

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

ANDE KYLES and DIANE TAYLOR, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

STEIN MART , INC., a Florida corporation,

and

SOCIAL ANNEX, INC. (d/b/a, ANNEX  
CLOUD), a Delaware corporation,

Defendants.

CASE NO. 1:19-cv-00483-CFC

**CLASS ACTION**

**JURY TRIAL DEMANDED**

**DECLARATION OF BENJAMIN F. JOHNS IN SUPPORT OF  
PLAINTIFFS' UNOPPOSED MOTION FOR  
ATTORNEYS' FEES, EXPENSES AND INCENTIVE AWARDS**

I, Benjamin F. Johns, declare as follows:

1. I am a partner at the law firm of Chimicles Schwartz Kriner & Donaldson-Smith LLP ("CSK&D"). I am admitted to practice before the Supreme Courts of Pennsylvania and New Jersey, and was admitted *pro hac vice* in this case on March 14, 2019. I submit this declaration in support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Expenses and Incentive Awards. I have personal knowledge of the matters discussed herein, and if called as a witness could testify competently thereto.

2. On March 25, 2020, the Court issued its Order Conditionally Certifying a Settlement Class, Granting Preliminary Approval of the Class Action Settlement, Approving the Form and Manner of Notice, and Scheduling Final Approval Hearing. *See* D.I. 28. Thereafter, it

issued an Order granting the joint request of the parties to reschedule the final approval hearing for August 19, 2020. *See* D.I. 30.

3. During the course of this litigation, my firm and Mr. Dukelow have been involved in the following types of activities:

- investigated the facts and circumstances related to the Data Breach;
- spoke with multiple prospective clients and consumers who contacted CSK&D about the Data Breach;
- drafted and filed the complaint on March 8, 2019;
- maintained ongoing communications with clients to keep them apprised of litigation developments and secured their approval and insights where necessary;
- researched, wrote, and filed an omnibus opposition to the two separate motions to dismiss filed by Defendants;
- prepared for the mediation session with Defendants, which included selecting a mediator, participating in a pre-mediation session with the mediator, speaking with the mediator several times over the telephone, researching relevant data breach settlements, and submitting a mediation statement;
- analyzed documents produced by Defendants for settlement purposes only, including without limitation a forensic report on the Data Breach;
- participated in an all-day mediation session with Bennett G. Picker at the Stradley Ronon law firm in Philadelphia on November 14, 2019;
- engaged in protracted negotiations with counsel for both Defendants over attorneys' fees, which included drafting and transmitting multiple letters to the Court requesting additional time to report on the status of the parties' fee negotiations and to file the preliminary approval papers;
- prepared the preliminary approval brief, assisted with the drafting of the claim form and class notices, and worked with the claims/notice administrator; and
- performed necessary factual and legal research throughout the course of the case.

4. Subsequent to the filing of Defendants' Motions to Dismiss and Plaintiffs' Opposition thereto, but prior to Defendants' Replies, the parties commenced discussions regarding the possibility of a negotiated settlement on behalf of Plaintiffs and the Class. On July 1, counsel

for all parties conducted a conference call to begin discussions of a possible resolution. During that call, Plaintiffs' counsel suggested that they would send defense counsel a letter containing Plaintiffs' proposed settlement terms. Thereafter, on July 3, Plaintiffs' counsel sent a written settlement demand to defense counsel. On September 6, defense counsel sent a settlement counterproposal to Plaintiffs' counsel.

5. In early September 2019, the parties agreed to seek the aid of private mediator Bennett Picker of Stradley Ronon Stevens & Young LLP, in Philadelphia to continue settlement negotiations.

6. In anticipation of mediation, on November 6, 2019, Plaintiffs served a set of document requests upon both Defendants, requesting information that would aid them in evaluating a possible resolution of their claims. In response thereto, both Defendants produced to Plaintiffs certain relevant information, including but not limited to: an Investigation Report on Annex's investigation of the Data Breach, Stein Mart's insurance policy providing coverage for data breach incidents, Stein Mart's factual timeline of the Data Breach, documents indicating the number of orders placed and payment cards transacted on Stein Mart's online store during the Data Breach period, and documents identifying 108,335 individuals who Stein Mart notified of the breach.

7. As noted above, on November 14, the parties engaged in a full-day mediation session with Mr. Picker. With the assistance of Mr. Picker, the parties reached agreement on the material terms of the settlement, with the exception of the amount of Plaintiffs' attorneys' fees and expenses. This issue was not discussed until after the parties had reached agreement on the material terms of the settlement. Following the mediation, however, counsel for both parties continued to directly negotiate the amount of Plaintiffs' attorneys' fees and expenses, and were ultimately able

to reach an agreement on that term on December 13, 2019. All terms of the Settlement are the result of extensive, adversarial, and arm's-length negotiations between experienced counsel for all parties.

8. From the inception of this case through May 31, 2020, my firm performed a total of 682.10 billable hours on this case. Based upon hourly rates currently charged to my firm's clients, the total lodestar value of this billable time is \$335,265.50. Attached as Exhibit A to this Declaration is a chart that identifies the attorneys and paralegals who worked on this litigation, the number of hours billed by each, their respective positions, and their respective billable rates. Current personnel are billed at their current rates, which are our standard rates, while former personnel are billed at their most recent billable rate before they departed from the firm. This schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm.<sup>1</sup>

9. All of the time billed to this case by my firm was reasonable and necessary in the prosecution of this case. It was also performed on a contingency basis; my firm has not been compensated for any of its work on this matter to date. My firm fronted all of the litigation costs and expenses associated with this matter.

10. As detailed in Exhibit B attached to this Declaration, my firm has incurred a total of \$7,337.04 in unreimbursed expenses in connection with the prosecution of this litigation through May 31, 2020. These expenses included, *inter alia*, the filing fee, mediation expenses, and costs for performing legal research on Lexis. These expenses were also reasonable and necessary in the prosecution of this case.

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<sup>1</sup> My firm's detailed time records are available to the Court for inspection upon request.

11. The expenses incurred in this action are reflected on my firm's the books and records. These books and records are prepared from expense vouchers, check records, and other source materials and represent an accurate recordation of the expenses incurred.

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

Dated: June 25, 2020

/s/ Benjamin F. Johns  
Benjamin F. Johns

# **EXHIBIT A**

<b><i>KYLES, et al. v. STEIN MART, INC.</i></b>				
<b>FIRM NAME: CHIMICLES SCHWARTZ KRINER &amp; DONALDSON-SMITH LLP</b>				
<b>LODESTAR REPORT</b>				
<b>INCEPTION - MAY 31, 2020</b>				
<b>NAME</b>	<b>STATUS*</b>	<b>HOURLY RATE</b>	<b>HOURS</b>	<b>LODESTAR</b>
Benjamin F. Johns	P	700.00	89.90	\$62,930.00
Tiffany J. Cramer	OC	575.00	65.00	\$37,375.00
Vera G. Belger	FA	550.00	0.50	\$275.00
Andrew W. Ferich	A	525.00	1.20	\$630.00
Mark B. DeSanto	A	510.00	406.80	\$207,468.00
David W. Birch	IT	300.00	2.90	\$870.00
Corneliu P. Mastraghin	PL	250.00	2.80	\$700.00
Alex B. Curtin	LC	225.00	96.70	\$21,757.50
Justin P. Boyer	PL	200.00	16.30	\$3,260.00
<b>TOTALS</b>			<b>682.10</b>	<b>\$335,265.50</b>

P = Partner

OC = Of Counsel

A = Associate

FA = Former Associate

PL = Paralegal

LC = Law Clerk

IT = Info. Tech

# **EXHIBIT B**

<b><i>KYLES, et al. v. STEIN MART, INC.</i></b>	
<b>EXPENSE CHART</b>	
<b>FIRM NAME: CHIMICLES SCHWARTZ KRINER &amp; DONALDSON-SMITH LLP</b>	
<b>REPORTING PERIOD: INCEPTION TO MAY 31, 2020</b>	
<b>DESCRIPTION</b>	<b>EXPENSES</b>
Mediation Fees	\$4,750.00
Adwords	\$832.65
Filing Fees	\$520.00
Photocopies/Internal	\$436.78
Computer Research	\$344.34
Postage/Express Mail	\$301.92
Travel/Food/Lodging	\$151.35
<b>TOTAL</b>	<b>\$7,337.04</b>