

EXHIBIT C

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY**

ALAYNA WOODS, JENNIFER NELSON,
on behalf of herself and her minor child, **E.N.-H., DANA BERKLEY** on behalf of her minor child, **M.B., JAMELLA MONTGOMERY, SUSAN HALL, ARGIRO TZIAKAS,** and **CHRISTINA KOVALSKY,** on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

ALBANY ENT & ALLERGY SERVICES, PC,

Defendant.

Index No. 904730-23

DECLARATION OF DANIEL O. HERRERA IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

I, Daniel O. Herrera, declare as follows:

1. I am an attorney duly licensed to practice law in the State of Illinois and am a partner at Cafferty Clobes Meriwether & Sprengel LLP (“Cafferty Clobes”). I am one of the interim co-lead attorneys in the above-captioned action (the “Action”). I submit this declaration in support of Plaintiffs’ Unopposed Motion for Attorneys’ Fees, Expenses, and Service Awards.

Fees & Expenses

2. My co-counsel and I have spent significant time and resources conducting pre-suit discovery, prosecuting this Action, reaching the Settlement, and administering the Settlement towards preliminary approval.

3. Each of the individuals comprising Class Counsel served as the principal lawyers in charge of aspects of the litigation and worked collaboratively in the case to ensure that Plaintiffs

and the Class which they sought to represent were zealously represented, while also ensuring efficiency and reducing duplicative effort.

4. In prosecuting this case, Cafferty Clobes, in conjunction with interim co-lead class counsel, performed a significant amount of work, including:

- a. before filing the complaints, Cafferty Clobes investigated the potential claims against Defendant, interviewed potential plaintiffs, gathered information about the Security Incident and Defendant's data security, considered and identified potential expert witnesses, and conducted extensive legal research into the allegations and best strategy to prosecute the case;
- b. requesting and reviewing informal discovery from Defendant;
- c. preparing the initial complaint and Consolidated Complaint;
- d. engaging in a mediation session with an experienced class action mediator and continuing negotiations for months;
- e. consolidating the filed cases before the Court and seeking the appointment of Interim Co-Lead Class Counsel;
- f. negotiating the terms of the Settlement Agreement with Defendant for weeks through numerous phone calls and emails;
- g. drafting the Settlement Agreement and notice documents;
- h. preparing a request for proposal from multiple potential claims administration firms and thereafter going through multiple rounds of bids to ensure Plaintiffs and the Class received the best claims administration and notice plan at a very competitive price;

- i. working with the claims administrator to develop and then implement the Notice program and claims documents;
- j. preparing, finalizing and filing the Preliminary Approval documents and negotiating an extremely favorable Settlement for the Class; and
- k. responding to Class Member phone calls regarding questions about the Settlement.

5. Cafferty Clobes' contemporaneous records of its work on this case reflect that attorneys and support staff worked a combined **98.9 hours** through August 31, 2024, on this litigation, which, when multiplied by the firm's current hourly rates, amounts to **\$76,290.00** in lodestar. A summary indicating the amount of time expended by the partners, associates, and professional support staff of Cafferty Clobes to date, involved in the litigation is set forth below.¹

Timekeeper	Hourly Rate	Hours	Lodestar
Daniel O. Herrera, Attorney	\$1,000.00	26.4	\$26,400.00
Nickolas J. Hagman, Attorney	\$800.00	35	\$28,000.00
Alex Lee, Attorney	\$650.00	21.9	\$14,235.00
Paige Smith	\$550.00	8.2	\$4,510.00
Sharon Nyland, Paralegal	\$425.00	3.6	\$1,530.00
Kelly McDonald, Paralegal	\$425.00	3.8	\$1,615.00
TOTAL		98.9	\$76,290.00

6. In my opinion and experience, this time was reasonably and justifiably incurred.

7. These hours do not include time Cafferty Clobes spent after August 31, 2024, and will spend on continuing services to the Class, including drafting the final approval motion,

¹ If the Court requires, we can provide detailed billing reports.

responding to Class Members' inquiries, supervising the claims administration process, and overseeing the distribution of payments to Class Members. Based on Cafferty Clobes' experience in other data breach settlements, Cafferty Clobes estimates it will spend many additional hours addressing issues that may arise after final approval, including interfacing with the with claims administrator, class members and defense counsel.

8. Cafferty Clobes' current hourly rates are appropriate considering the prevailing rates for similar legal services provided by lawyers of reasonably comparable skill, experience, and reputation. Many other courts have found Cafferty Clobes' current rates to be reasonable in the settlement context. My firm has confirmed that their hourly rates as adjusted for inflation have been accepted by state and federal courts for purposes of lodestar determinations and for purposes of lodestar cross-checks in other recent class action cases.

9. Reasonable hourly rates are determined by "prevailing market rates in the relevant community." *Blum v. Stenson*, 465 U.S. 886, 895 (1984). Class Counsel are entitled to the hourly rates charged by attorneys of comparable experience, reputation, and ability for similar litigation. *Blum*, 465 U.S. at 895 n.11. Here, the relevant community is that of attorneys practicing multi-state class action litigation, and in particular data breach litigation.

10. Similar rates have been accepted in numerous other data breach class action cases in the nationwide market. *See, e.g., Fox v. Iowa Health Sys.*, No. 3:18-CV-00327-JDP, 2021 WL 826741, at *6 (W.D. Wis. Mar. 4, 2021) (data breach settlement awarding \$1,575,000 in attorneys' fees and costs, at hourly rates from \$815-\$865 per hour for partners, \$550-\$625 for senior associates, \$415-\$500 for associates, and \$215-\$350 for paralegals); *Perdue v. Hy-Vee, Inc.*, No. 19-1330, 2021 WL 3081051, at *5 (C.D. Ill. July 21, 2021) (approving reasonable hourly rates requested by Class Counsel of \$700-\$815 for partners, \$325-\$700 for associates, \$200-\$275 for

paralegals, and \$150-\$225 for law clerks); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132, at *39 (N.D. Ga. Mar. 17, 2020) (finding reasonable hourly rates charged by partners who billed \$1050, \$1000 \$750, and \$935 per hour); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752-LHK, 2020 WL 4212811, at *26 (N.D. Cal. July 22, 2020) (finding reasonable rates from \$450 to \$900 for partners, \$160-\$850 for non-partner attorneys, and \$50 to \$380 for paralegals); *Fulton-Green v. Accolade, Inc.*, No. CV 18-274, 2019 WL 4677954, at *12 (E.D. Pa. Sept. 24, 2019) (finding reasonable hourly rates range \$202 to \$975 per hour); *In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617-LHK, 2018 WL 3960068, at *16 (N.D. Cal. Aug. 17, 2018) (finding reasonable hourly rates of partners from \$400 to \$970, non-partner attorneys from \$185 to \$850, and non-attorneys from \$95 to \$440).

11. Since the inception of this litigation, Cafferty Clobes has incurred **\$6,352.84** in expenses reasonably and necessarily incurred while prosecuting this Action. My firm's actual out-of-pocket costs expended to date are summarized below² These costs also reflect typical expenses of the type ordinarily passed on to fee-paying clients in a general legal practice and are also typically recoverable in a specialized complex class action practice as they are necessary and reasonable to prosecuting a class action. The total of the expenses for which Cafferty Clobes seeks reimbursement, and which Defendant has agreed to pay, was calculated from receipts, expense vouchers, check records and other documents maintained by Cafferty Clobes in the ordinary course of business.

Description	Amount
Filing Fees	\$216.28
Copies	\$7.25

² If the Court requires, we can provide detailed expense reports.

Computer Research and Pacer Fees	\$117.31
Mediation	\$6,000.00
Electronic Agreements	\$12.00
TOTAL	\$6,352.84

12. Cafferty Clobes kept contemporaneous records and can provide detailed itemizations of their time, lodestar, and expenses.

13. The Fee Motion comports with the terms of the Settlement Agreement. The Settlement Agreement reflects Class Counsel would apply for and Defendant would not object to a fee and expense request for an amount not to exceed \$415,000.00. This provision was negotiated only after all the other settlement terms had been finalized.

14. Given that data breach cases pose unique challenges because this area of law is not yet settled, these cases are often uncertain and hard to predict and may be considered as a less than desirable undertaking, even for seasoned class action attorneys. Cafferty Clobes invested substantial time, effort, and resources into the litigation of this risky and uncertain case with no guarantee or promise of return on its investment. The pursuit of this litigation was an economic risk for Cafferty Clobes and diverted their resources from other cases, some of which were less risky.

15. This matter has required Cafferty Clobes 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 firms' time. Such time could otherwise have been spent on other fee-generating work. Because Cafferty Clobes undertook representation of this matter on a contingency-fee basis, Cafferty Clobes shouldered the risk of

expending substantial costs and time in litigating the action without any monetary gain in the event of an adverse judgment.

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

17. 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 Cafferty Clobes' devotion to the case and its confidence in the claims alleged against Defendant, there have been many factors beyond our control that posed significant risks.

18. An award of the requested fees, costs and expenses is justified under the circumstances of this case, considering the risk, work performed, and the results achieved. The Settlement makes available an immediate cash payment to Settlement Class Members and provides for necessary and identity-theft protection services to protect Class Members' PII and PHI.

19. Cafferty Clobes is very experienced in class action litigation, particularly complex litigation and data breach litigation. Cafferty Clobes has successfully litigated dozens of data breach cases in this country to date.

20. Based on my years of practice litigating class actions and other complex actions, I endorse the Settlement and believe it benefits and provides substantial relief to the Settlement Class Members

Executed on this 9th day of September 2024 in Chicago, Illinois.

/s/ Daniel O. Herrera
Daniel O. Herrera