

1 **AUER RYAN, P.C.**

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7 **MORGAN & MORGAN**

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15 [Additional counsel in signature block.]
16 *Counsel for Plaintiff*

17 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**

18 **IN AND FOR THE COUNTY OF MARICOPA**

19	Carol Dearing, On Behalf of Herself and All)	Case No.: CV2020-013648
20	Others Similarly Situated,)	
21)	DECLARATION OF CLASS
22	Plaintiff,)	COUNSEL IN SUPPORT OF
23)	PLAINTIFF’S MOTION FOR AWARD
24	v.)	OF ATTORNEYS’ FEES AND
25)	EXPENSES AND PLAINTIFF’S
26	Magellan Health, Inc. and Magellan RX)	INCENTIVE AWARD
27	Management, LLC,)	
28)	(Assigned to the Hon. Connie Contes)
	Defendants.)	

29 We, Elaine A. Ryan, John A. Yanchunis, Joel R. Rhine and Martin A. Ramey hereby declare
30 and state as follows:

31 1. We are attorneys who represent the Plaintiff in this action. We are familiar with the
32 terms of this Settlement and believe that it represents a fair, adequate and reasonable settlement of
33 claims against the Defendants arising from the Data Incident, as defined in the Settlement
34 Agreement and related documents.
35

1 plaintiffs' litigation firm; the Phoenix-based firm of Bonnett, Fairbourn, Friedman & Balint, PC
2 whose partner, Elaine A. Ryan (now with Auer Ryan, P.C.), has substantial experience in data
3 breach class actions, and trial lawyers from the Rhine Law Firm, P.C., a firm that has achieved
4 national recognition for its multi-million dollar verdicts including having represented data breach
5 victims.

6
7 6. Associates and partners from each of the firms worked together and spent some
8 733.1 hours of time devoted to the case. The lawyers took the case on a contingency basis, such
9 that costs could not be recovered absent a successful resolution of the case. During the mediation,
10 following the conclusion of negotiations on all other items relative to the Class, the attorneys agreed
11 to \$280,000 in attorneys' fees and costs to reach what we believe is a favorable class settlement.
12 Using these attorneys' lodestars, were the attorneys to receive their hourly rates for this time, the
13 attorneys' fees generated would have amounted to \$517,828.40. When Counsels' \$20,706.17 in
14 costs are factored in, the agreed upon \$280,000 in fees and costs, compared to Class Counsel's
15 typical lodestar, results in a negative multiplier of 1.923.

16
17 7. As attorneys for the class, a considerable amount of time was spent investigating the
18 case, including working and communicating with the named class representative, review of
19 documents obtained from the Defendants as well as from other sources, selection and discussions
20 with data security experts, two full days of mediation and a considerable amount of briefing in both
21 federal and state court as to the merits of the Plaintiff's action. Additional time was spent
22 formalizing the documents needed for the settlement, including the Settlement Agreement, the
23 Claims Form, and the various notices and the supporting documents for the Court's consideration
24 of the settlement. At all phases of this process, the proposed Class representative was involved,
25 including reviewing the Settlement Agreement, and taking time away from her normal routine and
26 to work and respond to a variety of requests concerning her income, her credit and proof that she
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1 had suffered fraud as a result of the breach. And, additional time will be spent seeking final approval
2 of the settlement, and administration. All of these hours spent to date are, based upon our
3 experience, both reasonable and necessary in procuring a settlement of this nature and difficulty.
4

5 **Elaine A. Ryan, Auer Ryan, P.C. and formerly of Bonnett, Fairbourn, Friedman & Balint,**
6 **PC**

7 8. Practicing since 1989, Ms. Ryan is a named partner in Auer Ryan PC. Prior to
8 starting her own law firm this year, Ms. Ryan was a partner with the Phoenix, Arizona law firm of
9 Bonnett, Fairbourn, Friedman & Balint, PC (“BFFB”) which had a robust national class action
10 practice led by Ms. Ryan and several of her then-partners.

11 9. This litigation arose when Ms. Ryan was associated with BFFB and oversaw the
12 work of two other BFFB associates in the case, including Ms. Patti Syverson and Ms. Carrie
13 Laliberte. These attorneys, as well as one of the firm’s paralegals, accumulated time working on
14 the case that was both reasonable and necessary to the prosecution of the case.
15

16 10. Ms. Ryan’s class action experience includes several data privacy and breach cases
17 in courts throughout the United States. She and her former partners at Bonnett, Fairbourn have
18 successfully resolved cases in their home state of Arizona—*See, e.g., In re Valley Anesthesiology*
19 *Consultants, Inc. Data Breach Litigation*, Case No. CV2016-013446 (AZ. Dec. 14, 2016); *In re*
20 *Banner Health Data Breach Litigation*, Case No. 2:16-CV-02696-SRB (D. AZ Aug. 9, 2016), and
21 elsewhere. *See, e.g., In re Anthem, Inc. Data Breach Litigation*, Case No. 15-MD-02617-LHK
22 (N.D. Cal. 2015).
23

24 11. Ms. Ryan has taken an active role in these cases, as well as several others that are
25 presently pending from coast-to-coast. She has been appointed class counsel, assigned to plaintiffs’
26 steering committees in MDL suits, and her efforts have received praise from the courts.
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Court costs	\$1,074.09
Total	\$2,892.09

John A. Yanchunis, Morgan & Morgan, P.A.

14. Mr. Yanchunis is a partner with the law firm of Morgan & Morgan, P.A., counsel for Plaintiffs, the nation's largest plaintiff's litigation firm with extensive experience litigating data breach and privacy actions.

15. John's practice has concentrated on complex litigation for over 38 years with extensive experience in privacy and data-breach litigation.

16. Alongside his experience in the area of privacy, he also has served as lead, co-lead, and class counsel in numerous national class actions, including multi-district litigation, involving a wide range of subjects affecting consumers, including antitrust, defective products, life insurance, annuities, and deceptive and unfair acts and practices.

17. In 2014 and 2020, he was recognized by the National Law Journal as a trailblazer in the area of privacy litigation, and in 2020, he was recognized by LAW 360 for the second year in a row as one of 4 MVPs in the area of privacy and cyber security litigation. For his work in the area of privacy litigation, he was awarded Florida Lawyer of the Year by *The Daily Business Review*.

18. As a result of his experience in insurance and complex litigation, beginning in 2005, he was selected to serve as lead counsel for the Florida Department of Financial Services and the Florida Department of Insurance Regulation (the insurance regulators of Florida) in their investigations of the insurance industry on issues concerning possible antitrust activity and other possible unlawful activities regarding the payment of undisclosed compensation to insurance brokers. He served as lead regulator counsel and worked with a core group of state Attorneys General from the National Association of Attorneys General, which were selected to conduct the investigations. The litigation that was filed and the related investigations netted millions of dollars

1 in restitution for Florida consumers and resulted in significant changes in the way commercial
2 insurance is sold in Florida and across the country.

3 19. His work in privacy litigation began in 1999 with the filing of *In re Doubleclick Inc.*
4 *Privacy Litigation*, 154 F. Supp. 2d 497 (S.D.N.Y. 2001), alleging privacy violations based on the
5 placement of cookies on hard drives of internet users. In 2003, he served as Co-Lead Counsel in
6 the successful prosecution and settlement of privacy class action cases involving the protection of
7 privacy rights of more than 200 million consumers under the Driver's Protection Privacy Act
8 (DPPA) against the world's largest data and information brokers, including Experian, R.L. Polk,
9 Acxiom, and Reed Elsevier (which owns Lexis/Nexis). See *Fresco v. Automotive Directions, Inc.*,
10 No. 03-61063-JEM (S.D. Fla.), and *Fresco v. R.L. Polk*, No. 07-cv-60695-JEM (S.D. Fla.).
11 Subsequently, he served as co-Lead Counsel in the DPPA class cases, *Davis v. Bank of America*,
12 No. 05-cv-80806 (S.D. Fla.) (\$10 million class settlement), and *Kehoe v. Fidelity Fed. Bank and*
13 *Trust*, No. 03-cv-80593 (S.D. Fla.) (\$50 million class settlement).

14 20. He has been appointed and served in leadership positions in a number of
15 multidistrict litigations in the area of privacy and data breaches: *In re: Capital One Consumer*
16 *Data Security Breach Litigation*, No. 1:19-MD-2915-AJT (E.D. Va.)(Co- Lead); *In re Yahoo! Inc.*
17 *Customer Data Security Breach Litigation*, No. 5:16-MD-02752-LHK (N.D. Cal.) ("Yahoo")
18 (Lead Counsel) (Court approved \$117,500,000.00 common fund settlement for approximately 194
19 million US residents and 270,000 Israeli citizens); *In re The Home Depot, Inc. Consumer Data*
20 *Sec. Data Breach Litig.*, No. 1:14-md-02583-TWT (N.D. Ga.) (Co-Lead Counsel) (final
21 judgment entered approving a settlement on behalf of a class of 40 million consumers with total
22 value of \$29,025,000); *In Re: Equifax, Inc. Customer Data Security Breach Litigation*, 1:17-md-
23 2800-TWT (N.D. Ga.) (member of the Plaintiffs' Steering Committee) (final judgment entered
24 approving \$380.5 million fund for 145 million consumers); *In re: U.S. Office of Personnel*
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1 *Management Data Security Breach Litigation*, 1:15-mc-01394-ABJ (D.D.C.) (“OPM”) (member
2 of the Executive Committee) (active litigation with approximately 22.5 million present and former
3 federal employees); *In re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 2522 (D.
4 Minn.) (Executive Committee member) (final judgment approving a settlement on behalf of a class
5 of approximately 100 million consumers).

6
7 21. His court-appointed leadership experience in non-MDL, data breach class actions
8 is likewise significant: *Schmidt, et al., v. Facebook, Inc.*, No. 3:18-cv-05982 (N.D. Cal.) (Co-Lead
9 Counsel) (“Facebook”) (consolidated complaint filed in February 2019; motion for class
10 certification fully briefed and argued on November 6, 2019); *Walters v. Kimpton Hotel &*
11 *Restaurant*, No. 3:16-cv-05387 (N.D. Cal.) (“Kimpton”) (Lead Counsel) (class action settlement
12 final approval order entered July 11, 2019); and *In re: Arby’s Restaurant Group, Inc. Data Security*
13 *Litigation*, Nos. 1:17-cv-514 and 1:17-cv-1035 (N.D. Ga.) (co-Liaison Counsel) (final approval of
14 a class settlement entered June 6, 2019); and *Jackson, et al., v. Wendy’s International, LLC*, No.
15 6:16-cv-210-PGB (M.D. Fla.) (final approval of a class settlement entered February
16 26, 2019); *Henderson v. Kalispell Regional Healthcare*, No. CDV-19-0761 (Montana Eighth
17 Judicial Court – Cascade County) (final approval of class settlement entered January 5, 2021); *In*
18 *re: Citrix Data Breach Litigation*, No. 19-cv-61350 (S.D. Fla.) (preliminary approval of class action
19 settlement entered on January 26, 2021); *Kuss v. American HomePatient, Inc., et al.*, 18-cv-2348
20 (M.D. Fla.) (final approval of class action settlement entered on August 13, 2020); *Fulton-Green*
21 *v. Accolade, Inc.*, 18-cv-274 (E.D. Pa.) (final approval of class action settlement entered September
22 23, 2019); *Nelson v. Roadrunner Transportation Systems, Inc.*, 18-cv-7400 (N.D. Ill.) (final
23 approval of class action settlement entered September 15, 2020).

24
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26 22. As result of Mr. Yanchunis’ experience in the area of class litigation and ethics, he
27 has served as an expert for The Florida Bar on ethical issues arising in class action litigation.
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1 23. He is a frequent lecturer on privacy and class litigation nationally and
 2 internationally, including at international conferences such as the University of Haifa's 2019 Class
 3 Action Conference, in Haifa, Israel, attended by lawyers, judges and law professors from around
 4 the world. In 2020, he lectured on data privacy in Mexico, and in November 2020 he presented on
 5 data privacy to an international group of lawyers, judges and professors at a symposium in London
 6 sponsored by the London Law Society.

7
 8 24. Time spent by Mr. Yanchunis and associates of his firm at their usual and customary
 9 rates include the following:

10 **Morgan & Morgan**

Billor	Title	Hourly Rate	Time Spent	Total
John A. Yanchunis	Partner	\$1,300	61	\$79,300.00
Kenya Reddy	Associate	\$950	13.3	\$12,635.00
Patrick Barthle	Associate	\$800	22.5	\$18,000.00
Francesca Kester	Associate	\$468	2.8	\$1,310.40
Jennifer Cabezas	Paralegal	\$225	3	\$675.00
Total			102.6	\$111,920.40

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 17 25. Costs incurred by Mr. Yanchunis' firm consists of those expenses that were
 18 reasonably necessary to achieve a successful resolution of this case and are within market rates paid
 19 by the firm in other cases, and consist of:

20 **Morgan & Morgan**

Cost Category	Amount
Shipping	\$21.84
PACER	\$14.50
Fees to Arizona State Bar	\$505.00
MTD Hearing Travel Costs	\$1,344.09
Court Costs	\$359.00
Travel Scheduling Conf.	\$2,708.37
Total	\$4,952.80

1 **Joel R. Rhine, Rhine Law Firm, P.C.**

2 26. Mr. Rhine has been licensed to practice law in the State of North Carolina since
3 1988. His practice primarily is focused on complex litigation matters involving class actions
4 (including data breach litigation), mass torts of numerous types, and significant single event cases.
5 Within the last seven years, he has served as co-lead counsel in a data breach case concerning
6 Shorter University in Northern District of Georgia; co-lead counsel in *Finerman et al v. Marriott*
7 *Ownership Resorts, Inc, and International Cruise & Excursion Gallery* (United States District
8 Court, Middle District of Florida, 3:14-cv-1154); co-lead counsel in approximately 700 Chinese
9 Drywall cases in the Eastern District of Louisiana; on the trial team of Pella Window Class Action
10 in the North District of Illinois (*Eubank, et al v. Pella Corporation and Pella Windows and Doors*
11 (United States District Court for the Northern District of Illinois, 06 C 44810)) and an MDL against
12 Pella Corporation in the District Court of South Carolina; member of the Plaintiff Steering
13 Committee of Benicar (Olmesartan) Products Liability MDL in the District Court of New Jersey
14 and more.

15 27. He has been recognized repeatedly as a SuperLawyer - Top 100 North Carolina
16 Lawyers; Business North Carolina's Legal Elite; Best Lawyers; National Trial Lawyers Top 100
17 Trial Lawyers; and enjoyed an AV rating by Martindale Hubbell since 2002 and more. The Rhine
18 Law Firm has repeatedly been named a "Tier 1 Best Firm" by U.S. News and World Reports.

19 **Martin A. Ramey, Rhine Law Firm, P.C.**

20 28. Martin A. Ramey is a partner with the Rhine Law Firm, P.C. and is licensed in both
21 North Carolina and California. First licensed in 2002, he has represented plaintiffs in a variety of
22 complex matters, including multi-party, multi-million-dollar construction defect cases; securities
23 fraud litigations and arbitrations; pharmaceutical and medical device mass tort litigations (state
24 consolidations and MDLs) as well as class actions. He most recently served as class co-counsel in
25

1 *Boykin v. Tennessee Orthopaedic Alliance, P.A.*, Chancery Court for the State of Tennessee –
 2 Twentieth Judicial District, Davidson County, Case No. 20-0615-BC and is presently counsel in
 3 several putative class actions, including *Griffey v. Magellan Health, Inc.*, U.S. District Court,
 4 District of Arizona, Case No. 2:20-cv-1282-MTL; *EZ Mart 1, LLC v. Colonial Pipeline Company*,
 5 U.S. District Court, Northern District of Georgia, Case No. 1:21-cv-2522-MHC; *In re: Colonial*
 6 *Pipeline*, U.S. District Court, Northern District of Georgia, Case No. 1:21-cv-3559-MHC; *Moose*
 7 *v. Allegacy Federal Credit Union*, Superior Court of Forsyth County, North Carolina (Business
 8 Court), Case No. 2020 CVS 4279; *Jewett v. Wilmington Surgical Associates, P.A.*, Superior Court
 9 of New Hanover County, North Carolina, Case No. 21-CVS-0086; *John Does 1-14 v. The New*
 10 *Hanover County Board of Education, et al.*, Superior Court of New Hanover County, North
 11 Carolina, Case No. 19-CVS-2745; *Jane Does 1-2 v. The New Hanover County Board of Education,*
 12 *et al.*, Superior Court of New Hanover County, North Carolina, Case No. 20-CVS-1395.

15 29. His MDL experience includes *In re Vioxx Litigation*, Superior Court of Atlantic
 16 County, New Jersey; *In re Guidant Litigation*, MDL-1708 (with four potential cases chosen as
 17 potential bellwethers and defending client and family depositions); *In re 3M Products Liability*
 18 *Litigation*, MDL 2885, Northern District of Florida, among others.

19 30. Time spent by Mr. Rhine and others from his firm at their usual and customary rates
 20 includes the following:
 21

22 **Rhine Law Firm**

Billor	Title	Hourly Rate	Time Spent	Total
Joel R. Rhine	Partner	\$800	119.6	\$95,680.00
Maritn A. Ramey	Partner	\$800	154.2	\$123,360.00
Chris B. Barbour	Associate	\$400	15.5	\$6,200.00
Stephanie Chase	Paralegal	\$225	2	\$675.00
Total			291.3	\$225,915.00

1 Motion for Award of Attorneys' Fees and Expenses and Plaintiff's Incentive Award, it is our
2 opinion, and that the settlement is fair, reasonable, and adequate and that the settlement should be
3 given final approval.
4

5 EXECUTED on October 25, 2022, in Maricopa, Arizona.

6
7 /s/Elaine A. Ryan
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14 *Attorneys for Plaintiff*

15 EXECUTED on October 25, 2022, in Tampa, Florida.

16
17 /s/ John Yanchunis
18 John Yanchunis*
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25 pbarthle@forthepeople.com

26 EXECUTED on October 25, 2022, in Wilmington, North Carolina.

27
28 /s/ Joel R. Rhine
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Attorneys for Plaintiff

**Admitted pro hac vice*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 25th day of October, 2022, I electronically filed the foregoing
3 with the Clerk of the Court using the AZTurboCourt system which will send notification of such
4 filing to the following:

5
6 John C. Gray (State Bar No. 028454)
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28 *Attorneys for Defendants*

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