

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ERIC LAPRAIRIE, *on behalf of himself and all other employees similarly situated,*

*Plaintiffs,*

v.

PRESIDIO, INC., PRESIDIO HOLDINGS INC.,  
PRESIDIO LLC, PRESIDIO NETWORKED  
SOLUTIONS LLC, PRESIDIO NETWORKED  
SOLUTIONS GROUP, LLC, AND PRESIDIO  
TECHNOLOGY CAPITAL, LLC,

*Defendants.*

NOTICE OF MOTION

No. 1:21-cv-08795-ALC

PLEASE TAKE NOTICE that on \_\_\_\_\_ at \_\_\_\_\_ am/pm, Plaintiff in the above-captioned matter, will move this Court for an award of attorneys' fees, costs, expenses, and service award to the class representative. In support of this motion, Plaintiff will submit a memorandum of law, the Declaration of Jessica L. Lukasiewicz, and the exhibits to the foregoing declaration.

Plaintiff also respectfully requests leave to file a reply should any objections be filed or questions arise from the Court.

Dated: November 2, 2022

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TECHNOLOGY CAPITAL, LLC,

*Defendants.*

Case No. 1:21-cv-08795-ALC

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION  
FOR AWARD OF ATTORNEYS' FEES, COSTS, EXPENSES AND SERVICE AWARD  
TO CLASS REPRESENTATIVE

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## PRELIMINARY STATEMENT

Plaintiff Eric LaPrairie (“Plaintiff”), submits this Memorandum of Law and supporting declaration executed on November 2, 2022, in support of Plaintiffs’ application for attorneys’ fees and costs and service award to the Class Representative.

The Parties in this matter have reached a class action settlement (the “Settlement”) which was preliminarily approved by the Court on August 11, 2022 (ECF No. 55), and in connection with Plaintiffs’ Unopposed Motion for Final Approval of Settlement, which will be filed with the Court on November 23, 2022, Class Counsel seeks a fee and expense award of \$400,000, without objection by Defendants Presidio, Inc., Presidio Holdings Inc., Presidio, LLC, Presidio Networked Solutions LLC, Presidio Networked Solutions Group, LLC, and Presidio Technology Capital, LLC (“Presidio” or “Defendants”). As set forth below, Class Counsel’s requests for fees, costs and expenses are reasonable and appropriate, particularly when considering that Class Counsel is seeking less than they expended (or a negative multiplier) in the prosecution and resolution of this action.

Further, Class Counsel seeks a service award in the form of \$3,000 for the Class Representative. The requested service award is warranted because of the extra effort Mr. LaPrairie put into assisting Class Counsel with the commencement of the action and resolving the case with the favorable settlement secured on behalf of the approximately 3,300 current and former employees, as well as the personal risk he undertook by being named in the action.

Accordingly, for the reasons set forth herein, this Court should grant Plaintiff’s motion.

## FACTUAL BACKGROUND

The full factual background related to this motion is stated in Plaintiff’s Motion for Preliminary Approval of the Class Action Settlement and thus incorporated by reference. ECF

No. 51. In the interest of avoiding unnecessary repetition, Plaintiff will not repeat the entirety of the background, but will highlight a few critical points, as well as those points not addressed in the prior briefing.

### ***Plaintiff's Claims***

Class Representative LaPrairie filed a class action complaint on behalf of himself and all other similarly situated individuals (“Class Members” or the “Class”) against Defendants. *See* Amended Complaint, ECF No. 26. Plaintiff’s complaint alleged that on or around March 5, 2020, a third party gained unauthorized access to Defendants’ software and/or systems resulting in a data incident (“Data Incident”) and potential exposure of personally identifiable information (“PII”) of current and former employees. *Id.* ¶ 2. The potentially compromised PII included names, Social Security numbers, compensation and tax information. *Id.* ¶ 3. Plaintiff’s complaint also alleged that some Class Members saw their direct deposits directed to different people’s accounts and others, like Mr. LaPrairie, saw the same PII that was stolen from Presidio was used to take control of his cell phone and online accounts. *Id.* ¶¶ 47-50.

### ***Settlement***

As described in more detail in Plaintiff’s initial moving papers, the Settlement provides for significant relief for the Class, including credit monitoring and identity theft protection through TransUnion *myTrueIdentity* for a period of two years at Presidio’s cost, as well as Reimbursements of Out-of-Pocket Losses and Attested Time spent remedying issues related to identity theft caused by the Data Incident. The Settlement also provided the added benefit of Presidio’s agreement, which has already occurred, to provide confidential confirmatory discovery regarding the facts and circumstances of the Data Incident, Presidio’s response to the Data Incident, and the changes and improvements that have been made or are being made to

protect Class Members' PII from further unlawful intrusions, including but not limited to: (1) password changes; (2) changes to multi-factor authentication requirements; (3) updated reporting and monitoring of access to Presidio's HR application or any information contained therein; and (4) updated employee training. Settlement, ECF No. 52-1, at § II, ¶ 37 (a)-(d).

The total value of the Settlement for the Class of 3,324 individuals is over \$4 million. Declaration of Jessica L. Lukasiewicz ("Lukasiewicz Decl.") ¶¶ 5. The identify theft protection component is valued at \$1,990,411.20. *Id.* The Reimbursements of Out-of-Pocket Losses and Reimbursement for Attested Time have an aggregate cap of \$500, meaning that collectively the value of these claims is \$1,662,000. *Id.* Further, while separately negotiated, the Settlement also includes \$400,000 in attorneys' fees and costs. *Id.* Significantly, this does not even account for the non-monetary aspects of the Settlement, such as the additional security measures implemented by Presidio (which are especially invaluable to those who remain employed by Presidio). *Id.* Nor does it also account for settlement administration expenses, which is typically included in calculating the value of the settlement in common fund cases. *Id.*

#### ***Reaction of the Class to the Settlement***

Consistent with the Settlement, the Settlement Administrator, issued notice to the Class of approximately 3,324 individuals. ECF No. 52-1, at § III, ¶¶ 43(c)-(d). The Settlement notice discussed the relief available and the requested attorneys' fees and service award amounts, as well as the options available for Class Members, including opting out, objecting, or submitting for relief. Lukasiewicz Decl. ¶ 3.

As of the filing of this motion, the notice period has not yet expired, but the reaction to the Settlement is already positive. *Id.* ¶ 4. To date, none of the 3,324 Class Members have opted out or objected. *Id.* Class Members may continue to submit Claim Forms, opt-out, or

object to the Settlement until November 14, 2022. ECF No. 51-1, at § I, ¶ 5.

*Class Counsel's Efforts*

To date, Class Counsel has expended approximately 800 hours prosecuting this case, including conducting an investigation, commencing the action, and ultimately securing the Settlement.<sup>1</sup> *See* Lukasiewicz Decl. ¶ 8.

To start, Class Counsel spent a significant number of hours working with the Class Representative to investigate the claims and ultimately commenced the above-referenced action. *Id.* ¶ 10. Class Counsel conducted extensive factual and legal research into the claims and potential defenses in this matter, including interviewing dozens of potential Class Members and conducting extensive research into the dangers of identity theft and available credit monitoring and identity theft protection plans. *Id.* ¶ 11.

Further, Class Counsel has vigorously prosecuted this action. Following the initial filing of the action and the class certification motion in state court, Defendants removed the case to the Western District of New York. *Id.* ¶ 12. Plaintiff then filed a motion to remand, but before a decision was issued by the Court, the Plaintiff withdrew their motion and stipulated to the transfer of the case to the Southern District of New York. *Id.* Before the action was transferred, Defendants filed an initial motion to dismiss. ECF No. 16. Following transfer to the Southern District of New York, Defendants filed a second motion to dismiss pursuant Fed. R. Civ. P. 12(b)(1) and 12(b)(6). ECF Nos. 24-25. Plaintiff then filed an amended complaint. ECF No.

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<sup>1</sup> Class Counsel reviewed contemporaneous time records and exercised billing judgment. In total, Class Counsel reduced more than 200 hours of time billed by paralegals and/or attorneys. Lukasiewicz Decl. ¶ 9. While Class Counsel has endeavored to be detailed and thorough, in the interest of judicial economy, Class Counsel tailored its submissions to the most crucial of points. In the event there are objections, or the Court has further questions as to the fees expended in this matter, Class Counsel respectfully requests the opportunity to file a reply or supplemental briefing.

26. Defendants filed a motion to dismiss the amended complaint, which Plaintiff opposed. *See* ECF Nos. 29, 32, 33. Ultimately, the Court has not yet ruled on the motion to dismiss due to the Parties reaching a settlement in principle.

The Parties and their counsel have been discussing potential resolution of this matter since its inception, which included nearly a year of arm's-length and good faith negotiations, the exchange of significant information discovery, and two mediations with separate experienced mediators, as well as months of conference calls amongst the Parties. *Lukasiewicz Decl.* ¶ 13. During the first mediation attempt, the Parties selected respected mediator, Rodney Max, of Upchurch Watson White and Max, to assist them. *Id.* ¶ 14. The Parties engaged in significant informal discovery, had teleconferences with Mr. Max, and supplied him with written mediation statements prior to mediation. *Id.* Ultimately, after a full-day mediation session with Mr. Max, the Parties were unable to reach a resolution. *Id.* Although litigation immediately resumed, throughout the subsequent months, the Parties had numerous teleconferences to once again discuss resolution. *Id.* ¶ 15.

Ultimately, once the briefing on Defendants' motion to dismiss was complete, nearly ten months after the first mediation, the Parties were mutually willing to once again mediate the case. *Id.* ¶ 16. This time the Parties engaged of a different experienced mediator, Bennett G. Picker, of Stradley Ronon Stevens & Young, LLP. *Id.* During a full-day mediation, the Parties were able to reach an agreement that was memorialized in a Term Sheet. After signing the Term Sheet, the Parties negotiated the Settlement Agreement, which involved the exchange of multiple drafts, multiple conference calls, and resolution of various issues in dispute. *Id.*

Following the preliminary approval of the Settlement, Class Counsel then expended significant time on the administration of the Settlement, including through drafting and

preparing the notice materials and the website. *Id.* ¶ 17.

Overall, Class Counsel expended 802.3 hours, totaling a lodestar of \$563,625.00. *Id.* ¶ 18. These hours were broken down by attorney and paralegal time as illustrated in the charts within the Lukasiewicz Decl. ¶ 19. Notably, these hours do not reflect all of the time that Class Counsel will continue to spend on the Settlement of this action, including handling calls and inquiries from Class Members, as well as other administrative duties. *See id.* ¶ 20. In addition to the time worked, Class Counsel also incurred more than \$15,000 in costs and expenses, including for copying, mediation, and postage. *See id.* ¶ 21. To date, Class Counsel has not received any compensation for their work or any reimbursement for costs and expenses. *Id.*

Defendants do not object to the requested fee award. ECF No. 52-1, at § II, ¶ 38.

***Named Plaintiff Eric LaPrairie***

Plaintiff Eric LaPrairie was instrumental to the initiation and prosecution of this action. *See* Lukasiewicz Decl. ¶ 22. Plaintiff expended considerable time and effort since the inception of this action, as well as took on a personal risk in being named in the action. *Id.* As Class Representative, the Plaintiff assisted in the investigation of this lawsuit by providing factual information for the complaint, providing factual information to his counsel regarding the impact of the Data Incident, and reviewing the complaint (and amended complaint) prior to filing. *Id.* ¶ 23. Further, he participated actively in the lawsuit, including by frequently communicating with his counsel regarding legal theories of the case, sources of evidence, his experiences, and case status. *Id.* ¶ 24. In terms of the Settlement, the Plaintiff not only made himself available for two separate full day mediations but participated in multiple phone calls to discuss the terms of the Settlement, including reviewing documents and confirmatory discovery. *Id.* ¶ 25.

## ARGUMENT

### I. THE COURT SHOULD APPROVE THE REQUESTED ATTORNEYS' FEES

Class Counsel respectfully requests an award of reasonable attorneys' fees, costs and expenses in the amount of \$400,000. As set forth below, Class Counsel's requested fee award is reasonable under both the lodestar and the percentage of the fund methods.

#### A. Percentage of the Fund is the Preferred Method for Awarding Fees.

"[T]he court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. 23(h). *See also Pearlman v. Cablevision Sys. Corp.*, No. CV 10-4992, 2019 WL 3974358, at \*3 (E.D.N.Y. Aug. 20, 2019).

According to the Second Circuit, courts may use either the "percentage of the fund" method or the "lodestar" method. *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F.Supp.3d 344, 347-48 (S.D.N.Y. 2014) (internal citations omitted).<sup>2</sup> The clear trend in the Second Circuit is to use the "percentage of fund" method. *See Wal-Mart Stores Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) ("The trend in this Circuit is toward the percentage method..."); *Morris v. Affinity Health Plan, Inc.*, 859 F.Supp.2d 611, 622 (S.D.N.Y. 2012) (Carter, Jr., J.); *Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 183-84 (W.D.N.Y. 2011) (collecting cases); *Sukhnandan v. Royal Health Care of Long Island LLC*, No. 12 Civ. 4216, 2014 WL 3778173, at \*9 (S.D.N.Y. July 31, 2014).<sup>3</sup>

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<sup>2</sup> Under the lodestar method, the court multiplies the reasonable hourly rate by the reasonable hours billed. *In re Colgate-Palmolive Co.*, 36 F.Supp.3d at 347. "Once that computation is made, the district court may adjust the multiplier based on other factors such as the risk of the litigation or the performance of the attorneys." *Id.* at 348. As compared to the percentage of the fund method, the lodestar method creates "a disincentive to early settlements, tempts lawyers to run up their hours, and compels district courts to engage in a gimlet-eyed review of the line-item fee audits." *Id.* (internal quotation omitted).

<sup>3</sup> Further, a majority of the circuit courts have also adopted the percentage-of-the-fund method. *See, e.g., In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002); *In re Thirteen Appeals*



Thus, because percentage of the fund is the preferred methodology in awarding attorneys' fees, such a method should be utilized in this action.

**B. The Amount of Attorneys' Fees Requested is Reasonable.**

The Second Circuit has held “no matter which method is chosen, district courts should continue to be guided by the traditional criteria” when determining a reasonable fee. *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000). These criteria include: “(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation . . . ; (4) the quality of the representation; (5) the requested fee in relation to the settlement and (6) public policy considerations.” *Id.* (internal quotations omitted).

Here, consideration of these criteria fully supports the requested award. Indeed, Class Counsel has expended nearly 800 hours investigating and litigating this matter. Lukasiewicz Decl. ¶¶ 18-19. As discussed above, this time has been spent investigating the claims, commencing the lawsuit, completing informal discovery, litigating the action from its initial filing in New York Supreme Court, County of Monroe, to its removal to Western District of New York, and the transfer to the Southern District of New York, as well as motion practice. During the course of this matter, the following motions have been filed: Plaintiff's motion for class certification, Plaintiff's motion to remand, Defendants' three separate motions to dismiss, and Plaintiff's (anticipated) motion to strike excess reply pages to Defendants' (third) motion to dismiss. *Id.* ¶ 12. All of this was in addition to successfully negotiating a Settlement,

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*Arising Out of San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir. 1995); *Florin v. Nationsbank of Ga., N.A.*, 34 F.3d 560, 564-65 (7th Cir. 1994); *Gottlieb v. Barry*, 43 F.3d 474, 487 (10th Cir. 1994); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1271 (D.C. Cir. 1993); *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991); see also William B. Rubenstein, Alba Conte & Herbert B. Newberg, 4 *Newberg on Class Actions* § 14:6 n.16 and accompanying text (observing that the majority of court of appeals have adopted the percentage-of-the-fund method).

achieving a result for more than 3,300 Class Members, which was negotiated at arms'-length as evidenced by the two mediations with different mediators and months of settlement discussions. *Id.* ¶ 13. Further, when considering only the identify protection, Reimbursements for Attested Time and Out-of-Pocket Losses, and attorneys' fees, Class Counsel estimates the value of the Settlement to be at more than \$4 million for the entire Class. *Id.* ¶ 5. Additionally, significantly, the Settlement provides for additional protections and security measures that have been confirmed through confirmatory discovery, a benefit that is arguably invaluable.

1. Class Counsel Expended Significant Time and Labor Litigating this Action

The first *Goldberger* factor is effectively equivalent to using the lodestar calculation as a calculation to cross-check a percentage-of-the-fund award. *Febus v. Guardian First Funding Grp., LLC*, 870 F. Supp. 2d 337, 339 (S.D.N.Y. 2012) (citing *Wal-Mart Stores*, 396 F.3d at 123); *Goldberger*, 209 F.3d at 50. The lodestar calculation is made by multiplying "hours reasonably expended against a reasonable hourly rate." *Wal-Mart Stores*, 396 F.3d at 121. When the lodestar cross-check is performed, "the hours documented by counsel need not be exhaustively scrutinized by the district court. Instead, the reasonableness of the claimed lodestar can be tested by the court's familiarity with the case." *Goldberger*, 209 F.3d at 50; *see also In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306-07 (3d Cir. 2005) (in reviewing the cross-check, "[t]he district courts may rely on summaries submitted by the attorneys and need not review actual billing records"). Furthermore, courts may use their discretion to "increase the lodestar by applying a multiplier based on factors such as the riskiness of the litigation and the quality of the attorneys." *Wal-Mart Stores*, 396 F.3d at 121. Performing the lodestar cross-check here, which results in a negative multiplier of .71, confirms that the fee requested by Class Counsel is reasonable and should be approved.

*a. Class Counsel Expended a Reasonable Number of Hours*

Class Counsel expended a reasonable number of hours considering the Settlement provides relief for more than 3,300 Class Members.

Prior to the commencement of the class action complaint, and as part of its investigation, Class Counsel conducted extensive factual and legal research into the claims and potential defense in this matter, including interviewing many potential Class Members and conducting extensive research into the dangers of identity theft and available credit monitoring plans. Lukasiewicz Decl. ¶ 11. Further, Class Counsel researched publicly available materials regarding Defendants, its Data Incident, and identity theft. *Id.* Class Counsel then prepared a complaint (and amended complaint) on behalf of the Class, which incorporated Class Counsel's thorough research and complex legal theories. *Id.* ¶¶ 10-12.

Following preliminary research and filing the complaint and class certification motion, the Defendants removed the case to the Western District of New York. Plaintiff then filed a motion to remand, but following briefing and before a decision had been issued, the Parties stipulated to transfer the action to the Southern District of New York. *Id.* ¶ 12. The Parties then briefed Defendants' third motion to dismiss and began briefing on Plaintiff's motion to strike Defendants' excess pages filed in reply on their motion to dismiss. *See id.* ¶¶ 15-16.

Finally, during the course of the year of settlement discussions, the Parties engaged in substantial informal discovery in anticipation of a mediation. *Id.* ¶ 13. Prior to the first mediation, the Parties engaged in numerous teleconferences with Mr. Max, and supplied him with written mediation statements. *Id.* ¶ 14. Then even as motion practice moved forward, the Parties continued having settlement discussions over the course of several months and ultimately agreed to mediate once again following the briefing on Defendants' motion to

dismiss the amended complaint. *Id.* ¶ 16. This time the Parties agreed to mediate with a different experienced mediator, Mr. Picker. *Id.* Ultimately, with the assistance of Mr. Picker during a full-day mediation, the Parties were able to reach an agreement that was memorialized in a Term Sheet. *Id.* After signing the Term Sheet, the Parties negotiated the Settlement Agreement, which involved the exchange of multiple drafts, multiple conference calls, and resolution of various issues in dispute. *Id.* Class Counsel then did the work necessary to obtain preliminary approval. Following preliminary approval, Class Counsel expended significant time assisting with the administration of the Settlement. *Id.* ¶ 17.

The 802 hours expended on the above tasks are reasonable and compare favorably to the hours submitted by counsel in other data breach class actions. *See In re TJX Co., Retail Sec. Breach Litig.*, 584 F. Supp. 2d 395 (D. Mass. 2008) (in data breach action, attorneys billed over 5,000 hours in filing a complaint, opposing a motion to dismiss, and in negotiating and obtaining approval of a settlement); *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, No. 08-19998, 2010 WL 3341200, at \*10 (W.D. Ky. Aug. 23, 2010) (counsel billed 11,453 hours when the case went through multi-district litigation and the settlement process and reaching a resolution prior to a decision on a motion to dismiss).

Here, Class Counsel spent far less time than the counsel expended in *In re TJX* and *In re Countrywide* and brought relief to more than 3,300 Class Members swiftly and without delay. Class Counsel should not be penalized for resolving the case in the early stages of litigation. *See Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 474 (S.D.N.Y. 2013) (“courts encourage early settlement of class actions . . . because early settlement allows class members to recover without unnecessary delay and allows the judicial system to focus resources elsewhere.”).

Thus, Class Counsel’s time expended in this case is reasonable.

*b. Class Counsel's Rates are Reasonable*

Class Counsel's hourly rates, which range from \$300 to \$1,050 for attorneys, are also reasonable. The reasonable hourly rate is determined by "the rate prevailing in the [relevant] community for similar services by lawyers of reasonably comparable skill, experience, and reputation." *Farbotko v. Clinton Cty. Of N.Y.*, 433 F.3d 204, 208 (2d Cir. 2005) (quoting *Blum v. Stenson*, 465 U.S. 886 n. 11 (1984)). See also *Danaher Corp. v. Travelers Indem. Co.*, No. 10 Civ. 0121, 2015 WL 409525, at \*9 (S.D.N.Y. Jan. 16, 2015) ("[A reasonably hourly rate] need not be the lowest possible rate, but, rather, must merely fall within a range of reasonableness.").

Here, the hourly rates used by Class Counsel is certainly reasonable when considering that courts routinely approve similar hourly rates in other complex litigation, including data breaches. See *In re Prothena Corp. PLC Sec. Litig.*, No. 18-cv-06425 (Oct. 28, 2019), ECF Nos. 51, 61 (Carter, Jr., J.); *Blum v. Merrill Lynch & Co., Inc.*, No. 15-cv-01636 (S.D.N.Y. Mar. 22, 2016), ECF Nos. 136, 142; *Coleman v. Railworks Corp.*, No. 20-cv-02428 (S.D.N.Y. May 13, 2021) ECF Nos. 38, 39, 41; *Bellino v. JPMorgan Chase Bank, N.A.*, No. 14-03139 (S.D.N.Y. Nov. 9, 2017), ECF Nos. 137, 141; *Castillo v. Seagate Tech., LLC*, No. 16-01958 (N.D. Cal. Mar. 14, 2018), ECF Nos. 77, 85; *Rudman v. CHC Group Ltd.*, No. 15-cv-3773, 2018 WL 3594828, at \*3 (S.D.N.Y. July 24, 2018).

Accordingly, Class Counsel's requested hourly rates are reasonable.

*c. Class Counsel Requires No Multiplier, Further Demonstrating that the Requested Fees are Appropriate*

While no multiplier is required here, given that Class Counsel has already expended 802 hours for a lodestar fee of \$563,625, multipliers of between 2 and 6 are well within the range of acceptable. See *Lukasiewicz Decl.* ¶ 18; see also *Morris*, 859 F.Supp.2d at 623 (Carter, Jr., J.) ("Courts regularly award lodestar multipliers from 2 to 6 times lodestar."); *In re Lloyd's*

*Am. Trust Fund Litig.*, No. 96 Civ. 1262(RWS), 2002 WL 31663577, at \*27 (S.D.N.Y. Nov. 26, 2002) (“multiplier of 2.09 is at the lower end of the range of multipliers awarded by courts within the Second Circuit.”); *Davis*, 827 F. Supp. 2d at 185 (approving lodestar multiplier of 5.3); *In re Telik Sec. Litig.*, 576 F.Supp.2d 570, 590 (S.D.N.Y. 2008) (“In contingent litigation, lodestar multiples of over 4 are routinely awarded by courts”); *Beckman*, 293 F.R.D. at 482.

Here, given that multipliers are routinely applied by courts in granting fee awards, Class Counsel’s requested fee award should certainly be approved.<sup>4</sup> Indeed, even though the Parties utilized a Settlement Administrator, Class Counsel continues to receive inquiries from Class Members regarding the Settlement, and will likely continue with administrative duties, thus the hours expended will only increase.<sup>5</sup>

Therefore, Class Counsel’s requested fee award should be approved.

2. The Magnitude and Complexity of Litigation Warrants the Fees Requested

“Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them.” *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000), *aff’d sub nom. D’Amato v. Deutsche Bank*, 236 F.3d 78 (2d Cir. 2001). As such, cases involving claims of data breach are similarly complex and involve technical issues. *See In re Yahoo! Inc. Customer Data Sec. Breach Litg.*, No. 16-MD-

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<sup>4</sup> When Class Counsel seeks no multiplier, like here, courts are clear that the “lodestar cross-check unquestionably supports a percentage fee award.” *In re Veeco Inst. Inc. Sec. Litig.*, 05-MDL-01695, 2007 WL 4115808, at \*10 (S.D.N.Y. Nov. 7, 2007). *See also Duling v. Gristede’s Operating Corp.*, No. 06 Civ. 10197, 2014 WL 2567442, at \*2 (S.D.N.Y. Jun. 6, 2014).

<sup>5</sup> The attorneys’ fee award is not based solely on Class Counsel’s efforts to date, but also is meant to reflect the time that Class Counsel will spend administering the Settlement in the future. *Beckman*, 293 F.R.D. at 482; *DeMunecas v. Bold Food, LLC*, No. 09 Civ.00440, 2010 WL 3322580, at \*10 (S.D.N.Y. Aug. 23, 2010); *Parker v. Jekyll & Hyde Entm’t Holdings, L.L.C.*, No. 08 Civ. 7670, 2010 WL 532960, at \*2 (S.D.N.Y. Feb. 9, 2010).

02750, 2020 WL 4212811, at \*8 (N.D. Cal. July 22, 2020); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 17-md-2800, 2020 WL 256132, at \*32 (N.D. Ga. 2020).

Here, the complexity and magnitude of the action supports the requested fee award. Without a Settlement, this case would be complex, expensive and any relief obtained would be years removed. For example, assuming no Settlement, the Court would make a determination on the pending motion to dismiss. Further, there would then be a motion for class certification. Of course, Defendants would have vigorously opposed certification, and there was a significant risk that the Court could deny certification in whole or in part. In particular, when there is little precedence from courts on data breach issues at such a procedural juncture. Following certification, Plaintiff would continue to face a long road, including surviving a likely motion for summary judgment. Defendants would also likely challenge Plaintiff's ability to prove causation, damages, and the scope of Defendants' promise to protect PII.

Therefore, this factor weighs in favor of Settlement.

### 3. The Litigation was Wrought with Inherent Risk

The risk of nonpayment, after extensive use of resources and time, involved in continued litigation favors the fee award in this action. *See In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115808, at \*6 (collecting cases); *Stefaniak v. HSBC USA, N.A.*, No. 05-cv-720, 2008 WL 7630102, at \*3 (W.D.N.Y. June 28, 2008) ("The attorneys' fees requested were entirely contingent upon success. Class Counsel risked time and effort and advanced costs and expenses, with no ultimate guarantee of compensation."); *Willix v. Healthfirst, Inc.*, No. 07 Civ. 1143, 2011 WL 754862, at \*7 (S.D.N.Y. Feb. 8, 2011).

Indeed, as the Second Circuit explained:

No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay

for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, it is just to make a fee dependent solely on the reasonable amount of time expended.

*City of Detroit v. Grinnell Cop.*, 495 F.2d 448, 470 (2d Cir. 1974) (internal citation omitted).

Here, Class Counsel undertook this action on a strictly contingent-fee basis, “upfronting” significant costs with the distinct possibility that there would be no recovery in the event the case was dismissed or summary judgment was granted. Class Counsel assumed a high risk by entering into a contingency agreement with Plaintiff which supports the allocation of the requested attorneys’ fees. *See Rotuna v. W. Customer Mgmt. Group, LLC*, No. 09CV1608, 2010 WL 2490989, at \*8 (N.D. Ohio June 15, 2010) (approving one third in attorneys’ fees finding “[t]he contingent nature of the fee arrangement also meant that counsel bore the risk of receiving no fee in the event that a less than favorable result was achieved.”); *Willix*, 2011 WL 754862, at \*7; *Mohney v. Shelley’s Prime Steak*, No. 06 Civ. 4270, 2009 WL 5851465, at \*5 (S.D.N.Y. Mar. 31, 2009). Indeed, over the nearly two years spent investigating and prosecuting this action, Class Counsel has received no payment to date.

Thus, the contingent nature of Class Counsel’s fee structure, in combination with the uncertainty of the litigation moving forward, weighs in favor of approval of the fee award.

4. The Quality of Representation is Demonstrated by the Results Achieved

The history of litigation, the size of the fund created, the substantial recovery each employee will be eligible to receive as well as Class Counsel’s experience all demonstrate the quality of representation in this case.

*a. History of Litigation*

As described throughout this memorandum, Class Counsel’s zealous, yet efficient prosecution of this case, resulted in a Settlement providing comprehensive relief for more than



3,300 Class members. Indeed, from investigating the claims, speaking with dozens of Class Members, and researching novel legal theories, to conducting informal discovery, litigating the action from its initial filing in New York Supreme Court, County of Monroe to its removal to Western District of New York, and the transfer to the Southern District of New York, the motion practice (including motion for class certification and motion to dismiss) and negotiating a Settlement, Plaintiff's Counsel has not once stopped advocating on behalf of the Class.

*b. Size of the Fund Created*

While there is not necessarily a "fund," for the Settlement, Class Counsel has secured substantial relief on behalf of the Class. This relief includes credit monitoring and identity theft protection coverage, Reimbursements of Out-of-Pocket Losses and Attested Time, and Presidio's agreement to provide confirmatory discovery as to, amongst others, confirm their implementation and maintenance of additional data security practices since the Data Incident. ECF No. 52-1, at § II, ¶ 37(d). While it is difficult to put a monetary value on Presidio's agreement to prevent future data incidents, Class Counsel values the other three components at more than \$3.6 million for the Class, and more than \$4 million when also including attorneys' fees. *See* Lukasiewicz Decl. ¶ 5. Weighing the benefits of the Settlement against litigation, the Settlement is reasonable. The relief available under the Settlement will be available to Class Members without the uncertainty and delays, and without the risk that the relief would come too late given that the risk of improper use of PII is higher immediately following a data breach rather than many years down the road.

*c. Substantial Individual Relief for Class Members*

Class Counsel also deserves great credit for the relief provided to each Class Member in the Settlement. The Settlement makes significant relief to each Class Member.

Class action settlements often conjure up associations with coupon settlements that offer very little in terms of value to class members and are therefore viewed with skepticism by the public. This Settlement, however, stands in stark contrast to such coupon settlements—here, all Class Members are eligible to receive identity theft and credit monitoring protection so prompt action can be taken should their PII be used in a nefarious manner. ECF No. 52-1, at § II, ¶ 37(a). Further, Class Members can also recover Reimbursements for Out-of-Pocket Losses and Attested Time. *Id.* § II, ¶¶ 37(b), (c). Additionally, Presidio agreed to the production (and already did so) of confirmatory discovery as to the changes and improvements made to Presidio’s systems. *Id.* § II, ¶ 37(d). Significantly, here, the Class’s reaction is favorable given that not a single Class Member opted out or objected to the Settlement when they were put on notice of the amount of fees being requested. Lukasiewicz Decl. ¶ 4.

Overall, the Settlement represents an excellent outcome for the Class Members.

*d. Relief Afforded to Virtually All Affected Employees*

In many class action settlements, it is not uncommon that only a small percentage of Class Members actually receive any benefit. In contrast here, Class Counsel successfully negotiated a Settlement that allowed any Class Member the opportunity to sign up for identity theft and credit monitoring services, as well as Reimbursements of Out-of-Pocket Losses and Attested Time. Further, all Class Members benefit from the Presidio’s agreement to provide confidential confirmatory discovery as to the additional measures they implemented since the Data Incident. The significant relief here can be accredited to Class Counsel’s representation. Thus, it is clear this factor also weighs heavily in favor of approving the requested award.

*e. Class Counsel has Extensive Experience in Complex Litigation*

Class Counsel has extensive experience in handling class actions and complex litigation

and are knowledgeable about the applicable law here.

For decades, Thomas & Solomon LLP (“TS”) has devoted a majority of its practice to representing and protecting the rights of individuals against large institutions through complex and class litigation within a variety of substantive contexts. *Id.* ¶ 27. TS’s experience includes representing classes consisting of tens of thousands of employees, including in class action contexts involving multistate and CAFA litigation. *Id.* ¶ 28. Further, many courts have acknowledged TS’ class action leadership and ethical standards in appointing TS Class Counsel.<sup>6</sup> *Id.* ¶ 29. TS is also currently pursuing numerous data breach cases and has devoted significant resources to extensively researching and analyzing the relevant claims. *Id.* ¶ 30.

Thus, Class Counsel’s requested fee award is reasonable.

#### 5. The Requested Fee is Reasonable in Relation to the Settlement

As this Court has recognized, the prevailing method of evaluating attorneys’ fees in this Circuit is the percentage of the fund approach. *Morris*, 859 F.Supp.2d at 622 (Carter, Jr., J.). Under the method, courts assess whether the requested fee is a reasonable percentage of the recovery obtained in the Settlement.<sup>7</sup> “The federal courts have established that a standard fee

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<sup>6</sup> *See, e.g., Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 182 (W.D.N.Y. 2005) (TS “has demonstrated that it is well-qualified to conduct the litigation”); *Camesi v. Univ. of Pittsburgh Med. Ctr.*, No. 09-85J, 2009 WL 3032590, at \*1 (W.D. Pa. Sept. 17, 2009) (TS was “qualified and could appropriately represent the plaintiffs”); *Masters v. F. W. Webb Co.*, No. 03-CV-6280L, 2006 WL 2604833, at \*3 (W.D.N.Y. Sept. 11, 2006) (TS “is abundantly experienced in employment litigation, a substantial portion of which has been conducted before this Court”); *Hamelin v. Faxton St. Luke’s Healthcare*, 274 F.R.D. 385, 396 (N.D.N.Y. 2011).

<sup>7</sup> Courts have held that if class counsel’s attorney fees are not to be paid from the class settlement, as is the case here, “the aggregate amount of the attorney fee and class settlement payments may be viewed as ‘a constructive common fund.’” *See Lobatz v. U.S. West Cellular v. Calif., Inc.*, 222 F.3d 1142, 46-67 (9th Cir. 2000); *College Retirement Equities Fund, Corp. v. Rink*, No. 2012-CA-002050, 2015 WL 226112, at \*6 (Ky. Ct. App. Jan. 16, 2015); *Vista Healthplan, Inc. v. Warner Holdings Co. III, Ltd.*, 246 F.R.D. 349, 364 (D.D.C. 2007). Similar to a standard common fund matter, percentage of the fund method is also the appropriate mechanism in determining the reasonableness in a constructive common fund matter. *Id.*

in complex class actions cases like this one, where plaintiffs' counsel have achieved a good recovery for the class, ranges from 20 to 50 percent of the gross settlement benefit,' which includes the value of both monetary and nonmonetary relief, and 'district courts in the Second Circuit routinely award attorneys' fees that are 30 percent or greater.'" *Fleisher v. Phoenix Life Ins. Co.*, Nos. 11-cv-8405, 14-cv-8714, 2015 WL 10847814, at \*12 (S.D.N.Y. Sept. 9, 2014) (internal quotation omitted); *see also In re Prothena*, 2019 WL 6528672, at \*1 (Carter, Jr., J.) (awarding 30% of the settlement as attorneys' fees); *Jara v. Felida Rest., Inc.*, No. 17-cv-9622, 2018 WL 11225740, at \*2 (S.D.N.Y. Dec. 17, 2018) (Carter, Jr., J.) (awarding 33 1/3% of settlement as attorneys' fees); *Morris*, 859 F.Supp.2d at 622 (Carter, Jr., J.) (awarding attorneys' fees of 33 1/3% of settlement); *Blum*, 2017 WL 8784449, at \*1 (awarding attorneys' fees of 33 1/3% of a settlement); *Greene v. Emersons Ltd.*, No. 76 Civ.2178, 1987 WL 11558 (S.D.N.Y. May 20, 1987) (awarding 46.2% of settlement as fees); *In re Amaranth Nat. Gas Commodities Litig.*, No. 07 Civ. 6377, 2012 WL 2149094, at \*2 (S.D.N.Y. Jun. 11, 2012) (awarding 30% of \$77.1 million settlement); *Willix*, 2011 WL 754862, at \*7 (awarding 33 1/3% of settlement); *Prasker v. Asia Five Eight LLC*, No. 08 Civ. 5811, 2010 WL 476009, at \*6 (S.D.N.Y. Jan. 6, 2010) (awarding attorneys' fees of 33 1/3% of settlement); *Mohney*, 2009 WL 5851465, at \*5 (awarding attorneys' fees of 33% of settlement).

Further, in making such a consideration, courts have calculated the value of a common fund for the purpose of evaluating attorneys' fees by multiplying the value of the credit monitoring services times the total number of class members plus funds available for reimbursement of lost time/reimbursement for out-of-pocket expenses. *See Johansson-Dorhrmann v. Cbr Sys., Inc.* No. 12-cv-1115, 2013 WL 3864341, at \*2, \*9 (S.D. Cal. July 24, 2013) (in calculating the value of the settlement at more than \$114 million, the court multiplied the

parties' valuation of the credit monitoring times the number of class members, plus the funds allocated for reimbursement of out-of-pocket expenses related to the data breach); *Hillis v. Equifax Consumer Servs. Inc.*, Nos. 104-CV-3400, 107-CV-314, 2007 WL 1953464, at \*4-5 (N.D. Ga. Jun. 12, 2007).

Moreover, “[i]n calculating the overall settlement value for purposes of the ‘percentage of the recovery’ approach, Courts include the value of . . . non-monetary benefits conferred on the Class.” *Fleisher*, 2015 WL 10847814, at \*15 (internal citation omitted). Even if the value of the required relief is not quantifiable, “courts should consider the value of the injunctive relief obtained [the requisite cybersecurity improvements] as a ‘relevant circumstance’ in determining what percentage of the common fund class counsel should receive as attorneys’ fees.” *In re Excess Value Ins. Coverage Litig.*, 598 F. Supp. 2d 380, 387 (S.D.N.Y. 2005) (internal quotation omitted); accord *McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 478 (D. N.J. 2008).

Here, when considering comprehensive relief provided under the Settlement to the more than 3,300 Class Members, the requested fee award is reasonable. Indeed, the identity theft services provides an extraordinary benefit for Class Members. ECF No. 52-1, at § II, ¶ 37(a). Every Class Member is eligible to enroll in an additional two years of TransUnion *myTrueIdentity* at Presidio’s cost. *Id.* This is in addition to any services they may have received from Presidio when the Class was first notified of the Data Incident. *Id.* TransUnion *myTrueIdentity* provides a variety of services, including: \$1 million in identity theft insurance; credit monitoring from one bureau; and access to credit reports. Lukasiewicz Decl. ¶ 31. Each Class Member who signs up for the service is receiving a value of approximately \$600 per Class Member, or nearly \$2 million for the entire Class. *See* Lukasiewicz Decl. ¶ 5.

Further, when applying the above approach, the total value of the Settlement here is

\$3,652,411, plus the added benefit of the agreed upon additional security measures Presidio will implement.<sup>8,9</sup> When considering this amount in addition to the \$400,000 in requested fee award, the total value of is \$4,052,411, which is even more when considering the administration costs. Notwithstanding the extraordinary value conferred by the Settlement, Class Counsel seeks only a fee award of \$400,000 – a mere 9.87% of a conservative valuation of the fund.<sup>10,11</sup> Given that Class Counsel’s requested fee award is far below the range of reasonable percentage of the fund benchmarks, the requested fee award is reasonable.<sup>12</sup>

#### 6. Public Policy Strongly Supports the Requested Fee

“Where relatively small claims can only be prosecuted through aggregate litigation, and the law relies on prosecution by ‘private attorney generals,’ attorneys who fill [that role] must be adequately compensated for their efforts.” *Flores v. One Hanover, LLC*, No. 13 Civ. 5184, 2014 WL 2567912, at \*8 (S.D.N.Y. June 9, 2014) (internal quotation omitted), *accord Parker*

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<sup>8</sup> The Class size is estimated to be 3,324 individuals and each Class Member is entitled to receive additional years of credit monitoring services (valued at approximately \$600 per person), up to \$500 in Reimbursement of Out-of-Pocket Losses, and up to \$60 in Reimbursement of Attested Time.

<sup>9</sup> Claims for Reimbursement for Attested Time can be combined with Reimbursement for Out-of-Pocket Losses, which together, are subject to a \$500 aggregate cap.

<sup>10</sup> Awards in similar actions likewise demonstrate that the requested fee is reasonable. *See e.g., In re Target Corp. Customer Data Sec. Breach Litig.*, No. 14-02522 (D. Minn. Nov. 11, 2015), ECF No. 645 (court approved an award of \$6.25 million for attorneys’ fees, costs and expenses which was 29% of the combined value of the data breach settlement).

<sup>11</sup> Of course, this number only decreases when also taking into consideration the \$15,664.42 in costs and expenses upfronted by Class Counsel, which are routinely granted by courts. *See Mitland Raleigh-Durham v. Myers*, 840 F.Supp. 235, 239 (S.D.N.Y. 1993) (“Attorneys may be compensated for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they ‘were incidental and necessary to the representation’ of those clients”) (citing *Reichman v. Bonsignore, Brignati & Mazzotta, P.C.*, 818 F.2d 278, 283 (2d Cir. 1987)); Lukasiewicz Decl. ¶ 21.

<sup>12</sup> Significantly, the requested fee award was negotiated after an agreement for the Class was reached. Further, unlike traditional common fund settlements, any decrease of the attorneys’ fee award does not result in an increase of available funds for the Class.

*Hannifin Corp. v. N. Sound Properties*, No. 10 Civ. 6359, 2013 WL 3527761, at \*4 (S.D.N.Y. July 12, 2013) (“common-fund awards are designed to encourage litigation by ‘private attorneys general’ as a means of implementing policies embodied in those statutes.”); *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005) (“In order to attract well-qualified plaintiffs’ counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide appropriate financial incentives.”).

Here, many Class Members lack the time and financial resources necessary to be able to individually pursue long and protracted litigation at their own expense. Further, even if they had the financial resources, their individual recovery may not justify the hiring of an individual attorney. Also, not all firms have the required experience and resources to handle contingency based class actions. *See Laydon v. Mizubo Bank, LTD*, Nos. 12-cv-3419, 15-cv-5844, 2017 WL 6372625, at \*2 (Dec. 7, 2017). Thus, public policy favors granting Class Counsel’s request for attorneys’ fees.

## II. SERVICE AWARD TO CLASS REPRESENTATIVE IS JUSTIFIED

The service award here is reasonable given the significant contribution made by the Class Representative.

Courts in this circuit “fully support[] compensating class representatives for their work on behalf of the class, which has benefited from their representation.” *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 150 (S.D.N.Y. 2010). Service awards reimburse class representatives who “take on a variety of risks and tasks when they commence representative actions[.]” *Id.* (citation omitted). Service awards are common in class action cases and serve to compensate plaintiffs for their time and effort in assisting in the prosecution of the action, and for the risk of adverse actions they may suffer as the most visible members of the Class. *See e.g., Gonzalez v. Pritzker*,

No. 10-CV-3105, 2016 WL 5395905, at \*5 (S.D.N.Y. Sept. 20, 2016); *Morris*, 859 F. Sup. 3d at 624 (Carter, Jr. J.).

In examining the reasonableness of the requested service award, courts consider: (1) the existence of special circumstances including the personal risk by plaintiffs in becoming and continuing as litigants; (2) the time and effort expended by plaintiffs in assisting in the litigation or in brining added value; (3) any other burdens sustained by plaintiffs in assisting with the prosecution of the claim; and (4) the ultimate recovery. *Raniere*, 310 F.R.D. at 220. Each of these factors weigh in favor of granting Plaintiff’s request for a service award.

**A. The Class Representative Assumed Personal Risk by his Respective Participation.**

Granting a service award to a Class Representative willing to step forward knowing the risk and actively participate in the litigation is reasonable.

Courts acknowledge that a class representative who may by “exposed to a demonstrable risk of employer retaliation or whose future employability has been impaired may be worthy of receiving an additional payment.” *Silberblatt v. Morgan Stanley*, 524 F.Supp.2d 425, 435 (S.D.N.Y. 2007); *See also Morris*, 859 F. Supp. 2d at 624 (“service awards are common in class action cases and serve to compensate plaintiffs for . . . the risks incurred by becoming and continuing as a litigant . . .”). Even if the class representative did not suffer any retaliatory actions, this does not mean that they did not assume great risks. As the court in *Frank* recognized, “the fear of adverse consequences or lost opportunities cannot be dismissed as insincere or unfounded.” *Frank*, 228 F.R.D. at 188. *See also Bozak v. FedEx Ground Package System, Inc.*, 11-cv-00738, 2014 WL 3778211 (D. Conn. July 31, 2014).

The Class Representative here undertook tremendous reputational risk by prosecuting his former employer and putting his names on the class action. Lukasiewicz Decl. ¶ 18. The



Class Representative made this sacrifice to support a case that has provided benefits to thousands of Class Members. *Id.* Thus, the requested service award is warranted.

**B. The Time and Effort Expended by the Class Representative Warrants the Amount Requested.**

Further, the Class Representative is deserving of the requested service award because he has expended extra time and effort in support of this litigation.

Courts recognize that a service award is meant to compensate the class representative for “any additional effort expended by the individual for the benefit of the lawsuit.” *Dornberger v. Metropolitan Life Ins. Co.*, 203 F.R.D. 118, 124 (S.D.N.Y. 2001). *See also In re Colgate-Palmolive*, 36 F.Supp.3d at 354; *Bozak*, 2014 WL 3778211, at \*5.

As discussed above, the Class Representative assisted Class Counsel throughout the course of the case, including assisting in the investigation of this lawsuit by providing factual information for the complaint, including regarding the impact of the Data Incident, and reviewing the complaint prior to filing. *Lukasiewicz Decl.* ¶ 23. Further, the Class Representative participated actively in the lawsuit, including by frequently communicating with his counsel regarding legal theories of the case, sources of evidence, his experiences, and case status. *Id.* ¶ 24. Additionally, he made himself available for two separate mediations and participated in multiple phone calls with his counsel to discuss the terms of the Settlement and to review Settlement documents and confirmatory discovery.<sup>13</sup> *Id.* ¶ 25.

Thus, the requested service award is reasonable.

**C. The Class Representative Experienced Burdens in Assisting Class Counsel.**

Additionally, the Class Representative experienced various burdens due to assisting

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<sup>13</sup> Significantly, no Class Member objected to the Settlement or opted out when notified of the requested service award. *Lukasiewicz Decl.* ¶ 4.

Class Counsel throughout the course of this litigation, thus warranting the requested award. As noted above, the Class Representative was actively involved in the litigation, including communicating with counsel, providing evidence, being available during two separate mediations, and reviewing and commenting on the complaint and Settlement Agreement. *See id.* ¶¶ 23-25. Accordingly, due to the burdens experienced by the Class Representative in assisting Class Counsel, the requested service award is reasonable.

**D. The Ultimate Recovery to the Class is Significant.**

Lastly, the ultimate recovery to the class is significant – Class Counsel has secured a Settlement providing for free credit monitoring and identity theft protection coverage, monetary relief (Reimbursement for Attested Time and Reimbursement of Out-of-Pocket losses), and Presidio’s production of confidential confirmatory discovery. Class Counsel has valued the relief of identity protection and credit monitoring services, as well as the Reimbursement of Attested Time and Out-of-Pocket Losses, for the entire Class as over \$3.6 million, which is valued at more than \$4 million when including attorneys’ fees, plus the added benefit of the agreed upon confirmatory discovery. *See* ECF No. 52; Lukasiewicz Decl. ¶ 5.

The requested service award is well within the range that courts find to be reasonable. Here, Plaintiff seeks \$3,000. Courts regularly awarded similar awards in other complex class actions. *See, e.g., In re Colgate-Palmolive*, 36 F.Supp.3d at 354 (awarding \$5,000 to each of six named plaintiffs); *Railworks Corp.*, No. 20-cv-02428 (S.D.N.Y. May 13, 2021), ECF No. 41 (awarding \$5,000 each to the two class representatives in data privacy action); *Morris*, 859 F.Supp.2d at 624 (awarding a service award of \$7,500) (Carter, Jr. J.); *In re Honest Mktg. Litig.*, No. 16-01125, 2017 WL 8780329, at \*2 (S.D.N.Y. Dec. 8, 2017).

Thus, the requested service award for the Class Representative is reasonable.

## CONCLUSION

For the foregoing reasons, Plaintiff respectfully request that the instant motion be granted, and that Class Counsel be awarded its requested \$400,000 in attorneys' fees, costs, expenses, and the Class Representative is awarded \$3,000 as a service award.

Dated: November 2, 2022

## THOMAS & SOLOMON LLP

By: /s/ Jessica L. Lukasiewicz  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ERIC LAPRAIRIE, on behalf of himself and all other  
employees similarly situated,

*Plaintiffs,*

vs.

PRESIDIO, INC., PRESIDIO HOLDINGS INC.,  
PRESIDIO, LLC, PRESIDIO NETWORKED  
SOLUTIONS LLC, PRESIDIO NETWORKED  
SOLUTIONS GROUP, LLC, and PRESIDIO  
TECHNOLOGY CAPITAL, LLC,

*Defendants.*

Case No. 1:21-cv-08795-ALC

DECLARATION OF JESSICA L. LUKASIEWICZ

I, Jessica L. Lukasiewicz, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct:

1. I am a partner with the law firm Thomas & Solomon LLP (“TS”) and counsel for Plaintiff Eric LaPrairie in the above-captioned action.

2. I am fully familiar with the facts and circumstances surrounding this matter and I respectfully submit this Declaration in Support of Plaintiff’s Unopposed Motion for an Award of Attorneys’ Fees, Costs, Expenses, and Service Award to Class Representative.

3. The Settlement notice discussed the relief available and the requested attorneys’ fees and service award, as well as the options available for Class Members, including opting out, objecting, or submitting for relief.

4. As of the filing of this motion, the notice period has not yet expired, but the reaction to the Settlement is already positive. To date, none of the 3,324 Class Members have opted out or objected.

5. The total value of the Settlement for the Class of 3,324 individuals is over \$4 million. The identity theft protection component is valued at \$1,990,411.20. The Reimbursement of Out-of-Pocket Losses and Reimbursement for Attested Time have an aggregate cap of \$500, meaning that collectively the value of these claims is \$1,662,000. Further, while separately negotiated, the Settlement also includes \$400,000 in attorneys' fees and costs. Significantly, this does not even account for the non-monetary aspects of the Settlement, such as the additional security measures implemented by Presidio (which are especially invaluable to those who remain employed by Presidio). Nor does it also account for settlement administration expenses, which is typically included in calculating the value of the settlement in common fund cases.

6. In calculating the total value of the Settlement for the Class, Class Counsel started with the monthly cost of the credit monitoring services, which is currently \$24.95 per month, and the Settlement provides for credit monitoring services for two years for each of the 3,324 Class Members, and therefore the identity theft protection of the settlement is valued at \$1,990,411.20. Next, the Claims for Reimbursement for Attested Time and Reimbursement for Out-of-Pocket Losses have an aggregate \$500 cap, meaning that the combined value of these two claims for the 3,324 Class Members is \$1,662,000. Thus, the total value of the Settlement to Class Members is \$3,652,411.20.

7. Plaintiffs note that initially in the motion for preliminary approval, *see* ECF No. 51, Class Counsel inadvertently valued the Reimbursement for Out-of-Pocket Losses at \$997,200, as opposed to \$1,662,000 for both the Reimbursements for Out-of-Pocket Losses and Attested Time, the correct value for the Class when applying a \$500 cap for both claims. As such, the total valuation of the relief for the Class should be \$3.6 million. Again, the total

value of the Settlement increases to over \$4 million when including the separately negotiated attorneys' fees and costs as well.

8. To date, Class Counsel has expended approximately 800 hours prosecuting this case, including conducting an investigation, commencing the action, and ultimately securing the Settlement.

9. Class Counsel reviewed contemporaneous time records and exercised billing judgment. In total, Class Counsel reduced more than 200 hours of time billed by paralegals and/or attorneys.

10. To start, Class Counsel spent a significant number of hours working with the Class Representative to investigate the claims and ultimately commenced the above-referenced action.

11. Class Counsel conducted extensive factual and legal research into the claims and potential defenses in this matter, including interviewing dozens of potential Class Members and conducting extensive research into the dangers of identity theft and available credit monitoring and identity theft protection plans.

12. Following the initial filing of the action and the class certification motion in state court, Defendants removed the case to the Western District of New York. Plaintiff then filed a motion to remand, but before a decision was issued by the Court, the Plaintiff withdrew their motion and stipulated to the transfer of the case to the Southern District of New York.

13. The Parties and their counsel have been discussing potential resolution of this matter since its inception, which included nearly a year of arm's-length and good faith negotiations, the exchange of significant information discovery, and two mediations with separate experienced mediators, as well as months of conference calls amongst the Parties.

14. During the first mediation attempt, the Parties selected respected mediator, Rodney Max, of Upchurch Watson White and Max, to assist them. The Parties engaged in significant informal discovery, had teleconferences with Mr. Max, and supplied him with written mediation statements prior to mediation. Ultimately, after a full-day mediation session with Mr. Max, the Parties were unable to reach a resolution.

15. Although litigation immediately resumed, throughout the subsequent months, the Parties had numerous teleconferences to once again discuss resolution.

16. Ultimately, once the briefing on Defendants' motion to dismiss was complete, nearly ten months after the first mediation, the Parties were mutually willing to once again mediate the case. This time the Parties engaged of a different experienced mediator, Bennett G. Picker, of Stradley Ronon Stevens & Young, LLP. During a full-day mediation, the Parties were able to reach an agreement that was memorialized in a Term Sheet. After signing the Term Sheet, the Parties negotiated the Settlement Agreement, which involved the exchange of multiple drafts, multiple conference calls, and resolution of various issues in dispute.

17. Following the preliminary approval of the Settlement, Class Counsel then expended significant time on the administration of the Settlement, including through drafting and preparing Settlement notice materials and the settlement website.

18. Overall, Class Counsel expended 802.3 hours, totaling a lodestar of \$563,625.00.

19. The total time spent by each TS timekeeper, which has been broken down by attorney and paralegal time, is illustrated in the chart below:

Timekeeper	Hourly Rate	Year Graduated Law School	Hours	Total Lodestar
J. Nelson Thomas (partner)	\$1,050	1993	61.6	\$64,680.00
Jessica L. Lukasiewicz (partner)	\$850	2008	182.7	\$155,295.00
Jonathan W. Ferris (partner)	\$850	2012	195.6	\$166,260.00
Erin K. Hanlon (associate)	\$750	2009	160	\$120,000.00
Conor T. Tallet (former associate)	\$375	2018	53.1	\$18,585.00
Ryan C. Lamon (former associate)	\$300	2021	69.5	\$20,850.00
Paralegals	\$225		79.8	\$17,955.00
Total			802.3	\$563,625.00

20. Notably, these hours do not reflect all of the time that Class Counsel will continue to spend on the Settlement of this action, including handling calls and inquiries from Class Members, as well as other administrative duties.

21. In addition to the time worked, Class Counsel also incurred more than \$15,000 in costs and expenses, including for copying, mediation, postage, and process servers. To date, TS has not received any compensation for their work or any reimbursement for costs and expenses, which are illustrated in the chart below:

\$ Amount	General Description
\$966.36	Copying (\$.12/page)



\$1,875.56	Miscellaneous costs, including postage costs and process server
\$12,822.50	Mediation & filing fees
<b>Total \$ \$15,664.42</b>	

22. Plaintiff Eric LaPrairie was instrumental to the initiation and prosecution of this action. Plaintiff expended considerable time and effort since the inception of this action, as well as took on a personal risk in being named in the action.

23. As Class Representative, the Plaintiff assisted in the investigation of this lawsuit by providing factual information for the complaint, providing factual information to his counsel regarding the impact of the Data Incident, and reviewing the complaint (and amended complaint) prior to filing.

24. Further, the Class Representative participated actively in the lawsuit, including by frequently communicating with his counsel regarding legal theories of the case, sources of evidence, his experiences, and case status.

25. In terms of the Settlement, the Plaintiff not only made himself available for two separate full day mediations but participated in multiple phone calls to discuss the terms of the Settlement, including reviewing documents and confirmatory discovery.

26. TS has extensive experience in handling class actions and complex litigation and are knowledgeable about the applicable law.

27. For decades, TS has devoted a majority of its practice to representing and protecting the rights of individuals against large institutions through complex and class litigation within a variety of substantive contexts.

28. TS's experience includes representing classes consisting of tens of thousands of employees, including in class action contexts involving multistate and CAFA litigation. A copy of TS's firm resume is attached hereto as Exhibit A.

29. Further, many courts have acknowledged TS' class action leadership and ethical standards in appointing TS Class Counsel.<sup>1</sup>

30. TS is also currently pursuing numerous data breach cases and has devoted significant resources to extensively researching and analyzing the relevant claims.

31. TransUnion *myTrueIdentity* provides a variety of services, including: (1) \$1 million in identity theft insurance; (2) credit monitoring from one bureau; and (3) access to credit reports.

I declare under penalty of perjury under the laws of the United States of America and the State of New York that the foregoing is true and correct.

Executed on November 2, 2022

THOMAS & SOLOMON LLP

By: /s/ Jessica L. Lukasiewicz  
Jessica L. Lukasiewicz

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<sup>1</sup> See, e.g., *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 182 (W.D.N.Y. 2005) (TS "has demonstrated that it is well-qualified to conduct the litigation"); *Camesi v. Univ. of Pittsburgh Med. Ctr.*, No. 09-85J, 2009 WL 3032590, at \*1 (W.D. Pa. Sept. 17, 2009) (TS was "qualified and could appropriately represent the plaintiffs"); *Masters v. F. W. Webb Co.*, No. 03-CV-6280L, 2006 WL 2604833, at \*3 (W.D.N.Y. Sept. 11, 2006) (TS "is abundantly experienced in employment litigation, a substantial portion of which has been conducted before this Court"); *Hamelin v. Faxton St. Luke's Healthcare*, 274 F.R.D. 385, 396 (N.D.N.Y. 2011) (TS has "established they are qualified and able to conduct this litigation").

# Exhibit A

# **THOMAS & SOLOMON LLP**

## **FIRM RESUME**

### **Thomas & Solomon LLP**

Thomas & Solomon LLP (“TS”) has over two decades concentrated its work in representing class litigants in complex actions including nationwide class and collective actions, including cases with over 100,000 class members. Similarly, Thomas & Solomon has been repeatedly chosen to serve as counsel for individual whistleblowers who are bringing claims on behalf of the United States against the government under False Claims Act cases. Since its inception in 2000, TS has recovered over \$100 million on behalf of plaintiffs in its class action cases, and has returned over \$150 million to the government in False Claims Act cases.

The attorneys at TS have handled dozens of class action lawsuits across the United States. The attorneys are supported by a team of litigation support personnel, including paralegals and an investigative team. Not only does TS have a sophisticated legal team, but it also has the financial resources required to litigate cases against deep pocketed defendants for years on end. In fact, TS has been representing plaintiffs in one class action for over 15 years.

Descriptions of representative cases involving TS are below:

- *Goodlett v. Brown-Forman Corp.*, No. 20-CI-005631 (Jeff. Cir. Ct., Ky.). Data breach class action involving a breach of personally identifiable information of approximately 40,000 individuals, ultimately resulting in two separate settlements. The parties participated in a full-day mediation and reached settlements that provided significant relief to the class, including free credit monitoring and identity theft protection coverage, reimbursement for out-of-pocket expenses, and reimbursement for attested time. The court approved the settlement of which the identity theft protection component was valued at \$14.4 million.
- *Coleman v. Railworks Corp.*, No. 20-cv-02428 (S.D.N.Y.). Data breach class action involving a breach of personally identifiable information of approximately 20,763 current and former employees, their beneficiaries and dependents, and IRS Form 1099 vendors. Following substantial informal discovery, and a full-day mediation, the parties reached an agreement in principle, negotiated the memorandum of understanding, and ultimately negotiated the settlement agreement. The Court approved the settlement of which the identity theft component was valued at \$6.2 million for the class.
- *Baires-Rodriguez v. St. Francis College*, No. 507437/2021 (N.Y. Sup. Ct. Kings Cty.). Data breach class action involving a breach of 28,100 current and former employees and students’ personally identifiable information.
- *Velva B. v. Megan J. Brennan, Postmaster General*, Hearing No. 520-2010-00280X (EEOC). TS served as co-class counsel in a discrimination disability case involving over 100,000 workers against the U.S. Postal Service. The case was certified as a class action, and the EEOC found in favor of the employees holding that the Postal Service engaged in classwide discrimination, entitling class members to seek relief for the harm they experienced. In the damages phase of the case, TS represents nearly all of the approximately 29,000 individuals who chose to seek relief for the harm they

experienced.

- *Davis v. JPMorgan Chase & Co.*, No. 01-6492 (W.D.N.Y.). Nationwide class and collective action on behalf of mortgage underwriters seeking unpaid overtime. After ten years of litigation, including an appeal to the Second Circuit which reversed the district court's order granting summary judgment in favor of the defendants, the parties reached a \$42 million settlement that received final approval in 2011.
- *U.S. ex rel. Kelschenbach v. M&T Bank Corp.*, No. 13-280 (W.D.N.Y.). TS was also the sole counsel for the first-filed whistleblower bringing a False Claims Act action on behalf of the United States and its taxpayers for losses incurred due to mortgage fraud by the defendant. After conducting its own independent investigation, TS then worked with the whistleblower and the government to secure a \$64 million recovery for the government and taxpayers in 2016.
- *Sullivan v. Safeway Inc.*, No. 19-cv-03187 (N.D. Cal.). FCRA class action involving 151,152 class members concerning defendants' use of consumer reports for employment purposes. Offers of judgment were served, however, Plaintiffs opposed the offers of judgment because they did not include benefits for the entire class. On June 21, 2021, the court certified the class for settlement purposes, appointed the lawyers of TS as co-class counsel, and approved the settlement which incorporated the resolution of a related case (*Drew v. The Vons Companies, Inc.*, No. 20-cv-00347 (C.D. Cal.)).
- *Hart v. Crab Addison, Inc., d/b/a Joe's Crab Shack*, 13-cv-6458 (W.D.N.Y.). Class action on behalf of current and former hourly employees of Joe's Crab Shack. Defeated a motion to dismiss and granted conditional certification of a Fair Labor Standards Act class. Handled extensive motion practice. Also conducted an evidentiary hearing in regard to a sanctions motion filed against defense counsel and successfully argued that the court should impose sanctions based on defense counsel's continued pattern of conduct. Following the filing of bankruptcy by defendant Crab Addison, Inc., successfully maneuvered through the bankruptcy system and reached a settlement that provided relief to class members.
- *U.S. ex rel. Bozzelli v. PHH Mortgage Corp.*, No. 13-3084 (E.D.N.Y.). TS served as lead counsel in a qui tam action claiming defendants engaged in fraud, including against the Federal Housing Administration through their underwriting practices, where the claims were settled for approximately \$74.5 million after an investigation by the government. The settlement was the 22nd highest recovery nationally and 5th highest in New York in the year 2017.
- *U.S. ex rel. Carranza v. Guaranteed Rate, Inc.*, No. 17-637 (N.D.N.Y.). TS filed a qui tam action alleging that the bank had used improper underwriting policies and practices thereby engaging in fraud against the government. After an investigation by the government, a \$15 million settlement was reached.
- *Barrus v. Dick's Sporting Goods.*, No. 05-6253 (W.D.N.Y.). Class and collective

action nationwide on behalf of hourly employees claiming unpaid overtime wages. After extensive litigation and depositions of class members throughout the country, the parties reached a \$15 million settlement which achieved final approval.

- *U.S. ex rel. McGeehan v. Gateway Funding Diversified Mort. Servcs.*, No. 16-750 (N.D.N.Y.). TS was again the counsel for an individual relator who was bringing a False Claim action on behalf of the United States and its taxpayers for losses incurred by fraudulent underwriting policies and practices by the defendant. After conducting its own independent investigation, TS then worked with the representative client and the government to secure a \$14.5 million.
- *Malcolm & Luciano v. Eastman Kodak Co.*, Nos. 03-6589, 04-6194 (W.D.N.Y.). Class and collective actions on behalf of certain technical writers and customer support service specialists alleging such employees had been improperly misclassified as exempt from overtime. The parties agreed to settle for \$11 million to resolve the claims. The court granted final approval of the settlement.
- *George v. TD Bank, N.A.*, No. 12-1695 (D.Conn.). Class and collective action filed on behalf of employees who performed underwriting functions for the financial institution for wage and hour violations. In 2013, the parties reached an \$8 million settlement.
- *Doe v. JPMorgan Chase & Co.*, No. 06-6237 (W.D.N.Y.). Represented plaintiffs who worked as personal and consumer bankers in a class and collective action claiming they were misclassified as exempt from overtime. A \$7.75 million settlement was reached in 2007.
- *Roach v. T.C. Cannon Corp.*, No. 10-591 (N.D.N.Y.). In an action alleging violations of various wage and hour laws on behalf of hourly workers at a restaurant chain, TS served as co-class counsel. A class was certified under Rule 23, after the Second Circuit reversed and remanded an order by the district court denying class certification. The parties reached a settlement in 2018 in this case and companion litigation in the amount \$3.5 million.
- *Mitchell v. Paychex, Inc.*, 03-6650 (W.D.N.Y.). Class and collective action on behalf of national sales support representatives and direct marketing sales representatives for unpaid overtime compensation as a result of being misclassified as exempt employees. The parties reached a \$5.5 million settlement.
- *Gregg v. Trustees of the Univ. of Penn.*, No. 09-5547 (W.D. Pa.). TS filed a class and collective action lawsuit on behalf of hospital workers for unpaid wages, including during meal breaks. The parties reached a \$7.75 million settlement.
- *Hamelin v. Faxton-St. Luke's Healthcare*, No. 08-1219; *Colozzi v. St. Joseph's Hosp. Health Center*, No. 08-1220; *Myers v. Crouse Health System, Inc.*, No. 08-1221 (N.D.N.Y.). In certified class actions brought on behalf of health care workers alleging claims under federal and state law for unpaid wages and overtime, TS achieved

settlements totaling \$4.5 million for the workers with the three health care systems.

- *Nemeth v. General Motors Fin. Co., Inc.*, No. 12-2761 (C.D. Cal.). Class and collective action filed on behalf of underwriters working for an automobile financing company. TS achieved a \$2.9 million settlement to resolve plaintiffs' claims.
- *Goldowsky v. First Niagara Bank, N.A.*, No. 16/7322 (N.Y. Sup. Ct. Monroe Cty.). In a class and collective action alleging violations of federal and state overtime law, TS achieved a \$2.94 million settlement to resolve the claims on behalf of the plaintiffs.
- *Lusk v. Serve U Brands, Inc.*, No. 17-6451 (W.D.N.Y.). Represented delivery drivers in a class and collective action for wage and hour violations, including the failure to pay drivers required reimbursement for vehicle expenses. Despite defendants' threats to not pay the entire agreed upon settlement due to the COVID-19 pandemic, the action was settled for \$2.5 million and relief was provided to the class.
- *Cavallaro v. UMass Mem. Health Care Inc.*, No. 09-40152 (D.Mass.). On behalf hourly employees at a health care system, TS brought a class and collective action for overtime wages. After dismissal by the district court, the First Circuit reversed and remanded, and the parties commenced settlement discussions. The parties reached a \$2.2 million settlement.
- *Beatty v. Capital One Financial Corp.*, No. 12-434 (N.D. Ill.). TS brought a lawsuit on behalf of a class and collective claiming that underwriters and relationship managers employed by the defendants were misclassified as exempt from overtime. A settlement of \$3.2 million was reached and approved by the court.
- *Fischer v. Michael's Banquet Facility*, Index No. 811728/2014 (N.Y. Sup. Ct. Erie Cty.). Class action filed on behalf of banquet service employees asserting claims for unpaid wages and gratuities under New York Labor Law arising out of defendants' retention of mandatory service charges for banquet events. On February 9, 2015, the court certified a class action and appointed TS as class counsel. On January 20, 2016, the Court granted partial summary judgment in the amount of \$886,751.00 on plaintiffs' NYLL § 196-d claim. Further, on June 7, 2019, the court granted plaintiffs' motion for summary judgment as to the employer liability of an individual defendant. In early 2021, the court granted final approval of a class action settlement resolving all claims in the matter.
- *Lighthouse v. Rochester Institute of Tech.*, No. 2007-003180 (N.Y. Sup. Ct. Monroe Cty.). Plaintiffs challenged the employer's policy of automatically deducting time for meal breaks and its time rounding policy, among others. The parties were able to resolve the claims for \$2.5 million.
- *Acevedo v. Workfit Medical LLC*, No. 14-6221 (W.D.N.Y.). TS filed a lawsuit on behalf of employees against a medical staffing company for unpaid wages and overtime and for wage notice violations. In 2015, the parties reached a settlement of \$2.1 million which ultimately received final approval.



- *Demanchick v. S.G.P. Assocs. L.L.C.*, No. 2016-796 (Monroe Cty.). TS brought a class action on behalf of banquet service workers working at a hotel. The case was resolved for \$1.8 million.
- *Cusse v. Lyell Party House, Inc.*, Index No. I2015006556 (N.Y. Sup. Ct. Monroe Cty.). Class action filed on behalf of hospitality employees asserting claims for unpaid wages and gratuities under NYLL. On October 7, 2015, the Court certified the class and appointed the lawyers of TS as class counsel. The parties engaged in extensive motion practice, and on October 4, 2016, the court granted summary judgment on plaintiffs' NYLL § 196-d claim, and on December 23, 2020, plaintiffs defeated summary judgment by defendants on individual defendant employer liability.
- *Huchzermeier v. Unity Health System*, No. 2008/16016 (N.Y. Sup. Ct. Monroe Cty.). Action on behalf of a class and collective of employees who worked at a health system for wage and hour violations. In 2009, TS achieved a settlement of \$1.6 million for the workers.
- *Belviso v. Global Spectrum, LP*, No. E154027/2014 (N.Y. Sup. Ct. Erie Cty.). TS filed a class action lawsuit for unpaid gratuities pursuant to the New York Labor Law on behalf of banquet service employees who worked at the Niagara Falls Conference and Event Center. The settlement amount totaled \$1.25 million and was approved by the court in 2016.
- *Hutto v. Albertsons Companies, Inc.*, No. 20-cv-07541 (N.D. Cal.). FCRA class action involving 68,181 class members concerning defendants' use of consumer reports for employment purposes. On June 21, 2021, the court certified the class for settlement purposes, appointed the lawyers of TS as class counsel, and approved the over \$1 million settlement.

The lawyers at TS have successfully handled appeals in both federal and state courts. A sampling of those matters include:

- *Davis v. J.P. Morgan Chase & Co.*, 08-4092 (2d Cir. 2009). The Second Circuit reversed an order granting summary judgment in favor of a bank on the issue of whether the work performed by underwriters qualified as an exemption under the FLSA. The Court held that such employees were outside of the FLSA's administrative exception since the work constituted "production" of loans.
- *United States v. Acad. Mortg. Corp.*, 968 F.3d 996, 1000 (9th Cir. 2020). The Ninth Circuit dismissed an appeal of the U.S. Department of Justice of what is believed to be the first ever denial of an opposed Department of Justice motion to dismiss in a non-intervened lawsuit under the False Claims Act.
- *Kuebel v. Black & Decker (U.S.) Inc.*, 10-2273 (2d Cir. 2010). TS appealed a decision granting summary judgment in favor of defendant. Ultimately the Second Circuit vacated the order in part finding that there were genuine issues of material fact as to various issues including as to whether the employee showed the amount of

uncompensated work as a matter of just and reasonable inference.

- *Doolittle v. Nixon Peabody LLP*, Index No. 09-16450 (N.Y. Sup. Ct. Monroe Cty.); *rev'd* 126 A.D.3d 1519 (N.Y. App. Div. 2015). Court reversed lower court's ruling on summary judgment, instead finding that summary judgment on the breach of contract claim was inappropriate given the conflicting evidence and testimony concerning the nature of the collection's bonus, and further held that petitioner's Labor Law, promissory estoppel, and quantum meruit causes of action should not have been dismissed.
- *Bell v. Rochester Gas & Electric Corp.*, No. 03-cv-6040 (W.D.N.Y.); *rev'd* 2009 WL 1269581, 329 Fed. Appx. 304 (2d Cir. 2009). Reversed lower court's summary judgment decision finding that factual issues precluded summary judgment for defendants on discriminatory discharge claim under Title VII.

### **Jessica Lukasiewicz**



Jessica Lukasiewicz serves as the Managing Partner at TS. Ms. Lukasiewicz is an experienced litigator having spent more than a decade representing employees in all types of matters. During her tenure at the firm, she has launched massive investigations against countless employers, commenced numerous legal actions, negotiated out of court resolutions, certified classes of employees, defended and prosecuted depositions, drafted motions and responsive pleadings, completed discovery, handled evidentiary hearings, appealed legal issues, and assisted the firm in ultimately securing resolutions for hundreds of thousands of clients.

Founder of the firm's data breach class action group, Ms. Lukasiewicz currently leads the group. In this role, Ms. Lukasiewicz has filed and secured settlements in multiple data breach class actions. Further, as an experienced class action litigator, Ms. Lukasiewicz co-leads one of the largest discrimination matters ever in front of the EEOC.

She was recognized as a Rising Star from 2015 through 2019.

During law school, Ms. Lukasiewicz gained experience litigating claims on behalf of plaintiffs while at MFY Legal Services, Inc. and Legal Services of Central New York. Further, while at the U.S. Department of Education Office for Civil Rights, Ms. Lukasiewicz had the unique opportunity to be part of the investigation process used by the Office for Civil Rights when there has been a report of discrimination. She was also Business Editor for *The Digest*.

Before attending law school, Ms. Lukasiewicz graduated *cum laude* from the University of Florida in 2005, where she majored in psychology.

Ms. Lukasiewicz is admitted to practice in New York and is a member of the bars of the U.S. District Courts for the Western, Eastern, Northern, and Southern Districts of New York and the Second Circuit Court of Appeals.

Among the data breach cases, some notable examples of Ms. Lukasiewicz experience includes:

- *Goodlett v. Brown-Forman Corporation*, No. 20-CI-005631 (Jeff. Cir. Ct., Ky.). Data breach class action involving a breach of personally identifiable information of approximately 40,000 individuals, ultimately resulting in two separate settlements. The parties participated in a full-day mediation and reached settlements that provided significant relief to the class, including free credit monitoring and identity theft protection coverage, reimbursement for out-of-pocket expenses, and reimbursement for attested time. The court approved the settlement of which the identity theft protection component was valued at \$14.4 million.
- *Coleman v. Railworks Corp.*, No. 20-cv-02428 (S.D.N.Y.). Data breach class action involving a breach of personally identifiable information of approximately 20,763 current and former employees, their beneficiaries and dependents, and IRS Form 1099 vendors. Following substantial informal discovery, and a full-day mediation, the parties reached an agreement in principle, negotiated the memorandum of understanding, and ultimately negotiated the settlement agreement. The court approved the settlement of which the identity theft component was valued at \$6.2 million for the class.
- *McDonald v. Paperless Corporation, et al.*, No. 20-cv-516 (M.D. Fla.). Data breach class action involving a breach of current and former employees' personal information. The court consolidated four separate actions involving common factual and legal issues, and a consolidated class action complaint was filed. The court has not formally appointed interim counsel as plaintiffs' counsel have all agreed on the management of the consolidated cases of which TS serves as co-lead counsel.

The following are examples of other class actions handled by Ms. Lukasiewicz:

- *Velva B. v. Megan J. Brennan, Postmaster General*, Hearing No. 520-2010-00280X (EEOC). TS served as co-class counsel in a discrimination disability case involving over 100,000 workers against the U.S. Postal Service. The case was certified as a class action, and the EEOC found in favor of the employees holding that the Postal Service engaged in class wide discrimination, entitling class members to seek relief for the harm they experienced. Following a 2018 decision on liability, TS continues to represent approximately 29,000 claimants in their individual claims for damages.
- *Hart v. Crab Addison, Inc., d/b/a Joe's Crab Shack*, 13-cv-6458 (W.D.N.Y.). Class action on behalf of current and former hourly employees. Handled extensive motion practice. Also conducted an evidentiary hearing in regard to a sanctions motion filed against defense counsel and successfully argued that the court should impose sanctions based on defense counsel's continued pattern of conduct. Following the bankruptcy of defendant Crab Addison, Inc., successfully maneuvered through the bankruptcy system and reached a settlement that provided relief to class members.
- *Sullivan v. Safeway Inc.*, No. 19-cv-03187 (N.D. Cal.). FCRA class action involving 151,152 class members concerning defendants' use of consumer reports for

employment purposes. Offers of judgment were served, however, Plaintiffs opposed the offers of judgment because they did not include benefits for the entire class. On June 21, 2021, the court certified the class, appointed the lawyers of TS as co-class counsel, and approved the \$2.3 million settlement.

- *Lusk v. Serve U Brands, Inc.*, No. 17-6451 (W.D.N.Y.). Represented delivery drivers in a class and collective action for wage and hour violations, including the failure to pay drivers required reimbursement for vehicle expenses. Despite defendants' threats to not pay the entire agreed upon settlement due to the COVID-19 pandemic, the action was settled for \$2.5 million and relief was provided to the class.
- *Demanchick v. S.G.P. Assocs. L.L.C.*, No. 2016-796 (Monroe Cty.). TS brought a class action on behalf of banquet service workers. The case was resolved for \$1.8 million.
- *Fischer v. Michael's Banquet Facility*, Index No. 811728/2014 (N.Y. Sup. Ct. Erie Cty.). Class action filed on behalf of banquet service employees asserting claims for unpaid wages and gratuities under NYLL arising out of defendants' retention of mandatory service charges. On January 20, 2016, the court granted partial summary judgment in the amount of \$886,751.00 on plaintiffs NYLL § 196-d claim, and on January 28, 2021, the court granted final approval of settlement.

### **J. Nelson Thomas**



J. Nelson Thomas is a Founding Partner of TS. He has more than two decades of experience, including successfully representing clients in complex class and collective action lawsuits and whistleblower cases involving fraud on the government. He is a featured national speaker and author and leads panel discussions with judges and other lawyers on these issues. While his practice currently focuses on representing employees, he represented numerous employers at his previous firm – from large international companies to local entrepreneurial start-ups – acquiring a depth of experience that gives him an edge in litigating cases for plaintiffs. In 2017, he had the 22nd largest settlement in the country and the fifth largest in New York State. The total settlements he has reached for his clients over his career exceed \$200 million.

Mr. Thomas is an arbitrator with the American Arbitration Association and a certified federal court mediator with the U.S. District Court for the Western District of New York. Mr. Thomas received his B.A., *summa cum laude*, from Emory University and his J.D. from the University of Virginia School of Law. He has been selected a Super Lawyer from 2011 through the present and has received the Martindale-Hubbell AV Preeminent rating from 2009 through the present, signifying the highest level of professional excellence.

In 1999, Mr. Thomas was recognized by the judges of the U.S. District Court for the Western District of New York as they awarded him the Special Service Award for “his excellence in the vigorous representation of his clients.” In 2002, he received the 40 under 40 Award, which honors leaders who have made a significant contribution to the Rochester community.

**Jonathan Ferris**



Jonathan Ferris is a partner at TS. He returned to TS as an attorney in 2012 after working there as a lead paralegal from 2007 to 2009. Since rejoining the firm, Mr. Ferris has been involved in developing and prosecuting fraud cases on behalf of whistle-blowers against health-care providers, defense contractors, and other government contractors. Further, Mr. Ferris is also part of the firm’s data breach class action group and has been instrumental in the filing and prosecuting of data breach class actions. In his capacity as a member of the firm’s data breach class action group, Mr. Ferris monitors data breach trends, as well as trends in data breach actions across this country.

Mr. Ferris graduated from Albany Law School *cum laude* in 2012. While in law school, in addition to working as a law clerk and summer associate for TS in 2010 and 2011, Mr. Ferris was a quarterfinalist in the Karen C. McGovern Senior Prize Trials Competition. Before attending law school, Mr. Ferris graduated with honors in English from Colby College in 2007.

Mr. Ferris is admitted to practice in New York and is a member of the bars of the U.S. District Courts for the Northern, Western, and Southern Districts of New York as well as the Court of Appeals for the Third Circuit.

**Erin Hanlon**



Erin Hanlon, a 2009 Pace Law School graduate, is an associate attorney at TS. Ms. Hanlon has worked in the firm’s data breach class action group since its inception. In this role, Ms. Hanlon has been instrumental in investigating and filing data breach class actions. As a member of the data breach class action group, she regularly communicates with those class members who have been victims of the data breach.

Ms. Hanlon has also worked on wage and hour collective and class action lawsuits, as well as advising individuals on issues such as age, disability, sex discrimination, FMLA, New York State Paid Family Leave, and unpaid wages.

While in law school, Ms. Hanlon interned at the Pace Women’s Justice Center, providing legal services to victims of domestic violence. Prior to attending law school, Ms. Hanlon graduated *cum laude* from Saint Michael’s College, where she majored in business administration with a minor in economics.

Ms. Hanlon is admitted to practice in New York and Connecticut and is a member of the bar of the U.S. District Courts for the Western District of New York.

**Adam Sanderson**



Adam Sanderson is an associate attorney at TS. Since joining the firm in 2018, Mr. Sanderson has been involved in a variety of employment-law areas, including ERISA litigation as well as collective and class action wage and hour lawsuits. Mr. Sanderson has also been involved with the firm's data breach class action group.

Mr. Sanderson graduated from Syracuse University College of Law in 2018. While in law school, Mr. Sanderson served as the Executive Editor of the *Syracuse Journal of International Law and Commerce*, where he received the Gavel Award in recognition of exceptional talent in editing and scholarship, and his student note was selected for publication. Mr. Sanderson also interned at the Office of Chief Administrative Law Judge, U.S. Occupational Safety and Health Review Commission. Before attending law school, Mr. Sanderson graduated from Providence College in 2015.