

Declaration of Joel R. Rhine in Support of Representative  
Plaintiffs' Motion and Support Memorandum of Law for  
Approval of Attorneys' Fees, Costs and Expenses, and  
Service

Exhibit A to Plaintiffs' Unopposed Motion for an Award of Attorneys'  
Fees, Costs and Expenses, and Service Awards to Class Representatives

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.

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**DECLARATION OF JOEL R. RHINE IN SUPPORT OF REPRESENTATIVE  
PLAINTIFFS' MOTION AND SUPPORTING MEMORANDUM OF LAW FOR  
APPROVAL OF ATTORNEYS' FEES, COSTS AND EXPENSES, AND SERVICE  
AWARDS**

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

1. I am Class Counsel in this Action. I submit this declaration in support of Plaintiffs' Unopposed Motion for an Award of Attorneys' Fees, Costs and Expenses, and a Service Award to Class Representatives ("Motion for Attorneys' Fee, Expenses and Service Award"). I have personal knowledge of the matters stated in this declaration and could and would testify to these matters if called as a witness.

2. 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 ("Rhine Preliminary Approval Declaration"), which among other things details some of my legal experiences over the last 32 years litigating what I believe to be some of the most exciting and complex civil litigation matters in the country. In addition, I am submitting a Supplemental Declaration of Joel R. Rhine in Support of Representative Plaintiffs' Motion and Supporting Memorandum of Law for Final Approval ("Rhine Final Approval Declaration"). In order not to

overburden the Court with unnecessary papers, I am endeavoring to avoid redundancy with the Rhine Preliminary Approval Declaration and Rhine Final Approval Declaration and instead incorporate the same in this Declaration. However, I believe it appropriate to point out that over the last few years, I have been co-lead counsel in a data breach cases concerning Shorter University in Northern District of Georgia; co-lead counsel in two data breach class actions involving Magellan Health, Inc in Arizona; co-counsel in a combined cases against Cano Health, LLC (Miami Florida); counsel in the data breach cases involving *Dave, Inc.*, (California State and Federal Court); and co-counsel in the data breach case captioned *Peticos v. Oral and Maxillofacial Surgery Associates, P.C.*, Court of Common Pleas, Spartanburg County, South Carolina, Case No.: 2020-CP-4203041. I have also been involved in data breach cases involving Target, Home Depot, UCLA, Equifax and several more.

3. In addition to my experience and practice, another member of our firm, Janet R. Coleman, has been involved in this matter since shortly after the mediation and settlement. Ms. Coleman has over 36 years of legal experience. She was in private practice with a firm in Wilmington, North Carolina for almost 13 years, where she did commercial landlord-tenant litigation, transactional work, represented several local businesses and also did real estate and wills and estates work. Thereafter, she was an Assistant District Attorney in New Hanover and Pender Counties for over 22 years, handling in excess of 250 jury trials, primarily as lead counsel, as well as numerous smaller matters. She joined our firm at the end of July of 2020, and an hourly rate of \$400 per hour is commensurate with her extensive experience and appropriate.

4. Additionally, a former associate attorney in our firm, Christopher Barbour, was involved in this matter. Mr. Barbour graduated from University of Chapel Hill Law School and was admitted to the North Carolina State Bar in 2010. His practice primarily consisted of personal

injury and construction litigation. His hourly rate of \$300 per hour is commensurate with his experience and is appropriate.

5. Plaintiffs' Counsel has issued a request that the Court award attorneys' fees, costs, and expenses in the amount of \$255,300.00, which Defendant TOA has agreed to pay under the Settlement Agreement, separate and apart from any benefits to the Class. Again, it is critical to note that all of the fees, costs and expenses that Plaintiffs' Counsel seeks will be paid by Defendant, without any reduction in any benefit available to Class Members.

6. The attorneys' fees sought in the motion for attorneys' fees is reasonable and seeks fair and reasonable compensation for undertaking this case on a contingency basis, and for obtaining the relief for Plaintiffs and the Class. Throughout this action, we have been challenged by highly experienced and skilled counsel who deployed very substantial resources on Defendant's behalf.

7. In my previous Declaration, I have detailed much of the work we have undertaken and will perform in this case on behalf of the class. I think it is appropriate to highlight future work in this Declaration. In addition to time spent to prepare for and attend the fairness hearing, defend any appeals taken from the final judgment approving settlement, Class Counsel will perform post-settlement duties, including:

- a. The Settlement Agreement allows Class Counsel to participate in the claims administration process to ensure our clients receive a fair, just and appropriate recovery. Among other things, we likely will be involved whenever Heffler Group determines a claim for out-of-pocket losses or lost time is deficient in whole or part and the Participating Class Member is having difficulty curing the same. Agr. ¶15(a) and (b).

- b. The Settlement Agreement sets forth an appeal process, should a Participating Class Member dispute Heffler Group's determinations. Once a Participating Settlement Class Member disputes a determination in writing and requests an appeal, the Settlement Administrator shall provide a copy of the Participating Settlement Class Member's dispute and Claim Form along with all documentation or other information submitted to Counsel for the Parties. The Parties will confer regarding the claim submission and attempt to reach a decision as to whether the claim, in whole or in part, is approved or rejected, which will be final. If the Parties cannot agree on approval or denial of the member's claim, in whole or part, the dispute will be submitted to a claims referee agreed upon by the Parties. Agr. ¶15(c).
  - c. Further, as the Court is aware, TOA has committed to certain business commitments that will help ensure that Class Members' PII and PHI that remains in TOA's possession remains secure. The Settlement Agreement sets forth an independent audit process. Class Counsel and a cybersecurity expert that Class Counsel will retain will review the same and will alert TOA's counsel of any possible deficiencies. Class Counsel and TOA's counsel will meet and confer about these deficiencies and hopefully reach a resolution on how TOA's practices and policies should be altered. If, however, should counsel unable to agree, Class Counsel shall seek judicial intervention. Agr. ¶ 8(b).
8. Class Counsel's lodestar fully justifies the agreed upon attorney fee and costs award. Rhine Law Firm' lodestar of over 391 hours as of December 2, 2020 amounts to \$206,427.50. The Adkins Firm, P.C. has a lodestar of 87.95 hours as of December 2, 2020.

9. The chart below reflects the amount of time spent by me and members of my firm in the prosecution of this case:

<b>Firm Member:</b>	<b>Role:</b>	<b>Hourly Rate:</b>	<b>Total Time Spent:</b>	<b>Total Billed:</b>
Joel Rhine	Attorney / Partner	\$750.00	167.50	\$125,287.50
Martin Ramey	Attorney	\$400.00	49.80	\$19,920.00
Janet Coleman	Attorney	\$400.00	126.80	\$50,720.00
Christopher Barbour	Associate Attorney	\$300.00	28.75	\$8,625.00
Stephanie Chase	Paralegal	\$100.00	18.75	\$1,875.00

10. A breakdown of my firm's costs and expenses are reflected below.

<b>Expense:</b>	<b>Total:</b>
Court Fees	\$357.00
Copies and Printing	\$809.30
Mediator Fee	\$7,012.50
Total Expenses:	\$8,178.80

11. Our rates are commensurate with our peers who perform this complex, risky litigation. Prior to submitting the motion for attorneys' fees, costs, and expenses, I compared and confirmed our hourly rate with lawyers at the other law firms whose practice is focused on class litigation. As part of my legal education, I routinely survey hourly rates charged by lawyers around the country in published surveys, and review continuously as part of my continuing education, opinions rendered by Courts on attorneys' fees requests. Again, based upon my research, our rates are within the range of lawyers with our levels of experience.

12. My hourly rates have been approved by Courts in other matters. For example, in *Finerman et al v. Marriott Ownership Resorts, Inc, and International Cruise & Excursion Gallery* (United States District Court, Middle District of Florida, 3:14-cv-1154), my lodestar was based upon a \$750 hourly rate.

13. From the commencement of this case through today, the individuals who filed this case and serve as Class Representatives have at all times been in control of this litigation. These individuals reviewed and approved of the Complaint filed in this case, kept up with the ongoing developments of the case, were subject to the time consuming demands of discovery, and were involved in and approved the settlement terms reached in the case. The subject of service award was not raised nor negotiated until after the parties had reached a settlement of the underlying claims, and the Class Representatives' consent and agreement to the terms of the Settlement were not, nor are they in any way, conditioned on the Class Representatives' receipt of a service award. I support and request the reasonable service award of \$3,850 sought for the Class Representatives.

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

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