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

IN RE: Premera Blue Cross Customer Data
Security Breach Litigation

This Document Relates to All Actions

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

**PLAINTIFF CLASS'
SUPPLEMENTAL
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 in 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 Plaintiff Class' Motion for Final Approval and Motion for Award of Attorneys' Fees and Reimbursement of Expenses.

2. The parties reached the proposed settlement after extensive, arm's-length settlement negotiations guided by two experienced mediators. These negotiations included three mediation sessions with the Honorable Jay C. Gandhi (Ret.) of JAMS and numerous telephone negotiations. Two of the mediation sessions included the additional assistance of Peter K. Rosen, Esq. of JAMS. Judge Gandhi and Mr. Rosen each have significant experience successfully mediating data breach lawsuits, as well as other class and non-class cases.

3. Though this case has been pending since 2015, it was not until October 2018, after the parties had completed briefing class certification, that Premera first became willing to discuss settlement.

4. The first session of mediation took place on October 26, 2018, one day after the parties closed their briefing on Plaintiffs' class certification motion, but before the hearing on class certification. This mediation took place with the assistance of Judge Gandhi. After a long day of negotiations that extended into the evening, the parties were unable to reach a deal.

5. Following the unsuccessful mediation, the parties continued their negotiations through Judge Gandhi. The parties eventually agreed to attend a second mediation session and further agreed to engage Mr. Rosen as a second mediator to assist with the complex, multi-stakeholder negotiations.

6. All three mediation sessions were very contentious and difficult. Two of these mediation sessions began at 10 a.m. and went into the night; one past midnight. Both mediators assisted us in the last two mediation sessions.

7. I was present at each of the mediation sessions and I was joined by the following co-counsel for Plaintiffs at all or some of the sessions: James Pizzirusso, Keith Dubanevich, Tina Wolfson, Karen Riebel, Jason Dennett, Chase Alvord, and Robert Ahdoot.

8. Premera's corporate counsel and its outside counsel were present at each of the mediation sessions. Coverage counsel for Premera, counsel for Premera's insurers and insurance adjusters were present for the last two sessions.

9. Twice the parties reached a stalemate, and nearly abandoned negotiations. The second mediation session went past midnight and eventually resulted in a mediator's proposal. The third mediation session was largely unsuccessful. Negotiations continued over multiple follow-up emails and telephone conferences brokered by Judge Gandhi and Mr. Rosen, including from London, England. Finally, in the evening of Valentine's Day, February 14, 2019, the Parties reached a preliminary agreement on the general terms of a nationwide settlement based on a mediator's proposal.

10. Though the parties had reached the outline of a deal, the parties continued to negotiate numerous details in the following months with the assistance of Judge Gandhi and Mr. Rosen. All the while, the Court's impending decision on class certification was looming. Eventually, the parties felt they were close enough to a deal to ask the Court to refrain from issuing a ruling on class certification while the parties sought to finalize the settlement terms.

11. Negotiation efforts were extensive, stretching from October 2018 into May 2019. Attached at Exhibit 1 are true and correct copies of redacted invoices from JAMS showing the extensive involvement of mediators Judge Gandhi and Mr. Rosen throughout this process.

12. Finally, in early May 2019, the parties were coming close to a written agreement. On May 7, 2019, Class Counsel reached out to all individual counsel for the named plaintiffs, including Mr. Cochran, to inform them of the proposed settlement and its terms. The parties were still revising the agreement, and no party had signed the agreement at this time.

13. Mr. Cochran responded to me on May 9, 2019. On May 9, 2019, I sent Mr. Cochran a copy of the Settlement Agreement in its then-draft form at his request, reminding him of the sensitive status of negotiations and the need for confidentiality. As neither party had signed the settlement agreement at that time, we sought comments from all proposed class representatives and their counsel, including Mr. Cochran.

14. I met with Mr. Cochran in person on Saturday, May 18, 2019. This lunch meeting was for the purpose of discussing any concerns Mr. Cochran might have concerning the substance of the proposed settlement agreement. Because I had some concern about the mix of information Mr. Cochran had conveyed to his clients based on misrepresentations on his website and in press interviews that he was appointed one of the lead counsel and named trial counsel in Premera, I offered to speak with Mr. Cochran's clients about the proposed settlement, but Mr. Cochran refused to allow me to talk with them.

15. I explained the status of the settlement negotiations, including the involved process that had led to multiple mediation sessions, to Mr. Cochran and offered to consider any critiques of substance he might have.

16. The parties continued to negotiate through May 29, 2019, when they finally executed the proposed Settlement Agreement.

17. Believing the settlement to be in the best interests of the class and receiving overwhelming positive support from the other proposed class representatives, Class Counsel moved for preliminary approval of the settlement after notifying Mr. Cochran of our deadline, but without Mr. Cochran's clients.

18. Throughout this litigation, I have remained cognizant of my firm's obligation to prosecute this action efficiently for the benefit of the class. I exercised my judgment to inform non-appointed plaintiffs' counsel about key developments in the case when necessary and appropriate. I called on other, non-appointed counsel, including Mr. Cochran, to assist with specific litigation tasks when necessary and appropriate. I responded promptly and without hesitation to all inquiries from non-appointed plaintiffs' counsel, including Mr. Cochran, asking for litigation updates. We informed and sought approval of the proposed settlement before it was finalized from all class representatives and their counsel. Non-appointed plaintiffs' counsel, including Mr. Cochran, received all filings in the litigation, and Mr. Cochran attended at least one of the hearings in this matter.

19. Mr. Cochran has never explained or provided proof of his alleged 2,000 to 2,500 clients. While Class Counsel was engaged in vetting plaintiffs, Mr. Cochran provided approximately 400 anonymized intake forms, and it was unclear which individuals, if any, had retained him. Mr. Cochran refused to let Class Counsel perform any vetting directly with these individuals.

20. As of this filing, Epiq has informed me that it has not received a claim from either John Hickey, Anita Hickey, or Ian Hickey. Class Counsel attempted to contact these three

objectors to ensure they understand their ability to claim benefits in this settlement, but we have not received a response.

21. As recently as February 12, 2020, Epiq has informed me that it has received 803,710 total claims. Accordingly, the current claims rate now exceeds 9% and is expected to continue to rise before the claim period closes. Based on the high claims rate, the per-claim amount will be reduced on a pro rata basis, consistent with the terms of the Settlement Agreement. As the positive response from the Class has been many times higher than is typical in these types of cases, based on the data received from Epiq, Class Counsel currently estimates that the pro rata reduction could result in payouts on submitted claims in the range of 20-30%. Class Counsel currently estimates that Default Payments and California Payments will fall in the range of \$10 to \$15 per approved claim. 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. As claims rate has been many times higher than is typical in these types of cases, Epiq estimates it will incur additional administration costs beyond the capped costs.

22. I understand credit monitoring and identity theft insurance services provided to class members as a part of this settlement have a 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 who enrolls generates an additional value to the class of approximately \$42.5 million, before excluding the cost of the services. For the 471,712 class members who have submitted claims, this is equivalent to over \$223 million in additional value to the participating class members, after subtracting the \$2,730,000 cost of providing the services.

Class counsel project this number to rise as class members continue to file claims before the March 30, 2020 claims deadline.

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

DATED this 19th day of February 2020 in Seattle, Washington.

s/ Kim D. Stephens _____

Kim D. Stephens