

Supplemental Declaration of Joel R. Rhine in Support of
Plaintiffs' Unopposed Motion for Final Approval of Class
Action Settlement Agreement and Entry of Final
Judgment

Exhibit A to Plaintiffs' Unopposed Motion for Final Approval of Class
Action Settlement Agreement and Entry of Final Judgment

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

WILLIAM BOYKIN AND SALLY,
ROBBINS, on behalf of themselves and
all others similarly situated,

DOCKET NO.: 20-0615-BC

Plaintiffs,

v.

TENNESSEE ORTHOPAEDIC
ALLIANCE, P.A.,

Defendant.

**SUPPLEMENTAL DECLARATION OF JOEL R. RHINE IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AGREEMENT AND ENTRY OF FINAL JUDGMENT**

I, Joel R. Rhine, being first duly sworn, deposes and states as follows:

1. I am one of the attorneys for Plaintiffs and the proposed Class in this Action. On September 21, 2020, I submitted an "Affidavit and Declaration of Joel R. Rhine in Support of Preliminary Approval of Class Action Settlement and Certification of Settlement Class," which had 3 Exhibits attached thereto ("Preliminary Approval Declaration"). My Preliminary Approval Declaration detailed some of our experience in similar matters, described our investigation, the Complaint, discovery, TOA's defenses, COVID induced difficulties, and the negotiation process. My Preliminary Approval Declaration provides a robust description of the settlement terms and the claims administration to be performed by Heffler Claims Group.

2. I am submitting this Declaration to support of Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement and Entry of Final Judgment. In order not to overburden

the Court with unnecessary papers, I am endeavoring to avoid redundancy with the Preliminary Approval Declaration and instead incorporate the same in this Declaration.

3. I remain convinced that this Settlement is abundantly fair, reasonable and provides the Class with great benefit. Every Class Member, regardless of whether they filed a Claim Form, or whether the Claim Administrator had an adequate address, has been automatically enrolled in Fraud Protection Services. In my opinion, this is extraordinarily important because it provides every Class Member with the means to deal with any identity theft. Fortunately, to date, we are unaware of any Class Member having suffered an actual identity theft from the TOA Phishing Attack. Second, the mandated Business Commitments greatly improve TOA's safeguards against future attacks. This benefits every Class Member whose data remains in TOA's possession. It also benefits all future TOA patients. I commend TOA for taking these steps. Third, the monetary reimbursement for out-of-pocket expenses and lost time are fair and commensurate with the data breach. The credit monitoring is extremely protective and better than that offered in other data breach settlements. In short, we, TOA, and the Court should be proud of the settlement accomplished.

4. The alternative to this Settlement is not in any Class Members' best interest. These claims will be hotly contested, time-consuming and expensive because it will be heavily dependent on expert witnesses. The result of litigation, in my opinion, will not be better than the results achieved in this settlement.

5. Heffler Claims Group mailed out Notice to 60,114 Class Members on October 28, 2020. Since the creation of the Settlement Website at www.TOASettlement.com, there have been more than 2906 total website visits, and there have been more than 935 calls to the dedicated

Settlement Hotline number at 1-833-537-1184, according to the reports that I have been provided by Heffler Claims Group.

6. The reaction of the Class has been positive: more than 580 claims have been submitted, only one objection has been received, and only one opt-out has been received, as of the filing of the Motion for Final Approval.

7. With respect to Mr. Danny Ray Scarborough's objection, I note that the same violates the Court's requirements in that it was not mailed to Class Counsel and Defendant's counsel and: (1) fails to provide the objector's full name, address, email address, and telephone number; (2) fails to explain the basis upon which the objector claims to be a Settlement Class Member; (3) fails to provide any legal support for the objection; (4) fails to state whether or not the objector has any legal counsel, and if so, the identity of same who will appear at the Final Approval Hearing; (5) fails to list any persons who will be called to testify at the Final Approval Hearing in support of the objection; and (6) fails to contain a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing.

8. With respect to the substance of Mr. Scarborough's objection, I agree that data breach victims can be harmed by identity thieves and sympathize with his concerns. This threat is exactly why the Fraud Resolution Services granted to every Class Member is so important. Should anyone suffer an actual identity theft they are protected. Mr. Scarborough's objection is unclear as to whether he has been victimized by actual identity theft, but should the same occur, through Identity Guard's Fraud Resolution Services, he has trained professionals at his disposal to resolve the issues.

9. It is important to re-emphasize the three (3) years of Fraud Resolution Services granted in this Settlement. All Participating Settlement Class Members will receive Identity

Guard® Fraud Resolution Services where Victim Recovery Specialists ("VRS") assist Participating Class Members through a step-by-step recovery process and will also provide consultation and support to help alleviate anxiety. Once engaged, this team of professionals will place fraud alerts on the credit file and outline the required steps for continued protection. In the event a Participating Settlement Class Member's information is compromised, the VRS agent will register the event in Identity Guard's proprietary Case Management System and a Dedicated Case Manager will be assigned to assist the Participating Settlement Class Member for the duration of their identity theft recovery. Dedicated Case Manager duties include:

- a. Obtaining a real-time three bureau (Equifax®, Experian®, and TransUnion®) credit report and reviews in detail with the Participating Settlement Class Member;
- b. Contacting the Participating Settlement Class Members' affected creditors where permissible;
- c. Assisting the Participating Settlement Class Member in placing fraud alerts on their credit files;
- d. If needed, working with a limited Power of Attorney (POA);
- e. Providing full documentation in Identity Guard's Case Management System (CMS); and
- f. Working to full resolution with the Participating Settlement Class Member.

10. Mr. Scarborough's objection appears to request that TOA pay for lawyers to assist Class Members in state and federal courts for future litigation that depends on "how a Class Members Personal Identity was used". I am unaware of the federal and state court litigation to which Mr. Scarborough refers, however, because this settlement provides Fraud Resolution Services, it is extremely unlikely that additional litigation will occur.

11. I do not believe that any objective observer would anticipate that each Class Member would receive an award of \$10,000 at trial under these circumstances. Mr. Scarborough is requesting that TOA pay over \$600,000,000 to the Class Members. I am unaware of any data breach settlement that provides anything remotely close to that type monetary settlement.

12. Finally, while distressing, Mr. Scarborough's previous experience with cybercriminals makes his claim more difficult in this case because it raises causation issues. Like other Class Members, he will have to confront the difficult factual question of which data breach caused damages, other than those which are being reimbursed in the Settlement. Further, this is the type individual issues to which Defense counsel cite when challenging commonality and other Class Certification elements.

13. Again, it is my opinion, and that of Class Counsel, that the settlement is fair, reasonable, and adequate and that the settlement should be given final approval.

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

Executed this 2nd day of December, 2020 at Wilmington, North Carolina.

/s/ Joel R. Rhine
JOEL R. RHINE, ESQ.