

STATE OF MINNESOTA
COUNTY OF ANOKA

DISTRICT COURT
TENTH JUDICIAL DISTRICT

Case Type: Personal Injury

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.

**AFFIDAVIT OF JEAN S. MARTIN IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR AWARD OF ATTORNEYS' FEES AND
REIMBURSEMENT OF EXPENSES, AND APPROVAL OF SERVICE AWARD
TO NAMED PLAINTIFF**

W-2 forms); and co-lead counsel in *Linnins, et al., v. Timco Aviation Services, Inc.*, 16-cv-486 (M.D.N.C.) (data breach class action involving employees' W-2 forms).

5. I have represented consumers in other national class actions, including as co-lead counsel in *Fuentes, et al. v. UniRush, LLC, et al.*, No. 1:15-cv-08372 (S.D.N.Y.) (class action involving lengthy disruption in service and access to financial accounts for more than 400,000 consumers nationwide resulted in approval of \$28.5m monetary relief for the class); class counsel in *McCoy v. North State Aviation, LLC*, 17cv346 (M.D.N.C.) (WARN Act case); and, class counsel in *Lewis, et al., v. Green Dot Corp., et al.*, No. 2:16-cv-03557 (C.D. Cal.) (class action involving disruption in service and access to financial accounts for more than 56,000 consumers nationwide resulted in approval of \$8.1m monetary relief for the class).

6. I, along with my co-counsel, have represented Plaintiff Zimmerman and the putative Class in the above-captioned Action through the pendency of the litigation. After originally filing the case in federal court, Plaintiff Zimmerman filed the Complaint in this Action on 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.

7. 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 Borg and Riverplace on November 17, 2020. At the end of the day, the parties left with a tentative agreement. For several months thereafter, I and my co-counsel continued to negotiate a term sheet via email and telephone conferences with Riverplace. The full terms of the settlement reached by the parties are memorialized in the Settlement Agreement.

8. Before the Settlement of this matter was reached, Plaintiff's counsel and their staff worked diligently for over two years, propounding written discovery, reviewing documents, counseling and meeting with their client, strategizing, researching, writing, and engaging in motion practice.

9. During the protracted and sometimes contentious settlement negotiations, my co-counsel and I carefully assessed the probability of ultimate success on the merits of their case versus the risks of establishing liability and damages. Counsel understood that we faced significant hurdles in pursuing this case, including unfavorable precedent, the Court's ruling dismissing Plaintiff's negligence, negligence per se, invasion of privacy, unjust enrichment, breach of confidence, and MCFA claims; the risks of trial; and the further risks of appeal. We ensured that Plaintiff Zimmerman understood those risks as well.

10. The Parties agreed as part of the Settlement that Riverplace would not oppose a request by Class Counsel for an award of reasonable attorneys' fees not to exceed \$150,000, inclusive of costs and would also not oppose a request by Plaintiff for an incentive award of \$5,000.

11. The Court preliminarily approved the Settlement on September 3, 2021. Notices

sent out to Class members informed them of their right to object to the Settlement, including its provisions for attorneys' fees and expenses and a separate award to the named Plaintiff.

12. I believe that the relief achieved through the Settlement is close to if not the same relief we would have achieved had we taken the case to trial and succeeded. For our successful efforts on behalf of the Class, Class Counsel requests an award of legal fees of \$150,000.

13. Class Counsel have expended 395 hours of attorney and paralegal time on this matter. Based on the billing rates of my law firm and the law firm of my co-counsel, the total lodestar calculation is \$290,447.55, nearly double Class Counsel's requested fee.

14. The hourly rates for the attorneys for whom time was submitted in this matter range from \$468 to \$950, and the hourly rates for non-lawyer billing staff range from \$208 to \$325. These hourly rates have been accepted and approved in other contingent litigation and are comparable to rates charged by class action counsel in similar cases.

15. Contemporaneous, daily time records were regularly prepared and maintained by both law firms. Class Counsel monitored time expended throughout litigation to ensure that the time spent on the case was necessary. The vast majority of the time expended in this case was by three attorneys, who worked to avoid duplication while actively prosecuting the case.

16. Pursuant to the terms of the Settlement, costs and expenses are included in Class Counsel's request for \$150,000. These expenses include costs for filing fees, mediation, document management, photocopying, overnight mail, process service fees, copies, and

electronic research. For example, \$2,157.48 was expended on computer legal research; \$24.75 was expended on copying; \$2,442.98 was expended on mediation efforts; \$1,398 was expended in filing fees; \$105.50 was expended on messenger services; and \$4.60 was expended on postage. These expenses were incurred in the normal course of litigation and Class Counsel made every effort to keep expenses contained.

17. As set forth in previously filed firm resumes and declarations, my co-counsel and I have considerable experience in class actions and have litigated to resolution many, large data breach and privacy cases. We both have active litigation practices. The time and effort we devoted to this case would have been spent on other cases but for our commitment to Plaintiff and his claims.

18. Class Counsel represented Plaintiff on a contingent fee basis. Plaintiff is of modest means and would not have been able to obtain counsel to pursue his claims on a fixed-fee basis. Class Counsel have vigorously litigated this matter and incurred significant expenses for over two years with the risk of not being paid.

19. The named Plaintiff, Jason Zimmerman, did everything asked of him in the conduct of this litigation. He maintained regular contact with counsel to keep apprised as to the progress of the litigation. His interests in the litigation are aligned with, and not antagonistic to, those of the Settlement Class. At all times, he has acted in the best interest of the Class in pursuit of this litigation.

20. I believe the requested combined award of attorneys' fees and costs of \$150,000, and the requested service award of \$5,000 to Plaintiff, Jason Zimmerman, to be fair and reasonable.

21. On behalf of Plaintiffs and Class Counsel, I respectfully request that the Court enter an order granting final approval to the Settlement and awarding the requested attorneys' fees, costs and expenses and service awards.

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

Executed on November 30, 2021 in Tampa, Florida.

By: s/ Jean S. Martin
Jean Sutton Martin