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7 Attorneys for Plaintiff

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF SAN DIEGO – CENTRAL DIVISION**

11 JUAN C. LOZANO, and his minor son A.J.L.,  
12 individually, and on behalf of all others  
13 similarly situated,

13 Plaintiff,

14 vs.

15 CODEMETRO, INC., a California  
16 corporation; and DOES 1-50, inclusive,

17 Defendants.

Case No. 37-2020-00022701-CU-MC-CTL

Assigned for All Purposes to:  
Judge John S. Meyer  
Dept. C-64

**CLASS ACTION**

**PLAINTIFF'S SUPPLEMENTAL  
SUBMISSION IN SUPPORT OF MOTION  
FOR PRELIMINARY APPROVAL**

IMAGED FILE - Civil Unlimited  
(Mandatory eFILE Case)

Date: April 2, 2021  
Time: 10:30  
Dept.: C-64

Complaint Filed: July 1, 2020  
Trial Date: Not Yet Set

**DEMAND FOR JURY TRIAL**

BLOOD HURST & O' REARDON, LLP

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1 Pursuant to the Court's request at the February 3, 2021 hearing, Plaintiff Juan C. Lozano,  
2 for himself and his minor son ("Plaintiff"), individually and on behalf of the Settlement Class,<sup>1</sup>  
3 respectfully submits this supplemental filing in support of his Motion for Preliminary Approval.

4 1. The Settling Parties have agreed to remove all references to Cal. Civ. Code § 1542  
5 from the Settlement Agreement (including the exhibits thereto). The Settling Parties' Amendment  
6 to the Settlement Agreement reflecting these changes is filed concurrently herewith.

7 2. The following paragraphs describe how the estimated value of Cash Option  
8 payments in Plaintiff's submissions was determined and provide authority further supporting that  
9 the values of such payments are fair, reasonable, and adequate, and indeed excellent, considering  
10 the nature of the case and CodeMetro's size and financial condition.

11 3. The value of Cash Option payments to California resident Settlement Class members  
12 under the Settlement is twice the value of Cash Option payments to non-California resident  
13 Settlement Class members. The increase in amounts paid to California Settlement Class members  
14 reflects the strength of their claims under the California Confidentiality of Medical Information Act  
15 and California Consumer Privacy Act of 2018, as well as the statutory damages available under  
16 these California laws. *See* Cal. Civ. Code § 56.36(b)(1) (providing for nominal damages of \$1,000);  
17 Cal. Civ. Code. § 1798.150 (making available statutory damages of not less than \$100 and not more  
18 than \$750 per incident). A similar approach was used in the settlement reached and granted final  
19 approval in *In re Premera Blue Cross Customer Data Breach Litigation*, No. 3:15-md-2633 (D. Or.)  
20 (the "*Premera Litigation*"), on account of the strength of certain class members' claims under the  
21 CMIA in that matter. *See* Settlement Agreement ¶¶ 4.4.1, *Premera Litigation* (May 30, 2019)  
22 (making available a default cash payment of \$50 to all class members and an additional payment of  
23 up to \$50 for class members who resided in California as of March 17, 2015).

24 4. The following formula was used to calculate the estimated value of Cash Option  
25 payments to Settlement Class members: Estimated Total Amount Available for Cash Option  
26 Payments = (Estimated Number of Valid Cash Option Claims Submitted by California Resident  
27

28 <sup>1</sup> The definitions in the Settlement are incorporated herein by reference.

1 Settlement Class Members \* 2X) + (Estimated Number of Valid Cash Option Claims Submitted by  
2 Non-California Resident Settlement Class Members \* X). Using this formula, 2X is the estimate  
3 value of payments to California resident Settlement Class members, and X is the estimated value of  
4 payments to non-California resident Settlement Class members.

5 5. The estimated total amount available for Cash Option payments is calculated as  
6 follows: Settlement Fund (\$850,000) – estimated notice and settlement administration costs  
7 (\$90,897) – estimated attorneys’ fees (\$283,333) – estimated costs and expenses (\$11,414) –  
8 estimated service award (\$2,500) – estimated valid Protection Plan claims (\$7,200) – estimated  
9 reimbursement option claims (combined) (\$10,000) = estimated amount available to pay valid Cash  
10 Option claims (\$444,656). These figures were determined as follows:

11 A. Settlement Fund Amount. Paragraph 2.1 of the Settlement states the  
12 Settlement Fund amount (\$850,000).

13 B. Estimated Notice and Administration Costs. Consistent with best practices,  
14 proposed Co-Lead Settlement Class Counsel requested and obtained estimates from three reputable  
15 notice and settlement administration firms to serve as the Settlement Administrator. After reviewing  
16 each estimate and taking into consideration the fact that Epiq Class Action & Claims Solutions  
17 (“Epiq”) was the administration firm that sent letters to Settlement Class members in June 2020  
18 notifying them of the Security Incident, the Settling Parties selected Epiq to serve as the Settlement  
19 Administrator, subject to Court approval. Based on a projected 4% claims rate, Epiq estimates the  
20 cost of notice and administration to be \$90,897, which is the figure Plaintiff used in the above  
21 calculation.

22 C. Estimated Attorneys’ Fees, Costs, and Expenses, and Service Awards.  
23 Pursuant to the Settlement and subject to Court approval, CodeMetro agreed not to object to  
24 Plaintiff’s request for attorney’s of up to \$283,333, reimbursement of reasonable costs and expenses,  
25 and Representative Services award in the amount of \$2,500. At the time of Plaintiff’s filing,  
26 proposed Co-Lead Settlement Class Counsels’ firms had incurred costs and expenses of \$11,414 in  
27 litigating the matter.

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1           D.     Estimated Cost of Protection Plan Claims. To arrive at this figure, Plaintiff  
 2 multiplied the cost of the 24-month Protection Package (\$24) by the estimated number of valid  
 3 Protection Package claims. To estimate the number of valid Protection Package claims, Plaintiff  
 4 reviewed the claims rate for an analogous protection package included in the data breach settlement  
 5 reached and granted final approval in *Smith v. ComplyRight, Inc.*, No. 18-cv-4990 (N.D. Ill.). Similar  
 6 to this matter, the defendant in *ComplyRight* offered certain class members a free year of credit  
 7 monitoring in the wake of discovering the data breach. In the *ComplyRight* matter, 2,271 valid  
 8 protection package claims were received from a settlement class estimated to include 662,477  
 9 individuals—that is, less than half of one percent (.003). Multiplying the estimated number of  
 10 Settlement Class members (98,724) times .003 = 296 (a figure Plaintiff rounded to 300). The final  
 11 calculation is as follows:  $\$24 * 300 = \$7,200$ .

12           E.     Estimated Cost of Reimbursement Option Claims. To estimate the value of  
 13 Reimbursement Option claims, Plaintiff considered the fact that 79 valid reimbursement option  
 14 claims were submitted in *ComplyRight* from a settlement class estimated to include 662,477  
 15 individuals. Erring on the side of caution, Plaintiff estimated that valid Reimbursement Option  
 16 claims of \$10,000 would be submitted by Settlement Class members.

17           6.     Number of Settlement Class Members. CodeMetro has informed Plaintiff that the  
 18 Settlement Class includes 98,724 individuals.

19           7.     Estimated Number of Valid Cash Option Claims. Plaintiff used an estimated 4%  
 20 claims rate to estimate the total number of valid Cash Option claims that will be submitted ( $98,724$   
 21  $* .04 = 3,949$ ). The estimated claims rate is consistent with the fact that approximately 3.8% of  
 22 settlement class members in the *ComplyRight* matter submitted valid cash option claims.<sup>2</sup>

23           8.     Estimated Number of California Resident Settlement Class Members. CodeMetro  
 24 has advised Plaintiff that an approximately 70% of all Settlement Class members reside in  
 25 California. That figure was then multiplied by the total estimated total number of valid Cash Option  
 26 claims ( $3,949 * .70 = 2,764.3$ ).

27 \_\_\_\_\_  
 28 <sup>2</sup> In the *ComplyRight* matter, 25,723 valid cash option claims were received out of a settlement  
 class estimated to include 662,447 individuals ( $25,723/662,447=.0388$ ).

1           9.       Estimated Number of Non-California Resident Settlement Class Members.

2 CodeMetro has advised Plaintiff that an estimated 30% of all Settlement Class members do not  
3 reside in California. That figure was then multiplied by the total estimated number of valid Cash  
4 Option claims (3,949 \* .30 = 1,184.7).

5           10.       Applying the above figures to the formula described in paragraph 4 above results in  
6 the following calculation:  $\$444,656 = (2,764.3 * 2X) + (1,184.7X)$ . Solving for X in this equation  
7 reveals that the estimated value of Cash Option claims for non-California Settlement Class members  
8 is \$66.24, and that the estimated value of Cash Option claims for California Settlement Class  
9 members is \$132.47.

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11 Dated: February 17, 2021

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By:                   s/ Timothy G. Blood

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*Attorneys for Plaintiff*

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**CERTIFICATE OF SERVICE**

*Juan C. Lozano v. Codemetro, Inc.*

San Diego Superior Court – Central  
Case No. 37-2020-00022701-CU-MC-CTL

I hereby certify that on February 17, 2021, I electronically filed the foregoing with the Clerk of the Court using One Legal Online Court Services, and electronically served the foregoing upon the attorney of record for each party in this case at the e-mail address(es) registered for such service through One Legal Online Court Services. Parties may access this filing through the Court’s website.

I certify under penalty of perjury that the foregoing is true and correct. Executed on February 17, 2021.

*s/ Janet Kohnenberger*

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