

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ANOKA

TENTH JUDICIAL DISTRICT

Case Type: Personal Injury

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JASON ZIMMERMAN, on behalf of  
himself and all others similarly situated,

Civil File No. 02-CV-19-6522  
Honorable Jonathan N. Jasper

Plaintiff,

v.

CLASS ACTION

RIVERPLACE COUNSELING  
CENTER, INC.

Defendant.

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**AFFIDAVIT OF KATE M. BAXTER-KAUF IN SUPPORT OF  
PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT**

STATE OF MINNESOTA            )  
  ) ss.  
COUNTY OF RAMSEY            )

Kate M. Baxter-Kauf, being first duly sworn upon oat, deposes and states as follows:

1. I am a partner with the law firm of Lockridge Grindal Nauen P.L.L.P., and I am one of the attorneys representing Plaintiff Jason Zimmerman in connection with the above-referenced matter. I am a member in good standing of the State Bar of Minnesota. I have personal knowledge of the statements contained in this Affidavit, and I submit this Affidavit in support of the Plaintiff's Motion for Final Approval of Class Action Settlement.

2. I, along with my co-counsel, have represented Plaintiff Zimmerman and the

putative class throughout the pendency of the litigation. After originally filing the case in federal court, Plaintiff Zimmerman filed the complaint in this action November 19, 2019. On January 10, 2020, Riverplace Counseling Center, Inc. (“Riverplace”) filed a motion to dismiss, which was heard on June 18, 2020, and ruled on in an Order granting Riverplace’s motion in part and denying it in part on September 16, 2020. As a result of that Order, Plaintiff’s breach of implied contract and breach of fiduciary duty claims proceeded to discovery, and Plaintiff served written discovery and Riverplace filed and served an Answer on November 6, 2020.

3. Simultaneously, in light of the direction from the Court and the expenses to be incurred in full scale discovery, the parties agreed to engage in mediation. Plaintiff Zimmerman sent a mediation statement to the Honorable John Borg, Minnesota District Court Judge (ret.) on November 10, 2020, prepared for mediation, and met with Judge Zimmerman and Riverplace on November 17, 2020. At the end of that day, the parties left with a tentative way forward, but not a final agreement. For several months thereafter, I and my co-counsel continued to negotiate a term sheet via email and telephone conferences with Riverplace. The parties entered into a Settlement Term Sheet on February 17, 2021, which set forth the material terms of the Settlement.

4. On September 1, 2021, this Court preliminarily approved the Settlement and conditionally certified, for settlement purposes only, a Settlement Class of: All persons whose personally identifiable information and protected health information (“PII”) was potentially compromised in a cybersecurity incident announced by Riverplace on or about April 11, 2019. The Court also appointed settlement counsel, approved the direct mailing

of Class Notice to the Settlement Class and scheduled a final approval hearing for March 11, 2022.

5. Consistent with the Court's Order that Notice of the Proposed Settlement be provided to Class Members no later than forty-five (45) days after the entry of the Court's Preliminary Approval Order, Notice was mailed to 9,007 Settlement Class Members on October 15, 2021. Requests for exclusion from the settlement class and objections to the settlement were due December 14, 2021. Claim Forms were due to the Settlement Administrator by January 13, 2022.

6. To date, the Settlement Administrator has not received any objections to the Settlement or any requests for exclusion.

7. Plaintiff has requested, by separate motion a total for both attorneys' fees and expenses of \$150,000. Attorneys' fees, costs, expenses, and the service award were only negotiated after all substantive terms of the Settlement were agreed upon by the Parties.

8. Plaintiff's counsel have conducted a thorough investigation into the facts and law relating to the Lawsuit, fully analyzing and evaluating the merits of all the Parties' claims and defenses and of the proposed Settlement as it impacts each of the Parties, including the members of the Class. We have evaluated the risks, delay and difficulties in establishing liability, the potential relief that might be available, and the likely expense and time of further litigation. While we believe that Plaintiff could have gotten a class certified and then prevailed on his claims at trial and on any resulting appeals, we also recognize that any litigation, particular this kind, is fraught with risk.

9. Plaintiff's claims are both complex and novel. Data breach litigation such

as this is relatively new to Minnesota courts. Because caselaw generally favors defendants with respect to a number of the issues in this case, my co-counsel and I spent significant time developing strong, supported, and persuasive arguments. These efforts required extensive legal research.

10. The Term Sheet and the later Settlement were only reached after intensive arm's-length negotiations between the Parties, all of whom were represented by counsel with extensive experience and expertise in consumer and class action litigation. The negotiations were led by the Honorable John Borg, Minnesota District Court Judge (ret.), acting as a mediator. During these negotiations, the Parties all had a clear view of the strengths and weaknesses of their respective claims and defenses. Plaintiff's counsel's investigation and the settlement related proceedings confirmed that the Settlement meets the requirements for the Court's approval.

11. Although the efforts of Class Counsel have advanced this litigation considerably since its inception, we believe significant additional resources would be necessary to prosecute the case through the completion of discovery, class certification, dispositive motions, and pretrial and trial proceedings. A judgment favorable to Plaintiff would likely be the subject of post-trial motions and appeals. Those actions would substantially prolong the case, and delay the ultimate payment to members of the Class, in the event Plaintiff was to prevail. Instead, the Settlement provides for the cessation of litigation costs and immediate and certain payment to Class Members.

12. Based on my experience in class action litigation and settlements for data breach class actions such as this one, it is my opinion that the proposed Settlement meets

the standard for final approval. The Settlement provides tangible and substantial relief to the Class, relief that is certain now versus what would be a long time and uncertain outcome in the case of class certification and trial. I and my co-counsel have thoroughly examined the facts and applicable law relating to the claims and defenses in the lawsuit, especially in light of the motion to dismiss order, and have weighed the benefits secured by the Settlement against the risk, delay and cost of further litigation and possible appeals. We have concluded that the Settlement is fair, reasonable, adequate and in the best interests of the Class.

FURTHER YOUR AFFIANT SAITH NOT.

**s/ Kate M. Baxter-Kauf**

Kate M. Baxter-Kauf

Subscribed and sworn to on the 11th Day of March, 2022, in Ramsey County, Minnesota.