

EXHIBIT

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**IN RE U.S. VISION DATA BREACH
LITIGATION**

Civ. Action No. 1:22-cv-06558
(CPO/SAK)

**DECLARATION OF TERENCE R. COATES IN SUPPORT OF PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS**

I, Terence R. Coates, being competent to testify, make the following declaration:

1. I am currently the managing partner of the law firm Markovits, Stock & DeMarco, LLC ("MSD"). My credentials were previously outlined for this Court in the Joint Declaration submitted in connection with Plaintiffs' Unopposed Motion for Preliminary Approval. ECF Doc. 67. I have been appointed Class Counsel for Plaintiffs in this matter. I submit this declaration in support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could and would competently testify to them if called upon to do so.

2. As a member of Class Counsel, my firm has been intrinsically involved in all aspects of this litigation from the initial investigation to the present. Class Counsel have completed the following tasks in prosecuting this matter on behalf of Plaintiffs and the preliminarily-approved Class: investigating the cause and effects of the Nationwide-Sightcare Data Incident, interviewing potential clients, evaluating the potential class representatives, contributing to the evaluation of the merits of the case before filing the Complaint; 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; drafting and filing the Plaintiffs' respective

Complaints; litigating against a prominent law firm with extensive data breach litigation experience; obtaining information from Defendant regarding the Data Incident and analyzing that information; participating in a formal mediation of this case presided over by the Honorable Diane M. Welsh (Ret.); drafting the settlement term sheet, the comprehensive settlement agreement, well-crafted notices of settlement, an easy to understand claim form, the Motion for Preliminary Approval, and this instant motion for attorneys' fees; communicating with defense counsel; updating and handling questions from our class representative; overseeing the successful launching and implementation of the notice program to the approximately 714,000 Settlement Class Members with substantial interaction between me and the Settlement Administrator; and overseeing the claims process. I conferred with my colleagues about strategy and case status while being mindful to avoid duplicative efforts within my firm and with co-counsel.

3. Continuing through to today, my co-counsel and I have continued to work with Defendant and the Claims Administrator regarding claims administration and processing as well as answering class members questions about the settlement and the process.

4. Based on my past experience I, my law firm, and other Plaintiffs' Counsel expect to spend another roughly 150 hours seeking final approval, defending the Settlement from any potential objections, and supervising claims administration and the distribution of proceeds.

5. As of the date of filing, I have received no objections to the Settlement Agreement in general, and no objections to the proposed attorneys' fees, costs (the amount of which was made known to the Class via the Court-approved notice program) in particular. The deadline for submitting objections is August 23, 2024.

The Contingent Nature of the Case

6. My Firm and the other Plaintiffs' Counsel firms prosecuted this case on a purely contingent basis. As such, Plaintiffs' Counsel assumed a significant risk of nonpayment or underpayment.

7. This matter has required me, other attorneys at my Firm, and the other Plaintiffs' 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 Plaintiffs' Counsel.

8. 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.

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

10. 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 Plaintiffs' 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.

11. 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 Plaintiffs did not provide for

fees apart from those earned on a contingent basis, and, in the case of class settlement, approved by the court.

The Costs and Fees Incurred

12. Due to the early stage of litigation and efficiency by which Class Counsel was able to obtain this significant settlement, expenses and fees incurred by Plaintiffs are low, as reflected by each firm's lodestar totals. Class Counsel's rates in this case were the same as their standard hourly rates charged to paying clients on non-contingent matters and are consistent with the prevailing rates for class action and complex litigation in the relevant legal markets. In calculating our lodestar for this matter, my firm and Co-Counsel have made sure to separate any time or billing specifically relating to U.S. Vision, including drafting the recent Second Amended Complaint and briefing in response to the Motion to Dismiss.

13. My firm's lodestar of 173.6 hours as of August 9, 2024, amounts to \$133,103.50

14. In addition to the time expended by me and my Firm, my co-counsel accrued a reasonable amount of time billed on this matter.

15. Morgan & Morgan has billed a total of 195.1 hours for \$194,715.00 in lodestar on this matter.

16. Barnow and Associates has billed a total of 231 hours for \$155,005.00 in lodestar on this matter.

17. Milberg Coleman Bryson Phillips Grossman, PLLC has billed a total of 100.8 hours for \$73,886.60 in lodestar on this matter.

18. George Feldman McDonald, PLLC has billed a total of 6.7 hours for \$5,920 in lodestar on this matter.

19. Calcaterra Pollack, LLP has billed a total of 28.6 hours for \$24,750 in lodestar on this matter.

20. The total accrued attorney/staff lodestar of all firms to date is \$587,380.10 representing 735.8 hours of work.

21. Additional time will be spent drafting the final approval motion, preparing for and attending the Final Approval Hearing, defending any appeals taken from the final judgment approving Settlement, and ensuring that the claims process and distribution of Settlement proceeds to Settlement Class Members is done in a timely manner in accordance with the terms of the Settlement. Based upon my past experience, I estimate that another roughly 150 hours of attorney time will be reasonably expended on this matter. I assert that the attorneys' fees sought in the Motion for Attorneys' Fees, Costs, and Service Awards are reasonable and seek fair and reasonable compensation for undertaking this case on a contingency basis, and for obtaining the relief for Plaintiffs and the Class.

22. Where possible, Class Counsel made efforts to carefully assign work so as to avoid duplication of efforts and have the work completed by the appropriate level of attorney.

23. Upon request, I and the other Plaintiffs' attorneys can provide detailed contemporaneous billing records to the Court for review.

24. All books and records in this case regarding costs expended were maintained in the ordinary course of business, from expense vouchers and check records. I have reviewed the records of costs expended in this matter.

25. My firm and my co-counsel have also accrued \$13,819.38 in out-of-pocket expenses pertaining to this litigation; including: filing fees, mediation fees, and pro hac vice fees.

26. These costs are reasonable, and necessary for the litigation, and are modest in comparison to the enormous costs that likely would have been incurred if litigation had continued. Reimbursement of these costs is sought as part of the combined attorney fees and costs requested. Based upon my past experience, the amount of out-of-pocket case expenses will increase prior to Final Approval and will include additional travel expenses to appear at the Final Approval Hearing.

27. The Settlement Agreement calls for reasonable service awards to Plaintiffs in the amount of \$3,500, subject to approval of the Court. The Service Awards are meant to recognize Plaintiffs for their efforts on behalf of the Class, including assisting in the investigation of the case, maintaining contact with counsel, reviewing the pleadings, answering counsel's many questions, communicating with counsel during the settlement negotiations, and reviewing the terms of the Settlement Agreement. Plaintiffs also put their reputations at risk and put themselves forward for public scrutiny. Plaintiffs were not promised any service award, nor did they condition their representation on the expectation of any service or incentive award.

28. I strongly believe that the Settlement Agreement is favorable for the Settlement Class. The Settlement addresses the type of injury and repercussions sustained by Settlement Class Members in the wake of the Data Incident. As of August 2, 2024, 12,226 claims have been made, amounting to a 1.7% claims rate, and no Settlement Class Members have submitted an objection to the Settlement or proposed Fee Award, indicating favorability among Settlement Class Members. In the opinion of the undersigned and other Class Counsel, the settlement is fair, reasonable, adequate, as are the attorneys' fees, expenses, and service awards requested here.

29. Although Plaintiffs believe in the merits of their 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 Plaintiffs would face risks at each stage of litigation. Against

these risks, it was through the hard-fought negotiations and the skill and hard work of Class Counsel and the Class Representatives that the Settlement was achieved for the benefit of the Settlement Class.

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

Executed August 9, 2024, in Cincinnati, Ohio.

/s/ Terence R. Coates
Terence R. Coates