to show that Plaintiffs suffered damages as a result of the Data Incident. Defendant has continuously disputed the sufficiency of Plaintiffs' allegations. Although I feel strongly that Plaintiffs would be able to obtain a favorable ruling on all issues, I am aware that this is not a certainty.

### **The Risk, Expense, and Likely Duration of Further Litigation**

21. Although Plaintiffs are confident in the merits of their claims, the risks involved in prosecuting a class action through trial cannot be disregarded. I believe it is important not to disregard the high level of risk, expense, and complexity of class litigation, which is one reason that judicial policy so strongly favors resolving class actions through settlement. This is not only a complex case, but also it is in an especially risky field of litigation. Data breach cases continue to be among the most risky and uncertain of all class action litigation. Many data breach cases are dismissed at the motion to dismiss or summary judgment stage, or they fail to obtain class certification over the defendant's objection.

22. Through the Settlement, Plaintiffs and Class Members gain significant benefits without having to incur further risk. Moreover, the cost of trial and any appeals would be significant and would delay the resolution of this litigation without the guarantee of any relief.

### **The Amount Offered in Settlement**

23. The valuable benefits made available pursuant to the Settlement squarely address the issues raised in the Litigation and provide timely, significant, and pertinent relief to the

Settlement Class Members, which compares favorably to what Class Members could recover were they to secure a favorable judgment at trial. In the experience of Class Counsel, the monetary relief provided by this Settlement is fair and reasonable in light of reported average out-of-pocket expenses due to a data breach.

### **The Extent of Discovery Completed and the Stage of the Proceedings**

24. While formal discovery did not take place, the Parties exchanged informal discovery and briefs on their respective positions on the facts, claims, defenses, and assessments of the risk of litigation. Through informal discovery, the Parties were able to fully evaluate each side's respective position in light of the merits, claims, and defenses in the matter.

### **The Experience and Views of Counsel**

25. Mr. Lyon, Ms. Borrelli, and I are qualified, experienced, and able to conduct the litigation. Our firms have worked together for a number of years and Mr. Lyon, Ms. Borrelli, and I have personally worked together in other data breach cases. Through these experiences, I have had the opportunity to observe and benefit from their superior litigation skills and abilities.

26. With respect to the adequacy of counsel, Mr. Lyon, Ms. Borrelli, and I, and our firms, have invested considerable time and resources into the prosecution of this action. Specific to this area of privacy litigation, we have a wealth of experience in litigating complex, class action lawsuits, including data breach cases, as set forth in in the attached resumes to the Declaration of Raina Borrelli in support of Plaintiff's Uncontested Motion to Appoint Interim Co-Lead Class Counsel Under Fed. R. Civ. P 23(g)(3) and Memorandum in Support (ECF No. 21)

27. We have extensive experience leading and managing consumer class actions and complex litigation of this nature, extensive knowledge of all applicable case law, and sufficient resources which we committed to the class in this case.

28. Further, Mr. Lyon, Ms. Borrelli, and I have diligently investigated and prosecuted the claims in this matter, dedicated substantial resources to the investigation and litigation of those claims, and successfully negotiated the Settlement of this matter to the benefit of Plaintiffs and the Settlement Class.

29. Through the settlement process and before finally entering the Settlement, Mr. Lyon, Ms. Borrelli, and I carefully weighed with Plaintiffs: (1) the benefits to Plaintiffs and the Class under the terms of the Settlement Agreement; (2) the range of the results in other settlements reached in similar litigation; (3) the attendant risks and uncertainty of litigation, especially in complex cases, such as this Action where certification is by no means a given and would be challenged if litigated and appealed if the court certified the Class; (4) the difficulties and delays inherent in such litigation in the event that Defendants were to seek appellate review of the Court's Final Judgment, in the event Plaintiffs and the Class are successful at trial; (5) Defendants' vigorous defense of the litigation and continued denial of the claims contained in the Complaint (including certification); (6) the desirability of consummating this Settlement, to ensure that the Class received a fair and reasonable settlement; and (7) providing Plaintiffs and Class members prompt relief.

30. The delay in continuing to litigate this case also favors approval of the Settlement. Many more months and significant additional costs would be required for the parties and the Court to complete the pre-trial proceedings, summary judgment and Daubert motions, and class

certification. After trial, either party could appeal the Court's class certification and summary judgment decisions, which could take years to complete.

31. Conversely, the Settlement affords Settlement Class Members significant and timely benefits which compare favorably to what Settlement Class Members could recover were they to secure a favorable judgment at trial. In the experience of Class Counsel, the monetary relief provided by this Settlement is an outstanding result and is fair and reasonable in light of reported average out-of-pocket expenses due to a data breach.

32. Based on our independent investigation of the relevant facts and applicable law, experience with other data breach cases, and the information provided by Defendants, Plaintiffs' counsel has determined that the Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class.

#### **Whether the Settlement is a Product of Collusion Among the Parties**

33. Plaintiffs undertook significant factual and legal investigation of the issues prior to filing the case. As explained previously, the Parties engaged in informal discovery, and the Settlement clearly emerged from an arm's-length negotiation process between the Parties. The Settlement is the product of significant time and effort spent by the Parties in negotiating its terms and a final written memorialization over a period of many months.

34. Furthermore, the proposed Settlement Class Representatives are members of the Settlement Class and possess no interests antagonistic to the Settlement Class. They provided their PII to Defendants and allege that their PII was compromised as a result of the Security Incident, just as the PII of the Settlement Class was also allegedly compromised. Indeed, their claims reflect identically the claims of the Settlement Class, and they and the Settlement Class desire the same outcome of this litigation. Because of this, the proposed Settlement Class Representatives have



vigorously prosecuted this case for the benefit of all Settlement Class Members. Plaintiffs have been at the helm of the Litigation, reviewing pleadings, conferring with Counsel, and providing input in crafting and approving the Settlement.

**Rule 23(e) Statement Regarding Separate Agreements Between the Parties**

35. The Settlement Agreement is the only agreement between the Parties; no separate agreement exists.

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

Executed on March 1, 2024 in Chicago, Illinois.

*/s/ Gary M. Klinger* \_\_\_\_\_  
Gary M. Klinger