

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

STEVEN K. FARMER, individually and on behalf of all others similarly situated,

Plaintiff,

v.

HUMANA INC., a Delaware corporation, and COTIVITI, INC., a Delaware corporation,

Defendants.

Case No.: 8:21-cv-01478-MSS-SPF

I, John A. Yanchunis, declare pursuant to 28 U.S.C. § 1746, as follows:

1. I have been licensed to practice law in the state of Florida since 1981.

2. I am one of the attorneys for Plaintiff and the proposed Settlement Class in this case. I submit this declaration in support of the Motion for Preliminary Approval of the Class Action Settlement.¹ The facts herein stated are true of my own personal knowledge, and if called to testify to such facts, I could and would do so competently.

3. I lead the Class Action Department at Morgan & Morgan. Morgan & Morgan is the largest Plaintiff's, contingency-only law firm in the country, with over 800 lawyers in more than 50 offices throughout the United States. Its depth as a trial firm, and its self-funded financial resources, allow it to undertake the largest and most significant cases throughout the country.

4. My practice—which began after completing a two-year clerkship with United States District Judge Carl O. Bue, Jr., Southern District of Texas, Houston

¹ Unless otherwise noted, all capitalized terms are defined in the Settlement Agreement, which is attached the Motion for Preliminary Approval as its **Exhibit A**.

Division—has concentrated on complex litigation and spans over 38 years, including consumer class actions for more than two-thirds of that time. I have represented consumers in numerous successful class actions involving a wide variety of claims and topics from anti-trust, securities, civil rights, defective products, deceptive and unfair trade practices, common law fraud, and the protection of the privacy rights of consumers.

5. I was appointed co-lead counsel in the successful prosecution of the two largest class action cases in the United States: *Fresco v. Automotive Directions, Inc.*, Case No. 03-61063-JEM, and *Fresco v. R.L. Polk*, Case 0:07-cv-60695-JEM (Southern District of Florida). These cases were filed against the world’s largest data and information brokers—Experian, R.L. Polk, Acxiom, Reed Elsevier (which owns Lexis-Nexis) and others—to protect the important privacy rights of consumers.

6. I presently serve, or have served in the past, as lead, co-lead, or class counsel in numerous multi-district litigations across the country in a wide variety of areas affecting consumers. For example and to name only a few cases in which I have served in leadership, I presently serve as co-lead counsel in the case of *In re: Capitol One Consumer Data Sec. Breach Litig.*, No. 1:19-md-02915 (E.D. Va.). I have also served as co-lead of the *Home Depot Data Breach*, a member of the five-member overall Executive Committee in the *Target Data Breach*, No. 0:14-md-02522-PAM (Dist. Minn.), a member of the five-member Plaintiffs’ Steering Committee in *In re: U.S. Office Personnel Mgmt Data Security Breach Litig.*, 1:15-cv-01321-ABJ (D.D.C.), and a member of the Plaintiffs’ Steering Committee in *In re Equifax, Inc. Customer Data Security Breach Litigation*, 1:17-md-2800-TWT (N.D. Ga.). I also served as lead counsel in *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, 16-MD-02752-LHK (N.D. Cal.), a case involving a data breach of over 2.9 billion users of Yahoo’s email service. The court in that case fairly recently entered final judgment and approved the settlement of the claims of a class of consumers in the United States and Israel.

7. As a result of my experience in litigation against the insurance industry, including class litigation, I served as lead counsel for the insurance regulators for the state of Florida in connection with their investigations of a number of insurance companies and brokers of allegations of price fixing, bidding rigging, undisclosed compensation and other related conduct, and negotiated a number of settlements with insurance companies and brokers who were the subject of those investigations. These investigations resulted in the recovery of millions of dollars for Florida policyholders and the implementation of changes to the way insurance is sold in Florida and throughout the United States.

8. During my career, I have tried numerous cases in state and federal courts, including one of the largest and longest insurance coverage cases in U.S. history, which was filed in 1991 by The Celotex Corporation and its subsidiary, Carey Canada, Inc. During the seventeen years the case pended, I served as lead counsel for several insurance companies regarding coverage for asbestos and environmental claims. The case was tried in three phases over several years beginning in 1992. I was also lead counsel for these parties in the subsequent appeals that followed a judgment in favor of my clients.

9. As result of my experience in the area of class litigation and ethics, I have served as an expert for The Florida Bar on ethical issues arising in class action litigation.

10. I am currently a member in good standing of The Florida Bar, and of all the bars to which I have been admitted, including the United States Supreme Court, the United States Court of Appeals for the Third, Fifth, Ninth, and Eleventh Circuits, and the United States District Courts of the Southern District of Texas, Northern District of Texas, Western District of Texas, Eastern District of Wisconsin, Middle District of Florida, Southern District of Florida, Northern Ditriect of Florida, Eastern District of Michigan, Centrial District of Illinois and Northern District of Illinois.

11. Plaintiff requests that the Court appoint myself and Ryan D. Maxey of my firm as Settlement Class Counsel (collectively, "Class Counsel"). Class Counsel have invested considerable time and resources into the investigation of the facts underlying the claims and the prosecution of this action. Since the outset of this litigation, the firms have cooperatively and effectively collaborated to prosecute, and ultimately resolve, this case on behalf of their clients and the Class. They have performed work critical to achieving benefits for the Class, including by investigating the facts surrounding the Data Incident, researching and analyzing legal claims under state and federal law and common law, preparing and filing the Complaint, motion and discovery practice, participating in meetings with defense counsel to discuss the parties' respective positions, negotiating the proposed Settlement, and drafting this motion for preliminary approval.

12. As noted above, and as reflected in our respective resumes and biographies attached hereto as **Composite Exhibit 1**, Class Counsel are qualified, experienced, and able prosecute this litigation. Class Counsel have a wealth of experience in litigating complex class action lawsuits similar to this one and have extensive knowledge of the applicable law and sufficient resources to commit to the Settlement Class.

13. Throughout the pendency of this case, my co-counsel and I have maintained regular contact with Plaintiff to discuss with him the prosecution of the case. With the assistance of counsel, Plaintiff has been at the helm of this case and continues to be focused on the advancement of the interests and claims of the Class over his own interests. Plaintiff has always been concerned about obtaining a result that was best for the Class. Plaintiff is an adequate class representatives with no conflicts of interest.

14. Defendant Cotiviti helps Defendant Humana request medical records needed to verify data reported to the Centers for Medicare and Medicaid Services.

Cotiviti in turn uses a subcontractor, Visionary RCM Infotech (India) Pvt Ltd (“Visionary”), to review the collected medical records. This Action was initiated following Defendants’ disclosure that between October 12, 2020 and December 16, 2020, an employee of Visionary gained access to personally identifiable information (“PII”) and protected health information (“PHI”) of Humana members and shared that information with others in connection with a personal coding business (the “Data Incident”).

15. On May 6, 2021, Plaintiff commenced the instant litigation and filed a complaint in the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida, relating to the Data Incident. The complaint sought class action status and remedies for Plaintiff and other patients impacted by the Data Incident. On or about June 17, 2021, Defendants removed this matter to this Court. Thereafter, the parties engaged in motion practice, including Defendants’ Motions to Dismiss (Docs. 15, 16). On January 25, 2022, the Court entered an Order granting in part and denying in part the Motions to Dismiss (Doc. 32).

16. On March 10, 2022, the parties had a full-day mediation session with Harry Schafer. The negotiations were hard-fought throughout, and the process was conducted at arm’s length and non-collusive. In advance of the mediation, the parties briefed their respective positions on the facts, claims, defenses, and assessments of the risk of litigation. After extensive arm’s length settlement negotiations conducted through Mr. Schaffer, the parties reached an agreement on the essential terms of settlement.

17. This Settlement Agreement provides for the resolution of all claims and causes of action asserted, or that could have been asserted, against Defendants and the Released Persons (as defined in the Settlement Agreement and provided below) relating to the Data Incident, by and on behalf of Plaintiff and Settlement Class Members (as defined in the Settlement Agreement and provided below).

18. The Settlement provides an aggregate cap of \$500,000.00, to be paid by Cotiviti, for the following general categories of relief; (i) the reimbursement of ordinary expenses, (ii) the reimbursement of other extraordinary expenses, and (iii) credit monitoring and identity protection. *See* S.A. ¶ IV.2.4.

19. The parties negotiated Class Counsel's attorneys' fees, costs, and expenses only after they had reached an agreement on the benefits afforded to the Settlement Class.

20. Proposed Class Counsel has agreed to request, and Cotiviti has agreed to pay, subject to Court approval, the amount of \$300,000.00 to Proposed Class Counsel for attorney's fees, costs, and expenses. S.A. ¶ IV.7.2.

21. After investigating the facts and carefully considering applicable law, Plaintiff and Class Counsel have concluded that it is in the best interests of Settlement Class Members to enter into the Settlement in order to avoid the uncertainties of litigation and to assure meaningful and timely benefits to Settlement Class Members. I, along with the Plaintiff and Class Counsel, respectfully submit that the terms and conditions of this Settlement are fair, reasonable, adequate, and in the best interests of all Settlement Class Members.

22. Throughout the settlement process, my co-counsel and I carefully weighed with the Plaintiff: (1) the benefits to the Class under the terms of the Settlement Agreement, which provides significant relief to the Class; (2) the quantum of damages which might have been sustained by individual Settlement Class Members, the likelihood that in the absence of a class action consumers would not pursue individual claims, particularly due to the high cost and expense, including the cost of cyber and damage experts to litigate these claims if pursued in individual litigation, and the fact that the quantum of damages would not justify the retention of an attorney, either on an hourly or contingent basis, to pursue the claims individually; (3) the difficulty in proving and calculating those damages; (4) the attendant risks and

uncertainty of litigation, as well as the difficulties and delays inherent in such litigation including the challenges to certification of a class; (5) Defendants' vigorous defense of the litigation and continued denial of the claims contained in the Complaint; (6) the desirability of consummating the present Settlement Agreement to ensure that the Class receives a fair and reasonable Settlement; and (7) providing Settlement Class Members prompt relief.

23. In particular, it is my opinion that the Settlement Agreement provides significant benefits to Settlement Class Members.

24. The relief provided by the Settlement is reasonable and adequate, particularly in light of the risks and delay of trial and associated appeals. At bottom, Plaintiff faced difficult hurdles certifying a class.

25. Further, the proposed Settlement Class is functionally equivalent to that alleged in the Complaint. The proposed Settlement Class is defined as the:

“All individuals residing in the United States whose personal information was or may have been compromised in the data breach that is the subject of the Notice of Privacy Incident that Humana sent to Plaintiff and others in substantially the same form on or around March 1, 2021.” The Settlement Class specifically excludes: (i) Humana, Inc. and Cotiviti, Inc. and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge assigned to evaluate the fairness of this settlement; (iv) the attorneys representing the Parties in the Litigation; and (v) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity involved in the Data Incident or who pleads nolo contendere to any such charge.

S.A. ¶ IV.1.26.

26. Given my experience in class actions generally, I expect that the Notice Program in this case will produce a positive claims rate. The Notice Program involves

direct notice to the approximately 64,653 Settlement Class Members for whom physical addresses or email addresses are available, and best practices for identifying additional means of contact information, such as skip traces, will be employed. Notice will also be provided through the Settlement Website and telephone line established by the Settlement Administrator.

27. Plaintiff seeks certification of a nationwide class. All members of the proposed Settlement Class are entitled to the same benefits. All Settlement Class Members who do not exclude themselves from the Settlement will be eligible to submit claims. The dollar amounts of these reimbursements may vary, but those differences reflect the differing amounts of losses that Settlement Class Members incurred as a result of the Data Incident. Thus, each Settlement Class Member who submits a valid claim will be paid proportionate to the harm they suffered. And all Settlement Class Members are eligible to claim IDX Identity Theft Protection Services or two (2) years, which has a retail value of \$9.95 per month or \$238.80 for two (2) years. *See* <https://www.idx.us/idx-identity/plans> (Identity Essentials).

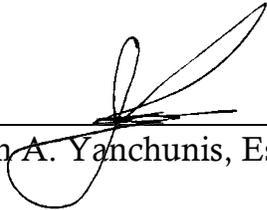
28. The parties' exchange of information in the mediation setting provided Class Counsel—along with my prior experience in similar litigation and communications with many consumers in those cases and the one before the Court—with the ability to make a well informed decision about the litigation risks and the benefits of the Settlement.

29. Given my extensive experience with class action settlements, it is my informed opinion that the Notice Program, with all attendant forms and as outlined in the Settlement, makes every effort to ensure that Class Members will be made aware of their right to a recovery under the Settlement.

30. I am informed that Notice and Administrative Expenses are expected to be approximately \$80,057.00.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 23, 2022 at Tampa, Florida.

By:  _____
John A. Yanchunis, Esq.