

Candice Adams  
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DuPage County  
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2023LA000535  
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JW

# **EXHIBIT A**

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS**

DARRICK YOUNG, JEREMY LAM, and  
DAVID RAMIREZ, individually and on behalf  
of all others similarly situated,

Plaintiffs,

v.

MILITARY ADVANTAGE, INC. d/b/a  
MILITARY.COM,

Defendant.

Case No. 2023LA000535

**DECLARATION OF GARY M. KLINGER IN SUPPORT OF PLAINTIFFS'  
UNOPPOSED MOTION FOR ATTORNEYS' FEES, COSTS, EXPENSES, AND  
INCENTIVE AWARD**

I, Gary M. Klinger, hereby aver, pursuant to 735 ILCS 5/1-109, that I am fully competent to make this Declaration, that I have personal knowledge of all matters set forth herein unless otherwise indicated, and that I would testify to all such matters if called as a witness in this matter.

1. I am a Partner at Milberg Coleman Bryson Phillips Grossman, PLLC Class Counsel in this action. I make this declaration in support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs, Expenses, and Incentive Award, filed herewith.

2. Attached hereto as **Exhibit 1** is a true and correct copy of the Parties' Class Action Settlement Agreement (the "Settlement"), and the exhibits attached thereto.

3. Prior to filing this action, my firm and my co-counsel, Bursor & Fisher, P.A. commenced an extensive pre-suit investigation, which included identifying the Facebook Tracking Pixel and developing a methodology to test for the Pixel's use on various websites. That process was technical and required substantial labor and technological knowledge.

4. Following that investigation, but before filing this action, the Parties engaged in settlement discussions, and, to that end, agreed to participating in a private mediation before

Defendant formally answered the Complaint. The Parties agreed that the mediation would take place before The Honorable Frank Maas (Ret.) of JAMS New York, who is a former United States Magistrate Judge for the Southern District of New York and a neutral at JAMS New York.

5. As part of the mediation, and in order to competently assess their relative negotiating positions, the Parties exchanged informal discovery, including on issues such as the size and scope of the putative class, and certain facts related to the strength of Defendant's defenses. Given that the information exchanged was similar to the information that would have been provided in formal discovery related to the issues of class certification and summary judgment, the Parties had sufficient information to assess the strengths and weaknesses of the claims and defenses as well as the risks of continued litigation.

6. The mediation took place at JAMS' New York City offices on April 14, 2023. While the Parties engaged in good faith negotiations, which at all times were at arms' length, they failed to reach an agreement that day. However, because the Parties felt they had made progress, they agreed to continue negotiations through Judge Maas.

7. To that end, Judge Maas made a mediator's recommendation to settle the case and, on May 5, 2023, both Parties accepted that recommendation.

8. In the weeks following, my firm and my co-counsel negotiated and finalized the full-form Settlement Agreement, which is attached to this Declaration as Exhibit 1, selected a Settlement Administrator after a competitive bidding process, and prepared a motion for preliminary approval.

9. On July 26, 2023, the Court issued an Order Granting Preliminary Approval, which is attached hereto as **Exhibit 2**.

10. Since that time, my firm and my co-counsel have worked with the Court-appointed Settlement Administrator, Epiq, to effectuate the Court-ordered Notice, and have fielded calls from

Settlement Class Members answering their questions and assisting them in filing claims.

11. Since class notice has been disseminated, my firm and my co-counsel have also worked with Epiq on a weekly basis to monitor settlement claims and other issues that may arise.

12. The resulting Settlement secures an excellent recovery for the Settlement Class. Pursuant to the Settlement, Defendant will establish a cash Settlement Fund of up to \$7,350,000, which will be used to pay Approved Claims, all Settlement Administrator costs, and any Fee Award and Service Awards. Settlement ¶ 1.31. Settlement Class Members will be entitled to submit claims against the Settlement Fund for a cash payment of up to \$30. *Id.* ¶ 2.3(a).

13. As part of the Settlement, Defendant has also agreed to suspend operation of the Facebook Tracking Pixel on any pages of its website that include video content, within 45 days of the Preliminary Approval Order, for a period of at least two years from November 1, 2022, which is the date Military.com removed the Pixel. *Id.* ¶ 2.8.

14. From the outset of the case, Plaintiffs and Class Counsel recognized that the case presented substantial and novel litigation risks. For example, Defendant contends that: (i) it is not a “video tape service provider” within the meaning of the VPPA; (ii) the information it allegedly disclosed to Facebook does not constitute PII within the meaning of the VPPA; and (iii) any disclosures of PII to Facebook were not made by Defendant “knowingly,” as required by the VPPA. An adverse decision on any of these contentions would deprive Plaintiffs and the Settlement Class of any recovery whatsoever.

15. Despite the clear risks, my firm and my co-counsel undertook this matter on a contingency basis with no guarantee of recovery and have committed substantial resources of attorney and staff time, in addition to out-of-pocket costs and expenses, towards this matter. In doing so, my firm and my co-counsel assumed the risk of significant delay associated with achieving a final resolution.

16. The Parties agreed to the terms of the Settlement through experienced counsel who possessed all the information necessary to evaluate the case, determine all the contours of the proposed class, and reach a fair and reasonable compromise after negotiating the terms of the Settlement at arm's-length.

17. Plaintiffs and Class Counsel recognize that despite our belief in the strength of Plaintiffs' claims, and Plaintiffs' and the Class's ability to ultimately secure a favorable judgment at trial, the expense, duration, and complexity of protracted litigation would be substantial and the outcome of trial uncertain.

18. Plaintiffs and Class Counsel are also mindful that absent a settlement, the success of Defendant's various defenses in this case could deprive Plaintiffs and the Settlement Class Members of any potential relief whatsoever. Defendant is represented by highly experienced attorneys who have made clear that absent a settlement, they were prepared to continue their vigorous defense of this case. Plaintiffs and Class Counsel are also aware that Defendant would continue to challenge liability, as well as assert a number of defenses.

19. Looking beyond trial, Plaintiffs are also keenly aware that Defendant could appeal the merits of any adverse decision, and that in light of the statutory damages in play it would argue – in both the trial and appellate courts – for a reduction of damages based on due process concerns. *See, e.g., Rogers v. BNSF Railway Co.*, 2023 WL 4297654, at \*13 (N.D. Ill. June 30, 2023) (vacating jury's statutory damages award in statutory privacy class action and ordering a new trial on damages); *Wakefield v. ViSalus, Inc.*, 51 F.4th 1109, 1125 (9th Cir. 2022) (vacating and remanding district court's denial of post-trial motion challenging the constitutionality of statutory damages award in statutory privacy class action and ordering the district court to reassess the question with new appellate guidance).

20. Plaintiffs and Class Counsel believe that the relief provided by the settlement

weighs heavily in favor of a finding that the settlement is fair, reasonable, and adequate, and well within the range of approval.

21. I am of the opinion that Plaintiffs' active involvement in this case was critical to its ultimate resolution. They took their role as class representatives seriously, devoting significant amounts of time and effort to protecting the interests of the class. Without their willingness to assume the risks and responsibilities of serving as class representative, I do not believe such a strong result could have been achieved.

22. Plaintiffs equipped Class Counsel with critical details related to this Lawsuit. Plaintiffs spent substantial time on this action, including by: (i) assisting with the investigation of this action and the drafting of the complaint, (ii) being in contact with counsel frequently, (iii) and staying informed of the status of the action, including settlement. Plaintiffs were also prepared to testify at deposition and trial, if necessary. And they were actively consulted during the settlement process.

23. In short, Plaintiffs assisted Class Counsel in pursuing this action on behalf of the class, and their involvement in this case has been nothing short of essential.

I declare under penalty of perjury that the above and foregoing is true and accurate.

Executed this 24th day of September 2023 at Chicago, Illinois

/s Gary M. Klinger

Gary M. Klinger