

**THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

MICHAEL EVERETTS,

on behalf of himself and all others  
similarly situated,

Plaintiff,

v.

PERSONAL TOUCH HOLDING CORP.,  
a Delaware corporation,

Defendant.

Case No.: 2:21-cv-02061 (JMA) (ARL)

**PLAINTIFFS' NOTICE OF MOTION AND UNOPPOSED  
INITIAL MOTION FOR SERVICE AWARD AND AWARD  
OF ATTORNEY'S FEES AND LITIGATION COSTS**

Plaintiff Michael Everetts hereby moves this Court for a service award and an award of attorney's fees and litigation costs. Plaintiff respectfully request that this Court:

1. Award Plaintiff a service award in the amount of \$2,500.00.
2. Award Plaintiff attorney's fees in the amount of \$497,357.41 and litigation costs in the amount of \$12,642.59.

This Motion is based on the Supporting Memorandum filed herewith; the Declaration of Scott M. Fenwick of Kroll Settlement Administration LLC in Connection with Class Notice and Claim Activity; the Declaration of Plaintiff's counsel Ryan D. Maxey; the Settlement Agreement entered into between the parties (ECF No. 37-1); and any oral argument that may be heard by this Court regarding this Motion.

Wherefore, Plaintiff respectfully requests that this Court grant this motion and award Plaintiff the requested service award and attorney's fees and litigation costs.

Dated: May 1, 2024

Respectfully submitted,

/s/ Ryan D. Maxey

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 1, 2024, a true and correct copy of the foregoing was electronically filed with the Clerk of Court using CM/ECF. Copies of the foregoing document will be served upon counsel via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Ryan D. Maxey

**THE UNITED STATES DISTRICT COURT  
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v.

PERSONAL TOUCH HOLDING CORP.,  
a Delaware corporation,

Defendant.

Case No.: 2:21-cv-02061 (JMA) (ARL)

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF UNOPPOSED  
INITIAL MOTION FOR SERVICE AWARD AND AWARD  
OF ATTORNEY’S FEES AND LITIGATION COSTS<sup>1</sup>**

Plaintiff Michael Everetts (“Plaintiff”) respectfully moves for a service award and an award of attorney’s fees and litigation costs.<sup>2</sup>

**I. INTRODUCTION**

Defendant Personal Touch Holding Corp. (“PTHC”), through its subsidiaries, provides home health and home care personnel and related services to individuals in their homes. S.A. ¶

1.1.

In or about January 2021, PTHC suffered a cyber-security attack on its private cloud hosted by its managed service providers (the “Data Breach”). During the Data Breach, an unauthorized

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<sup>1</sup> This motion is styled as an “initial motion” because the Court has ordered Plaintiff to file a supplemental motion for attorney’s fees, costs, expenses, and service award 21 days prior to the Final Approval Hearing. *See* (ECF No. 39 at 5).

<sup>2</sup> Unless otherwise noted, all capitalized terms are defined in the Settlement Agreement (“S.A.”), which is attached to Plaintiff’s Unopposed Motion to Direct Class Notice and Grant Preliminary Approval of Class Action Settlement (ECF No. 37) as Exhibit A (ECF No. 37-1).

person may have accessed private cloud business records of PTHC and its direct and indirect subsidiaries, including medical treatment information, insurance card and health plan benefit numbers, medical record numbers, first and last name, address, telephone numbers, date of birth, Social Security numbers, and financial information, including check copies, credit card numbers, and bank account information. *Id.* ¶ 1.2.

PTHC sent notice of the Data Breach to approximately 753,107 Class Members, including Class Members in both the Exposure Class and the Non-Exposure Class. *Id.* 1.31. After PTHC provided notice of the Data Breach on or about March 24, 2021, Plaintiff filed a putative Class Action Complaint on April 15, 2021 in the United States District Court for the Eastern District of New York. *Id.* ¶ 1.3.

On February 24, 2022, the parties participated in a full-day in-person mediation facilitated by an experienced JAMS mediator, Andrew Nadolna, who has over 25 years of experience in mediation. On June 2, 2022, the parties conducted a second session with Mr. Nadolna. Over the ensuing months, the parties continued to negotiate the terms of a potential settlement. After coming to an agreement in principle, the parties finalized the terms of this Settlement Agreement and the attached exhibits. *Id.* ¶ 1.5.

On May 5, 2023, in support of Plaintiff's Unopposed Motion to Direct Class Notice and Grant Preliminary Approval of Class Action Settlement, Plaintiff filed the parties' Settlement Agreement. (ECF No. 37-1). The relief negotiated by counsel extremely experienced in litigating privacy litigation and security incidents of the type at issue in the present litigation, and provided by the Settlement, is designed to address the injuries and repercussions typically experienced by individuals whose personally identifiable information has been compromised in a security incident of the type at issue here. Specifically, the Settlement Agreement provides an aggregate cap of

\$3,000,000.00, to be paid by PTHC, for the following: (i) valid and approved claims made by members of the Exposure Class under S.A. ¶ 2.1, (ii) valid and approved claims made by members of the Non-Exposure Class under S.A. ¶ 2.2, and (iii) settlement administration fees under S.A. ¶ 3.6. Settlement administration has been handled by a neutral, Kroll, experienced in disseminating notice to class members and administrating claims of the type which may be filed by Settlement Class Members. PTHC will also separately pay (i) the cost of Identity Defense Total Service for members of the Exposure Class, subject to an aggregate cap of \$67,000.00, (ii) any service award approved by the Court, and (iii) any attorney's fees, costs, and expenses of Proposed Class Counsel approved by the Court. Proposed Class Counsel will move the Court for a service award payment not to exceed \$2,500.00 per Class Representative. S.A. ¶ 7.3. Proposed Class Counsel has agreed to request, and PTHC has agreed not to oppose, an application by Plaintiff's counsel on an award of attorneys' fees and litigation costs not to exceed \$510,000.00, subject to Court approval. S.A. ¶ 7.2.

## II. ARGUMENT

### a. Attorney's Fees and Litigation Costs.

In the Opinion & Order entered January 22, 2024, the Court, citing *In re Hudson's Bay Co. Data Sec. Incident Consumer Litig.*, 2022 WL 2063864 (S.D.N.Y. June 8, 2022), stated that "in calculating a fees award – the Court will consider the monetary benefit that will be paid to the class and not the \$3 million 'Aggregate Cap.'" (ECF No. 39 at 5). Accordingly, Plaintiff's argument for attorney's fees, expenses, and costs is made under the framework set forth in *Hudson's Bay*, which calculated these amounts based on the "benefits to the class" or the "value of the settlement," comprised of the actual claims paid, the value of "structural relief," the costs of notice and claims administration, and the amount of the attorney's fees, costs, and expenses.

As explained below, the current value of the settlement is approximately \$ \$1,771,238.21, comprised of \$74,850.00 in validated claims of class members, at least \$700,000 in costs of implementing, or the value to Class Members of, specifically enumerated business practice commitments (which PTHC has a contractual obligation to maintain for 3 years), \$499,030.80 in estimated costs of notice and claims administration, and \$497,357.41 in attorney's fees. Accordingly, the proposed attorney's fees award of \$497,357.41 (\$510,000 minus \$12,642.59 in litigation costs) is 28% of the current value of the settlement, well within the acceptable range for attorney's fees awards in class action settlements.

**i. PTHC's Agreement to Pay Attorney's Fees and Litigation Costs.**

“In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement.” Rule 23(h).

Here, the Settlement Agreements provides that PTHC agrees not to oppose an application by Plaintiff's counsel on an award of attorneys' fees and litigation costs not to exceed \$510,000.00, subject to Court approval, as follows:

7.1. The Settling Parties did not discuss the payment of attorney's fees and litigation costs and/or a service award to Representative Plaintiff, as provided for in ¶¶ 7.2 and 7.3, until after the substantive terms of the settlement had been agreed upon, other than that PTHC would pay reasonable attorney's fees and litigation costs and a service award to Representative Plaintiff as may be agreed to by PTHC and Proposed Class Counsel and/or as ordered by the Court, or in the event of no agreement, then as ordered by the Court. PTHC and Proposed Class Counsel have agreed to the following:

7.2. Defendant agrees not to oppose an application by Plaintiff's counsel on an award of attorneys' fees and litigation costs not to exceed Five Hundred Ten Thousand Dollars (\$510,000.00), subject to Court approval. Defendant shall pay the attorneys' fee award approved by the Court up to the agreed maximum in addition to any benefits provided to Settlement Class members and the cost of

settlement administration.

S.A. ¶¶ 7.1, 7.2.

As Plaintiff seeks \$510,000 in attorney's fees and litigation costs, PTHC does not oppose this application.

**ii. Plaintiff Seeks to Recover \$12,642.59 in Litigation Costs and \$497,357.41 in Attorney's Fees.**

Plaintiff's counsel seeks reimbursement of \$12,642.59 in litigation costs incurred in this case, comprised of the following:

Airfare	\$696.60
Court Fees	\$300.00
Ground Transportation	\$388.12
Hotel	\$1,813.25
In-House Printing	\$319.50
JAMS, Inc.	\$8,418.00
Meals	\$534.75
PACER	\$5.20
FedEx	\$18.62
Tampa Process, LLC	\$148.55

Declaration of Ryan D. Maxey ("Maxey Decl."), **attached hereto as Exhibit 1**, ¶ 19. The majority of these expenses were half the cost of mediation services. *Id.* ¶ 20. The remaining costs are attributed to attorneys Ryan Maxey and Patrick Barthle traveling from Florida to New York for the in-person mediation and other expenses routinely incurred in litigation. *Id.*

Subtracting these litigation expenses from the \$510,000 in attorney's fees and litigation



costs leaves \$497,357.41 in attorney's fees, the amount Plaintiff requests this Court award him.

**iii. The Method for Calculating Attorney's Fees.**

Although this case, like *Hudson's Bay*, is not a common fund case, the *Hudson's Bay* court discussed that “[i]n common fund cases, courts typically use either the lodestar method or the percentage method to compute attorneys’ fees.” 2022 WL 2063864, at \*13 (quoting *Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.*, 504 F.3d 229, 249 (2d Cir. 2007)). “It is up to the district court, rather than counsel, to choose whether to use the lodestar or percentage methods.” *Id.* (quoting *Allen v. Taylor*, 795 Fed. App'x 79, 80 (2d Cir. 2020) (summary order)).

As previously noted, in the Opinion & Order entered January 22, 2024, the Court stated that “in calculating a fees award – the Court will consider the monetary benefit that will be paid to the class and not the \$3 million ‘Aggregate Cap.’” (ECF No. 39 at 5). Accordingly, Plaintiff addresses the factors that the *Hudson's Bay* court considered in applying the percentage of the fund method.

Although the lodestar method is not being applied here, Plaintiff includes lodestar information so the Court may perform a “cross check.” “In a common fund case where a plaintiff seeks a percentage of the fund, the lodestar serves only as a cross-check and need not have the detail of a fee application made on an hourly-rate basis.” *Hudson's Bay*, 2022 WL 2063864, at \*13. “[T]he lodestar remains useful as a baseline even if the percentage method is eventually chosen. Indeed, we encourage the practice of requiring documentation of hours as a ‘cross check’ on the reasonableness of the requested percentage. Of course, where used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court.” *Id.* (quoting *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000)).

**iv. The Value of the Settlement.**

**1. Validated Claims of Class Members.**

As the Claims Deadline is May 21, 2024, the final dollar amount of approved claims of Class Members remains to be determined. The Settlement Class, comprised of approximately 753,107 individuals who received notice of the Data Breach from PTHC, is comprised of (i) approximately 35,000 “Exposure” Class Members whose personally identifiable information (“PII”) or protected health information (“PHI”) was potentially exposed in the Data Breach and (ii) approximately 715,000 “Non-Exposure” Class Members whose PII or PHI was not potentially exposed in the Data Breach. S.A. ¶¶ 1.12, 1.17, 1.31. As of April 25, 2024, the claims for settlement benefits have been as follows:

Validated “Exposure” Class Claims	808
Validated “Exposure” Class Claims Value	\$46,950.00
Validated “Non-Exposure” Class Claims	759
Validated “Non-Exposure” Class Claims Value	\$27,900.00
Total Claims Made	2,049
Total Validated Claims	1,567
Total Validated Claims Value	\$74,850.00

Declaration of Scott M. Fenwick of Kroll Settlement Administration LLC in Connection with Class Notice and Claim Activity (“Fenwick Decl.”), **attached hereto as Exhibit 2, ¶ 15.**

Accordingly, as of May 1, 2024, the dollar amount of validated claims is approximately \$74,850.00. Notably, 566 claims forms are still under review and more claims may be filed. *Id.*

## 2. Business Practice Commitments.

In *Hudson's Bay*, the court recognized that the settlement “provide[d] for prospective structural relief directed to defendants’ data security measures.” 2022 WL 2063864, at \*21. The Court was “unable to determine an approximate value that the structural relief provides to the class, but conclude[d] that a class consisting of retail customers w[ould] benefit from prospective structural relief that is intended to better safeguard their payment information, and that the structural relief should weigh in favor of counsel’s fees application.” *Id.*

Here, the Settlement Agreement creates a binding contractual obligation for PTHC to continue for 36 months specific measures to further secure Plaintiff’s and Class Members’ personally identifiable information (“PII”) and protected health information (“PHI”), as follows:

Defendant has taken and agrees to continue for 36 month an adjustment to its internal controls and systems to further secure its PHI and PII (“Business Practice Commitments”), including:

- PTHC re-trained its staff about cybersecurity, in general, and phishing attempts, in particular;
- passwords for all systems were changed and password requirements strengthened;
- geolocation restrictions were reviewed and hardened;
- PTHC implemented Microsoft Office 365 with multifactor authentication through Azure;
- Rapid7 intrusion detection was installed on all PCs with 24/7 monitoring through a security operations center (SOC);
- PTHC installed CrowdStrike Endpoint detection on all servers with 24/7 monitoring through SOC;
- PTHC implemented routine ongoing phishing testing through KnowBe4;
- PTHC adopted a learning management system to deliver threat awareness instruction;

- PTHC engaged vCISO through a third-party vendor to review and advise on governance, risk, compliance frameworks, and security hardening;
- PTHC required multi-factor authentication for VPN/remote access and other critical platforms

S.A. ¶ 2.6.

Looking at the cost of these measures, Class Counsel understands that the cost to date for PTHC's implementation of these measures is at least \$700,000. Maxey Decl. ¶ 16. Looking at the value to Class Members, \$700,000 is less than \$1 for each of the approximately 753,107 Class Members. It would be reasonable to conclude that the value of PTHC continuing the above measures for 3 years to further secure Plaintiff's and Class Members' PII and PHI is worth at least \$1 per Class Member. Under a similar analysis, \$2.50 has been deemed an acceptable valuation per class member in the data breach context for defendants agreeing, for 18 months, to maintain their vendor compliance and oversight policies that contain provisions protecting information security. *See, e.g., Farmer v. Humana, Inc.*, No. 8:21-cv-01478-MSS-SPF, Plaintiff's Objection to Report and Recommendation (M.D. Fla. Jan. 11, 2023) (ECF No. 44 at 6) (arguing, in data breach case, that the value of defendants maintaining their vendor compliance and oversight policies that contained provisions protecting information security for 18 months was at least \$5 per class member) *and* Order Granting Plaintiff's Motion for Final Approval of Class Action Settlement and Other Relief and Motion for Fee Award and Litigation Costs and Entering Final Judgment (ECF No. 49 at 6) (valuing same at \$2.50 per class member for purposes of calculating the value of the settlement), **attached hereto as Exhibits 3 and 4.**

### **3. Costs of Notice and Claims Administration.**

In *Hudson's Bay*, the court recognized that "[t]hough not a direct payment to class members, the costs of claims administration would typically be drawn from a common fund, and

reflects a benefit to the class that was based on the efforts of plaintiffs' counsel." 2022 WL 2063864, at \*20 (citing *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 438 (2d Cir. 2007)). The *Hudson's Bay* court ultimately allocated "the \$250,000 earmarked for claims administration" in calculating the "benefit of the settlement to the class." *Id.* at \*21.

Here, \$499,030.80 has been earmarked for notice and claims administration. Fenwick Decl. ¶ 19. That amount should be considered in calculating the total value of the settlement.

**4. The Proposed Attorney's Fees are 28% of the Benefit to the Class.**

In *Hudson's Bay*, the court recognized that "any award of attorney's fees" is part of the "benefit to the class." 2022 WL 2063864, at \*22 (increasing total value of settlement to include attorney's fees).

Here, the benefit to the class without attorney's fees is \$74,850.00 for validated claims, at least \$700,000 (less than \$1 per Class Member) for the continuation of data security measures for 3 years, and approximately \$499,030.80 for notice and claims administration, totaling \$1,273,880.80. Adding \$497,357.41 in attorney's fees increases the overall benefit to the class to \$1,771,238.21. The \$497,357.41 in attorney's fees are 28% of the overall benefit to the class.

**v. The Goldberger Factors.**

Although it was analyzing attorney's fees for an "aggregate cap" settlement, the *Hudson's Bay* court applied the *Goldberger* factors traditional to common fund settlements in determining reasonable attorney's fees, recognizing that "courts should continue to be guided by the traditional criteria in determining a reasonable common fund fee, including: (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 representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations." 2022 WL 2063864, at \*14 (quoting *Goldberger v. Integrated Res., Inc.*,

209 F.3d 43, 50 (2d Cir. 2000)). Plaintiff addresses these factors below.

**1. The Time and Labor Expended by Counsel and the Attorney Lodestar.**

**a. The Time and Labor.**

Here, two law firms billed a total of 255.5 attorney and professional hours on this case.

Maxey Decl. ¶ 3. The current hours and rates for each attorney and professional are as follows:

***Morgan & Morgan***

<b>Name</b>	<b>Role</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Lodestar</b>
Ryan Maxey	Attorney	115.90	\$800	\$92,720.00
John Yanchunis	Attorney	47.30	\$1,600	\$75,680.00
Patrick Barthle	Attorney	41.00	\$800	\$32,800.00
Kenya Reddy	Attorney	27.10	\$1,000	\$27,100.00
Jennifer Cabezas	Paralegal	6.50	\$225	\$1,462.50
<b>Total:</b>				\$229,762.50

***Maxey Law Firm (since July 2023)<sup>3</sup>***

<b>Name</b>	<b>Role</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Lodestar</b>
Ryan Maxey	Attorney	21.9	\$800	\$17,520.00

*Id.*

**TOTAL HOURS: 259.7**

**TOTAL LODESTAR: \$247,282.50**

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<sup>3</sup> Attorney Ryan Maxey started his own law firm in July 2023 but continued to work on this case.

The total hours are expected to increase as, among other things, Plaintiffs still need to (i) prepare a supplemental motion for attorney's fees and litigation costs, (ii) prepare a motion for final approval, and (iii) attend the final approval hearing. Moreover, the reported hours do not account for any additional work that could be required should there be an objection or an appeal. In any event, based on the anticipated time required to prepare the supplemental motion for attorney's fees and litigation costs and the final approval motion and attend the final approval hearing, Plaintiff anticipates the total lodestar will easily exceed \$255,000, meaning a lodestar multiplier of less than 2 against the request for \$497,357.41 in attorney's fees. *See Reynolds v. Marymount Manhattan Coll.*, No. 1:22-CV-06846-LGS, 2023 WL 6977635, at \*2 (S.D.N.Y. Oct. 23, 2023) (data breach case deeming 1.1 multiplier "well within the range of reasonable multipliers" and citing cases allowing multipliers of 1.14 and 1.94, the latter deeming 1.82 the "median multiplier ... in consumer cases").

The hours reported are easily justified by the underlying work, which included the following:

- Investigating the data breach and other factual allegations in the complaint,
- Preparing the complaint,
- Analyzing PTHC's letter requesting a pre-motion conference regarding its anticipated motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and (6) and preparing a response to same,
- Attending the Rule 26(f) conference and preparing the Rule 26(f) Report,
- Preparing for and attending the pre-motion conference regarding PTHC's anticipated motion to dismiss;
- Preparing a mediation statement,

- Traveling from Florida for and attending an in-person mediation in New York (attorneys Maxey and Barthle),
- Attending follow-up telephonic conferences with the mediator,
- Negotiating and preparing settlement term sheets,
- Negotiating and preparing the Settlement Agreement, and the exhibits thereto, including the claim form, the short form notice, the long form notice, and the proposed order granting preliminary approval,
- Preparing the preliminary approval motion, and
- Preparing this motion.

*Id.*

In *Hudson's Bay*, where the plaintiffs' attorneys reported 4,666.03 hours of work, the court concluded that "the attorney submissions made in support of the fees application suggest inefficiencies and redundancies, and the record submitted in support of the fees application is vague about the work of the plaintiffs' firms." 2022 WL 2063864, at \*19. Here, by contrast, Plaintiff's counsel currently report 255.5 hours of work. This amount of time, a fraction of the time reported in *Hudson's Bay*, is reasonable given the work performed in this case and does not raise the specter of inefficiencies and redundancies.

#### **b. The Hourly Rates.**

In *Hudson's Bay*, "[s]enior partners at certain of plaintiffs' firms billed at hourly rates in the \$900 to \$1,000 range, while other partners billed at rates beginning at \$600. Associates generally billed in the range of \$350 to \$650, although a small number of senior associates billed at hourly rates of more than \$700. Paralegals billed time at hourly rates ranging from \$150 to, in one instance, \$400." *Id.* The court reasoned that "[t]hese rates are consistent with the higher end



of the hourly rates that have been deemed reasonable in similar class action settlements over the past ten years, both in this district and others.” *Id.* (citations omitted).

Here, similarly, the proposed hourly rates are consistent with hourly rates that have been deemed reasonable in similar settlements, particularly in the data breach context.

**i. Attorney Ryan Maxey (\$800/hour).**

Attorney Ryan Maxey spent the most time working on this case (more than 50% of the total hours across all attorneys and professionals). He graduated from law school more than 15 years and began his legal career as a law clerk for a United States Magistrate Judge. Maxey Decl. ¶ 6. Since 2020, he has worked almost exclusively on data breach cases. *Id.* He is one of few attorneys who have argued data breach cases before federal appeals courts. His oral arguments before the Eleventh Circuit Court of Appeals in *Ramirez v. Paradies Shops, LLC*, 69 F.4th 1213 (11th Cir. 2023) and *Sheffler v. Americold Realty Tr.*, No. 22-11789, 2023 WL 3918491 (11th Cir. June 9, 2023), both of which had been dismissed below for failure to state a claim, resulted in these cases being remanded for further proceedings. He is also counsel in a data breach case that the Second Circuit resolved without oral argument, reversing a dismissal for failure to state a claim and remanding for further proceedings. *See Bohnak v. Marsh & McLennan Companies, Inc.*, 79 F.4th 276 (2d Cir. 2023). Lead counsel John Yanchunis was the lead counsel in each of these cases and co-counsel Kenya Reddy was instrumental in the success of these appeals. *Id.*

Mr. Maxey is currently court-appointed interim or settlement co-lead class counsel in several data breach cases, including *Hummel v. Teijin Automotive Techs., Inc.*, No. 23-cv-10341 (E.D. Mich.); *Moreland, et al. v. 1st Franklin Financial Corporation*, No. 2:23-cv-00038-SCJ (N.D. Ga.); *Domitrovich, et al. v. M.C. Dean, Inc.*, 1:23-cv-00210-CMH-JFA (E.D. Va.); *May, et al. v. Give Guys Enterprises, LLC*, No. 1:23-cv-00029 (E.D. Va.); *Bitmouni v. Paysafe Payment*

*Processing Solutions LLC*, No. 3:21-cv-00641-JCS (N.D. Cal.); *Ware, et al. v. San Gorgonio Memorial Hospital*, No. CVRI 2301216 (Riverside County, CA); and *Phelps, et al. v. Circles of Care, Inc.*, No. 05-2023-CA-010840 (Brevard County, Fla.). *Id.* ¶ 7.

Mr. Maxey has also litigated dozens of other data breach class action matters, including the following in which settlements have been finally or preliminarily approved in 2022 and 2023: *Morales v. Orlando Family Physicians, LLC*, No. 2021-ca-009153-o (Orange County, Fla.) (settlement finally approved Sept. 14, 2023); *Flores v. Don Roberto Jewelers, Inc.*, No. 30-2021-01212035-CU-NP-CXC (settlement finally approved July 24, 2023); *Farmer v. Humana Inc., et al.*, No. 8:21-cv-01478-MSS-SPF (M.D. Fla.) (settlement finally approved Feb. 13, 2023); *Gamez, et al. v. PCS Revenue Control Systems, Inc.*, No. 2:21-cv-08991-JXN-AME (D. N.J.) (settlement finally approved Feb. 6, 2023); *Heath v. Insurance Techs. Corp., et al.*, No. 3:21-cv-01444-N (N.D. Tex.) (settlement finally approved Jan. 4, 2023); *Paras, et al. v. Dental Care Alliance, LLC*, No. 22EV000181 (Fulton County, Ga.) (settlement finally approved Aug. 2, 2022). *Id.* ¶ 8.

**ii. Attorney John Yanchunis (\$1,600/hour).**

Attorney John Yanchunis is the lead attorney on this case. His practice—which began after completing a two-year clerkship with United States District Judge Carl O. Bue, Jr., S. D. Tex.—has concentrated on complex litigation and spans over 43 years, including consumer class actions for more than two-thirds of that time. Maxey Decl. Exhibit 1 at 1. As a result of his extensive experience in class litigation, including privacy and data-breach litigation, he regularly lectures nationally and internationally at seminars and symposiums regarding class litigation and privacy litigation. *Id.* For his work in the area of privacy litigation, he was awarded lawyer of the year in the state of Florida by The Daily Business Review. *Id.* at 2. In 2023, he was also recognized by LAW 360 as a Titan of the Plaintiffs’ Bar. *Id.*

He has been appointed and served in leadership positions a number of multidistrict litigation in the area of privacy and data breaches: *In re: Capital One Consumer Data Security Breach Litigation*, No. 1:19-MD-2915-AJT (E.D. Va.)(settlement for \$190,000,000 preliminarily approved ) *In re Yahoo! Inc. Customer Data Security Breach Litigation*, No. 5:16-MD-02752-LHK (N.D. Cal.) (“Yahoo”) (Lead Counsel) (Court approved \$117,500,000.00 common fund settlement for approximately 194 million US residents and 270,000 Israeli citizens ); *In re The Home Depot, Inc. Consumer Data Sec. Data Breach Litig.*, No. 1:14-md-02583-TWT (N.D. Ga.) (co-Lead Counsel) (final judgment entered approving a settlement on behalf of a class of 40 million consumers with total value of \$29,025,000); *In Re: Equifax, Inc. Customer Data Security Breach Litigation*, 1:17-md-2800-TWT (N.D. Ga.) (member of the Plaintiffs’ Steering Committee) (final judgment entered approving \$380.5 million fund for 145 million consumers ); *In re: U.S. Office of Personnel Management Data Security Breach Litigation*, 1:15-mc-01394-ABJ (D.D.C.) (“OPM”) (member of the Executive Committee) (motion for preliminary approval of a \$60,000,000 common fund ); *In re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 2522 (D. Minn.) (Executive Committee member) (final judgment approving a settlement on behalf of a class of approximately 100 million consumers ). *Id.* at 3.

**iii. Attorney Patrick Barthle (\$800/hour).**

Patrick Barthle attended Washington and Lee University School of Law, graduating *summa cum laude* in 2012; where he was a Lead Articles Editor for the Wash. & Lee Law Review, a member of the Order of the Coif and the Phi Delta Phi Legal Honor Society, and President of the W&L Law Families organization. *Id.* at 11.

Before joining Morgan & Morgan in 2015, Patrick worked at one of the country’s largest law firms, Greenberg Traurig, LLP, and then served as a judicial law clerk for two years to the

Honorable Mary S. Scriven, United States District Judge, Middle District of Florida. *Id.* Before joining Morgan & Morgan in 2015, Patrick worked at one of the country's largest law firms, Greenberg Traurig, LLP, and then served as a judicial law clerk for two years to the Honorable Mary S. Scriven, United States District Judge, Middle District of Florida. *Id.* Patrick has extensive privacy and consumer fraud class action experiencing, having actively participated in the following litigations: *In re: Capital One Consumer Data Security Breach Litigation*, No. 1:19-MD-2915-AJT (E.D. Va.); *In re: U.S. Office of Personnel Management Data Security Breach Litigation*, 1:15-mc-01394-ABJ (D.C.); *Torres v. Wendy's International, LLC*, No. 6:16-cv-210 (M.D. Fla.); *In Re: Equifax, Inc. Customer Data Security Breach Litigation*, 1:17-md-2800-TWT (N.D. Ga.); *In re The Home Depot, Inc. Customer Data Security Data Breach Litigation*, No. 1:14-md-02583-TWT (N.D. Ga.); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, 16-md-02752-LHK (N.D. Cal.); and *Finerman v. Marriott Ownership Resorts, Inc.*, Case No.: 3:14-cv-1154-J-32MCR (M.D. Fla.). *Id.* at 11-12.

**iv. Attorney Kenya Reddy (\$1,000/hour).**

Attorney Kenya Reddy graduated from Duke University in 1997 with a degree in political science. *Id.* at 9. In 2000, she received her law degree from the University of Virginia School of Law. *Id.* Prior to joining Morgan & Morgan, Ms. Reddy was a shareholder at Carlton Fields, P.A., where her primary areas of practice were antitrust, complex civil litigation, class action defense, and business litigation. She also has experience in including labor and employment, products litigation, ERISA and employee benefits law, insurance, healthcare, and securities litigation. *Id.* at 9-10.

Ms. Reddy has served as a law clerk for the Honorable Charles R. Wilson, United States Circuit Court Judge, Court of Appeals for the Eleventh Circuit, the Honorable Anne C. Conway,

former Chief Judge of the United States District Court for the Middle District of Florida, the Honorable Mary S. Scriven, United States District Judge, Middle District of Florida, and the Honorable Karla R. Spaulding, United States Magistrate Judge, Middle District of Florida. *Id.* at 10.

## **2. The Magnitude and Complexity of the Case.**

This case arose from a Data Breach that prompted PTHC to send notices to approximately 753,107 individuals. S.A. 1.31. Similar to *Hudson's Bay*, “[t]he magnitude and complexity of this case are reflected in the volume of affected [individuals] and the technical details of how [an unauthorized person may have accessed private cloud business records of PTHC and its direct and indirect subsidiaries].” 2022 WL 2063864, at \*19; *see* S.A. ¶ 2 (“During the Data Breach, an unauthorized person may have accessed private cloud business records of PTHC and its direct and indirect subsidiaries....”). “If this case had not settled, it is likely that discovery, motion practice and trial would have prolonged the action by several years and significantly increased the attorneys’ fees.” *Hudson's Bay*, 2022 WL 2063864, at \*19; *see* Maxey Decl. 10. “It is also likely that issues of damages and causation would have been heavily informed by expert testimony.” *Hudson's Bay*, 2022 WL 2063864, at \*19; *see* Maxey Decl. 11.

Here, as in *Hudson's Bay*, “[t]his is a case of moderate magnitude and complexity. This factor weighs in favor of an award of attorneys’ fees.” *Hudson's Bay*, 2022 WL 2063864, at \*19.

## **3. The Risks of Litigation**

Here, as in *Hudson's Bay*:

Plaintiffs would have faced a series of risks in pursuing this case through a jury verdict and judgment. A motion for class certification would likely have been contested, with defendants urging that individual issues of damages predominated over issues that are common to the class. Plaintiffs’ submissions suggest that proving damages would have been a complicated task that turned on the

testimony of competing experts. Plaintiffs also would have been required to demonstrate negligence on the part of defendants, which would have required them to prove that defendants breached a duty of care. This would also likely have required expert testimony on matters of data security, as well as detailed evidence about the nature of the breach and defendants' knowledge about the potential for such a breach.

2022 WL 2063864, at \*20. And, as in *Hudson's Bay*, Plaintiff's counsel "took this case on a contingency basis, and risked non-payment in pursuing this case on behalf of the class." *Id.*; see Maxey Decl. ¶ 12.

Accordingly, as in *Hudson's Bay*, "[t]he risks of litigation weigh in favor of an award of an attorneys' fees award." 2022 WL 2063864, at \*20.

#### **4. The Quality of Representation.**

"Goldberger states that quality of representation is best assessed by comparing the results of the settlement against plaintiffs' maximum possible recovery." *Id.* (citing 209 F.3d at 55).

In *Hudson's Bay*, the court reasoned that "\$30 for a Tier 1 claimant,<sup>4</sup> and reimbursement for out-of-pocket expenses up to \$5,000 for a Tier 2 claimant<sup>5</sup> – is consistent with similar data-breach class action settlements that have been brought throughout the country." *Id.*

Here, Exposure Class Members can recover up to \$7,500 in reimbursement for documented Out-of-Pocket Loses, including up to \$75 in Attested Time spent remedying issues related to the Data Breach. S.A. ¶ 2.1, 2.1.4. This substantially exceeds the benefits deemed adequate in

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<sup>4</sup> A "Tier 1 claimant" was a class member "who submits proof of a payment transaction during the period of the breach and confirms that he or she spent some amount of time monitoring account information after the breach." 2022 WL 2063864, at \*1.

<sup>5</sup> A "Tier 2" claimant was a class member who "will be reimbursed for documented out-of-pocket expenses incurred as a result of the breach, such as costs and expenses related to identity theft or fraud, late fees, and unauthorized charges and withdrawals, in an amount not to exceed \$5,000 per claimant. *Id.*

*Hudson's Bay*.

Although Non-Exposure Class Members can recover lesser amounts of up to \$125 in reimbursement of out-of-pocket expenses and up to \$75 for time spent remedying issued related to receipt of notice of the Data Breach, these amounts are adequate given that Non-Exposure Class Members did not have their data exposed; rather, they are being compensated for unreimbursed costs or expenditures fairly traceable to receiving notice of the Data Breach. *Id.* ¶ 2.2.1.

Here, as in *Hudson's Bay*, “[t]his recovery is fair, reasonable and adequate from the standpoint of the individual class members.” 2022 WL 2063864, at \*20.

In *Hudson's Bay*, the court also reasoned that “[t]he quality of representation was also demonstrated in the partially successful opposition to defendants’ motion to dismiss the claims in [one of the] action[s]. Plaintiffs’ counsel ... ably advanced the interests of [the plaintiff] – and, by extension, the class – in bringing claims that partially survived the standing threshold and defendants’ motion to dismiss under Rule 12(b)(6).” *Id.*

Here, similarly, after Plaintiff filed his response to Defendant’s letter requesting a pre-motion conference regarding its anticipated motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and (6), the Court held a hearing on the request and ordered the parties “to attend either private mediation or EDNY mediation.” (ECF No. 20).

Finally, in *Hudson's Bay*, the court noted that “[t]he experience of counsel is also relevant.” 2022 WL 2063864, at \*20. Here, as in *Hudson's Bay*, “[t]he plaintiffs’ firms are experienced class-action law firms with a history of representing plaintiffs in complex cases, including data-breach actions” and “the quality of representation weighs in favor of an award of attorneys’ fees.” *Id.*; see Maxey Decl. ¶¶ 4-9 and Exhibit 1.

### **5. The Requested Fee in Relation to the Settlement.**

In *Hudson's Bay*, the court recognized that “any award of attorney’s fees” is part of the “benefit to the class.” 2022 WL 2063864, at \*22 (increasing total value of settlement to include attorney’s fees). Noting that “[c]ounsel’s combined fees and expenses of \$1.4 million would total 72% of defendants’ total payment to resolve this case,” the court concluded “[the requested fee’s relation to the settlement weighs against the size of the fees request.” *Id.*

Here, the proposed attorney’s fees are a dramatically smaller percentage of PTHC’s total payment to resolve the case. The current value of the settlement without attorney’s fees is \$74,850.00 for validated claims, at least \$700,000 (less than \$1 per Class Member) for the continuation of data security measures for 3 years, and approximately \$499,030.80 for notice and claims administration, totaling \$1,273,880.80. Adding \$497,357.41 in attorney’s fees increases the overall value of the settlement to \$1,771,238.21. The requested \$497,357.41 in attorney’s fees is 28% of the overall value of the settlement. This is much lower than the 60.68% that was allowed in *Hudson’s Bay*. See 2022 WL 2063864, at \*22 (“The attorneys’ fees award totals approximately 60.68% of the value of the settlement – a significant percentage that is far higher than the 36.7% sought in plaintiffs’ application, even if the total amount the fees is lower than plaintiffs have requested.”).

### **6. Public Policy Considerations.**

Here, as in *Hudson’s Bay*, “[p]ublic policy favors a fees award” because “[t]he public benefits when attorneys undertake a complex commercial case that implicates consumer protections and data privacy.” 2022 WL 2063864, at \*21.

#### **vi. Reaction of the Class.**

In *Hudson’s Bay*, the court “afford[ed] some weight to the reaction of the class, which



supports an attorneys' fees award," balancing that "[t]here ha[d] been no objections to the settlement and no requests to opt out of the class" against "a consumer in the class [being] less likely to scrutinize the particulars of the settlement and the relationship between the payment to the class and the award of attorneys' fees." *Id.*

Here, similarly, some weight should be afforded to the reaction of the consumer class. Out of 743,107 Class Members, to date only 2 Class Members out of approximately 750,000 have requested exclusion from the settlement. Fenwick Decl. ¶ 18. None have objected. *See* S.A. ¶ 5.1 (requiring objectors to submit written notice to the Clerk of Court, served concurrently therewith upon Proposed Class Counsel and counsel for PTHC via the Court's electronic filing system).

**vii. The Proposed Attorney's Fees are Reasonable Given the Risk of Disincentivizing Counsel from Bringing Meritorious Claims in the Future.**

In *Hudson's Bay*, the court "balance[d] the prospect of an attorney windfall against the risk of disincentivizing counsel from bringing meritorious claims in the future." 2022 WL 2063864, at \*22 (citing *Babcock v. C. Tech Collections, Inc.*, 2017 WL 1155767, at \*10 (E.D.N.Y. Mar. 27, 2017)).

Here, Plaintiff's counsel brought suit based on information publicly available indicating that PTHC sent notices of the Data Breach to more than 700,000 individuals, advising them that their information may have been compromised. *See* Complaint (ECF No. 1) ¶ 24. The claims brought in this case were meritorious, both for the Exposure Class Members whose PII and PHI may have been exposed, and for the Non-Exposure Class Members who incurred expenses or spent time responding to receipt of notice of the Data Breach. Disallowing the recovery of attorney's fees would disincentivize counsel from bringing meritorious claims on behalf of other individuals

who propose to bring similar claims arising from a data breach.

**b. Service Award.**

The Settlement Agreements provides that “The Representative Plaintiff shall seek and Defendant agrees to pay a service award not to exceed Two Thousand Five Hundred Dollars (\$2,500.00), subject to Court approval.” S.A. ¶ 7.3.

In *Hudson’s Bay*, the court denied the request for a service award of \$1,000 to each plaintiff. 2022 WL 2063864, at \*23. The court reasoned that “[a] service award may be warranted by ‘special circumstances,’ including a plaintiff’s personal risk in becoming a litigant, the time and effort expended on behalf of the class, and other burdens sustained by the plaintiff.” *Id.* (quoting *Hirsch v. Citibank, N.A.*, 2018 WL 1779376, at \*6 (S.D.N.Y. Mar. 26, 2018)). The court emphasized that the plaintiffs had “not identified risks associated with their roles as plaintiffs in this case, or, for example, travel expenses, lost wages, lost opportunities or lost vacation time that they incurred as a result of their work on behalf of the class.” *Id.*

Other courts within the Second Circuit, post-*Hudson’s Bay*, have taken a different approach, allowing service awards to plaintiffs in data breach cases. *See, e.g., Reynolds v. Marymount Manhattan Coll.*, No. 1:22-CV-06846-LGS, 2023 WL 6977635, at \*3 (S.D.N.Y. Oct. 23, 2023) (Schofield, J.) (allowing \$1,000 to each class representative); *Torretto v. Donnelley Fin. Sols., Inc.*, No. 1:20-CV-02667-GHW, 2023 WL 123201, at \*5 (S.D.N.Y. Jan. 5, 2023) (Woods, J.) (allowing \$2,500 to each class representative).

Moreover, the requested \$2,500 service award is modest compared to service awards recently approved in class action cases outside the data breach context. *See, e.g., Mateer v. Peloton Interactive, Inc.*, No. 1:22-CV-00740, 2024 WL 1054983, at \*2 (S.D.N.Y. Mar. 4, 2024) (“Service awards are granted as follows: \$21,450 to Mateer, \$21,450 to Johnson, and \$9,000 to Branchcomb.

These awards are reasonable and promote equity because they were determined based on the lead Plaintiffs' contributions and special circumstances. Mateer and Johnson's awards reflect \$10,000 each for their contributions to the litigation, \$10,000 each for special circumstances and \$1,450 each as reimbursement for out-of-pocket expenses. Branchcomb's award reflects \$4,000 for his contributions and \$5,000 for his special circumstances.”).

Accordingly, Plaintiff respectfully requests that the Court award him a \$2,500 service award for his contributions to this litigation on behalf of the more than 700,000 Class Members.

### III. CONCLUSION

For the reasons stated above, Plaintiff respectfully requests that the Court award him a service award in the amount of \$2,500, attorney's fees in the amount of \$497,357.41, and litigation costs in the amount of \$12,642.59.

Dated: May 1, 2024

Respectfully submitted,

/s/ Ryan D. Maxey

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*\* admitted pro hac vice*

***Attorneys for Plaintiff and the Proposed Class***

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 1, 2024, a true and correct copy of the foregoing was electronically filed with the Clerk of Court using CM/ECF. Copies of the foregoing document will be served upon counsel via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Ryan D. Maxey

**THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

MICHAEL EVERETTS,

on behalf of himself and all others  
similarly situated,

Plaintiff,

v.

PERSONAL TOUCH HOLDING CORP.,  
a Delaware corporation,

Defendant.

Case No.: 2:21-cv-02061 (JMA) (ARL)

**DECLARATION OF RYAN D. MAXEY IN SUPPORT OF PLAINTIFF’S  
UNOPPOSED INITIAL MOTION FOR SERVICE AWARD  
AND AWARD OF ATTORNEY’S FEES AND LITIGATION COSTS**

I, Ryan D. Maxey, being competent to testify, make the following declaration:

1. I am currently the owner and principal member of Maxey Law Firm, P.A. (“Maxey Firm”). I am one the lead attorneys for Plaintiffs. I submit this declaration in support of Plaintiffs’ Motion For an Award of Attorneys’ Fees, Reimbursement of Expenses, and Service Award to Plaintiffs. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so. A true and correct copy of the Settlement Agreement (“S.A.”) was filed with the Court (ECF No. 37-1).

2. I incorporate by reference the Declaration of John A. Yanchunis in Support of Plaintiff’s Unopposed Motion to Direct Class Notice and Grant Preliminary Approval of Class Action Settlement (ECF No. 37-2).

**Time and Labor Expended**

3. To date, the efforts of attorneys John Yanchunis, Ryan Maxey, Patrick Barthle, and Kenya Reddy and paralegal Jennifer Cabezas on behalf of Plaintiff and Class Members include the following:

- Investigating the data breach and other factual allegations in the complaint,
- Preparing the complaint,
- Analyzing PTHC's letter requesting a pre-motion conference regarding its anticipated motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and (6) and preparing a response to same,
- Attending the Rule 26(f) conference and preparing the Rule 26(f) Report,
- Preparing for and attending the pre-motion conference regarding PTHC's anticipated motion to dismiss;
- Preparing a mediation statement,
- Traveling from Florida for and attending an in-person mediation in New York (attorneys Maxey and Barthle),
- Attending follow-up telephonic conferences with the mediator,
- Negotiating and preparing settlement term sheets,
- Negotiating and preparing the Settlement Agreement, and the exhibits thereto, including the claim form, the short form notice, the long form notice, and the proposed order granting preliminary approval,
- Preparing the preliminary approval motion and the declaration of counsel in support thereof, and

- Preparing the motion for service award and attorney's fees and litigation costs and this declaration in support thereof.

The hours and rates of each of these attorneys and professionals are as follows:

***Morgan & Morgan***

<b>Name</b>	<b>Role</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Lodestar</b>
Ryan Maxey	Attorney	115.90	\$800	\$92,720.00
John Yanchunis	Attorney	47.30	\$1,600	\$75,680.00
Patrick Barthle	Attorney	41.00	\$800	\$32,800.00
Kenya Reddy	Attorney	27.10	\$1,000	\$27,100.00
Jennifer Cabezas	Paralegal	6.50	\$225	\$1,462.50
<b>Total:</b>				\$229,762.50

***Maxey Law Firm (since July 2023)***<sup>1</sup>

<b>Name</b>	<b>Role</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Lodestar</b>
Ryan Maxey	Attorney	21.9	\$800	\$17,520.00

**TOTAL HOURS: 259.7**

**TOTAL LODESTAR: \$247,282.50**

**The Skill Required to Perform the Services Rendered**

4. The expertise of the attorneys involved in this matter, combined with the complexity of the case, supports the requested fee award. Plaintiff's counsel have demonstrated

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<sup>1</sup> Attorney Ryan Maxey started his own law firm in July 2023 but continued to work on this case.



skill commensurate with their reputations and prosecuted a tough case on behalf of the Plaintiffs and the Settlement Class.

5. Each of Plaintiff's counsel is highly experienced and well-regarded in the data security class-action litigation field. Class Counsel have and are currently handling many data breach cases and are on the forefront of data breach litigation.

6. I graduated from law school more than 15 years and began my legal career as a law clerk for a United States Magistrate Judge. Since 2020, I have worked almost exclusively on data breach cases. *Id.* I am one of few attorneys who have argued data breach cases before federal appeals courts. My oral arguments before the Eleventh Circuit Court of Appeals in *Ramirez v. Paradise Shops, LLC*, 69 F.4th 1213 (11th Cir. 2023) and *Sheffler v. Americold Realty Tr.*, No. 22-11789, 2023 WL 3918491 (11th Cir. June 9, 2023), both of which had been dismissed below for failure to state a claim, resulted in these cases being remanded for further proceedings. I am also counsel in a data breach case that the Second Circuit resolved without oral argument, reversing a dismissal for failure to state a claim and remanding for further proceedings. *See Bohnak v. Marsh & McLennan Companies, Inc.*, 79 F.4th 276 (2d Cir. 2023). Lead counsel John Yanchunis was lead counsel in each of these cases and co-counsel Kenya Reddy was instrumental in the success of these appeals.

7. I am currently court-appointed interim or settlement co-lead class counsel in several data breach cases, including *Hummel v. Teijin Automotive Techs., Inc.*, No. 23-cv-10341 (E.D. Mich.); *Moreland, et al. v. 1st Franklin Financial Corporation*, No. 2:23-cv-00038-SCJ (N.D. Ga.); *Domitrovich, et al. v. M.C. Dean, Inc.*, 1:23-cv-00210-CMH-JFA (E.D. Va.); *May, et al. v. Give Guys Enterprises, LLC*, No. 1:23-cv-00029 (E.D. Va.); *Bitmouni v. Paysafe Payment Processing Solutions LLC*, No. 3:21-cv-00641-JCS (N.D. Cal.); *Ware, et al. v. San Gorgonio*

*Memorial Hospital*, No. CVRI 2301216 (Riverside County, CA); and *Phelps, et al. v. Circles of Care, Inc.*, No. 05-2023-CA-010840 (Brevard County, Fla.).

8. I have also litigated dozens of other data breach class action matters, including the following in which settlements have been finally or preliminarily approved in 2022 and 2023: *Morales v. Orlando Family Physicians, LLC*, No. 2021-ca-009153-o (Orange County, Fla.) (settlement finally approved Sept. 14, 2023); *Flores v. Don Roberto Jewelers, Inc.*, No. 30-2021-01212035-CU-NP-CXC (settlement finally approved July 24, 2023); *Farmer v. Humana Inc., et al.*, No. 8:21-cv-01478-MSS-SPF (M.D. Fla.) (settlement finally approved Feb. 13, 2023); *Gamez, et al. v. PCS Revenue Control Systems, Inc.*, No. 2:21-cv-08991-JXN-AME (D. N.J.) (settlement finally approved Feb. 6, 2023); *Heath v. Insurance Techs. Corp., et al.*, No. 3:21-cv-01444-N (N.D. Tex.) (settlement finally approved Jan. 4, 2023); and *Paras, et al. v. Dental Care Alliance, LLC*, No. 22EV000181 (Fulton County, Ga.) (settlement finally approved Aug. 2, 2022).

9. The credentials and experience of attorneys John Yanchunis, Kenya Reddy, and Patrick Barthle are accurately described in the attached firm bio for Morgan & Morgan, attached to this declaration as **Exhibit A**.

**The Settlement Eliminated Serious Risk to Class Members' Recovery**

10. If this case had not settled, it is likely that discovery, motion practice and trial would have prolonged the action by several years and significantly increased the attorney's fees.

11. If this case had not settled, issues of damages and causation would have been heavily informed by expert testimony.

**Plaintiff's Counsel Took This Case on a Contingency Basis**

12. Plaintiff's counsel took this case on a contingency basis, and risked non-payment in pursuing this case on behalf of the class.

**The Results Obtained Strongly Weigh in Favor of the Requested Fee Award**

13. The Settlement is unique in the data breach context as approximately 715,000 of the 753,107 Class Members did not have their data exposed (the “Non-Exposure Class”). Accordingly, their recovery is up to \$125 in reimbursement of out-of-pocket expenses and up to \$75 for time spent remedying issued related to receipt of notice of the Data Breach. S.A. ¶ 2.2.1. To date, the claims rate for the Non-Exposure Class is approximately 0.1%, which is low, but not surprising given the limited harm arising from receipt of notice of the Data Breach and corresponding limited relief. This low claims rate should be balanced against Plaintiff’s counsel obtaining a recovery at all for the Non-Exposure Class.

14. For the much smaller Exposure Class, estimated at approximately 35,000 individuals, the recovery is up to \$7,500 in reimbursement for documented Out-of-Pocket Loses, including up to \$75 in Attested Time spent remedying issues related to the Data Breach. S.A. ¶ 2.2.1. To date, the claims rate for the Exposure Class is approximately 2.3%. This is a successful claims rate in a data privacy class action where the claims rates typically range from 1-3%. *See, e.g., Poertner v. Gillette Co.*, 618 Fed.Appx. 624, 625–26 (11th Cir. 2015) (approving a settlement involving more than seven million class members where the claims rate was roughly 0.75%); *LaGarde v. Support.com, Inc.*, Case No. 13-609, 2013 WL 1283325, at \*2–10 (N.D. Cal. Mar. 26, 2013) (approving class action settlement with a claims rate 0.17% and noting 92% of the class members received notice via email); *In re Apple iPhone 4 Prods. Liab. Litig.*, Case No. 10-2188, 2012 WL 3283432, at \*1–3 (N.D. Cal. Aug. 10, 2012) (approving a class action settlement with claims rate between 0.16% and 0.28%); *Trombley v. Bank of Am. Corp.*, Case No. 08-CV-456, 2012 WL 1599041, at \*2 (D. R.I. May 4, 2012) (approving a class action settlement that garnered 0.9% claims rate); *In re Packaged Ice Antitrust Litig.*, Case No. 08- MDL-1952, 2011 WL

6209188, at \*14 (E.D. Mich. Dec. 13, 2011) (approving a class action settlement with a claims rate of less than 1%); *In re Online DVD– Rental Antitrust Litig.*, 779 F.3d 934, 944–45 (9th Cir. 2015) (approving thirty five million member settlement where less than four percent of class members filed claims); *Touhey v. United States*, Case No. 08-1418, 2011 WL 3179036, at \*7–8 (C.D. Cal. July 25, 2011) (approving a class action settlement with a response rate of two percent); *Perez v. Asurion Corp.*, 501 F.Supp.2d 1360, 1377–78 (S.D. Fla. 2007) (approving settlement where 1.1% of class members filed claims before the Court issued its decision).

15. With the Claims Deadline being May 21, 2024, the claims period remains open for roughly one more month meaning that the claim rate will grow as additional Settlement Class Members submit claims to receive benefits from the Settlement. The objection and opt out deadlines are also May 21, 2024.

16. The Settlement Agreement also creates a binding contractual obligation for PTHC to continue for 36 months specific measures to further secure Plaintiff’s and Class Members’ personally identifiable information (“PII”) and protected health information (“PHI”). I understand that the cost to date for PTHC’s implementation of these measures, enumerated in the Settlement Agreement, is at least \$700,000.

17. As of May 1, 2024, no class member has objected and only 2 class members have opted out. Settlement Class Counsel will update the number of exclusions including whether objections are filed in the Motion for Final Approval of Class Action Settlement.

18. This fee request is similarly in line with settlements in the data breach context across the country.

**Plaintiff's Counsels' Reasonably Incurred Litigation Costs**

19. Plaintiff's counsel also seek reimbursement of \$12,642.59 in litigation costs incurred in this case, comprised of the following:

Airfare	\$696.60
Court Fees	\$300.00
Ground Transportation	\$388.12
Hotel	\$1,813.25
In-House Printing	\$319.50
JAMS, Inc.	\$8,418.00
Meals	\$534.75
PACER	\$5.20
FedEx	\$18.62
Tampa Process, LLC	\$148.55

20. The majority of these expenses were half the cost of mediation services. The remaining costs are attributed to attorney Patrick Barthle and I traveling from Florida to New York for the in-person mediation and other expenses routinely incurred in litigation.

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

Executed on May 1, 2024

/s/ Ryan D. Maxey  
Ryan D. Maxey

# **EXHIBIT A**



Morgan & Morgan is a leading civil trial law firm representing consumers and commercial clients nationwide. With over 1,000 lawyers, and more than 3,000 non-lawyer employees, Morgan & Morgan is the largest plaintiffs' firm in the nation. Morgan & Morgan maintains over offices throughout the United States. Among its lawyers are former state attorney generals and present and former members of various state legislatures.

Morgan & Morgan has a dedicated Complex Litigation Group staffed with lawyers, paralegals, and retired FBI agents serving as investigators committed to representing consumers in complex litigation, MDL proceedings and class action cases throughout the country. It has achieved many remarkable results in class litigation, including the settlement of *In re Black Farmers Discrimination Litigation*, no. 08-0511 (D.C. Oct. 27, 2017), where one of its partners served as co-lead. The case resulted in a settlement with the United States Government in the amount of \$1.2 billion for African American farmers who had been systematically discriminated against on the basis of race, in violation of the Fifth Amendment to the United States Constitution, the Equal Credit Opportunity Act, Title VI of the Civil Rights Act, and the Administrative Procedure Act. The Class Action section is a part of Morgan & Morgan's Complex Litigation group, has assembled a talented, ethnically diverse team of lawyers. Aside from the lawyers listed below, its team of lawyers is assisted by 75 lawyers in the shared legal services section of the Complex Litigation Group. These lawyers are dedicated to document review, deposition preparations and deposition summaries. It is also assisted by a separate section of 8 lawyers, comprised of former federal law clerks at the District and Circuit level, who assist the Class Action section with research and writing support.

**John A. Yanchunis** leads the class action section of the law firm. His practice—which began after completing a two-year clerkship with United States District Judge Carl O. Bue, Jr., S. D. Tex.—has concentrated on complex litigation and spans over 43 years, including consumer class actions for more than two-thirds of that time. As a result of his extensive experience in class litigation, including privacy and data-breach litigation, he regularly lectures nationally and internationally at seminars and symposiums regarding class litigation and privacy litigation. He is a member of The State Bar of Texas and The Florida Bar.

He has served as lead, co-lead, and class counsel in numerous national class actions, including multi-district litigation, involving a wide range of subjects affecting consumers, including antitrust, defective products, life insurance, annuities, and deceptive and unfair acts and practices. In 2014, he was recognized by the National Law Journal as a trailblazer in the area of privacy litigation, and in 2019, 2020 and 2023, he was recognized by LAW 360 as one of a very small number of MVPs in the United States in the area of privacy and cyber security litigation. For his work in the area of privacy litigation, he was awarded lawyer of the year in the state of Florida by The Daily Business Review. In 2023, he was also recognized by LAW 360 as a Titan of the Plaintiffs' Bar.

As a result of his experience in insurance and complex litigation, beginning in 2005, he was selected by Tom Gallagher, the Chief Financial Officer for the state of Florida and a member of the Florida Cabinet, to serve as lead counsel for the Florida Department of Financial Services and the Florida Department of Insurance Regulation (the insurance regulators of Florida) in their investigations of the insurance industry on issues concerning possible antitrust activity and other possible unlawful activities regarding the payment of undisclosed compensation to insurance brokers. He served as lead regulator counsel and worked with a core group of state Attorneys General from the National Association of Attorneys General, which were selected to conduct the investigations. The insurance regulator for Florida was the only insurance regulator in the group. The litigation that was filed and the related investigations netted millions of dollars in restitution for Florida consumers and resulted in significant changes in the way commercial insurance is sold in Florida and across the country.

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

Mr. Yanchunis began his work in privacy litigation in 1999 with the filing of *In re Doubleclick Inc. Privacy Litigation*, 154 F. Supp. 2d 497 (S.D.N.Y. 2001), alleging privacy violations based on the placement of cookies on hard drives of internet users. Beginning in 2003, he served as co-Lead Counsel in the successful prosecution and settlement of privacy class action cases involving the protection of privacy rights of more than 200 million consumers under the Driver's Protection Privacy Act (DPPA) against the world's largest data and information brokers, including Experian, R.L. Polk, Acxiom, and Reed Elsevier (which owns Lexis/Nexis). See *Fresco v. Automotive Directions, Inc.*, No. 03-61063-JEM (S.D. Fla.), and *Fresco v. R.L. Polk*, No. 07-



cv-60695-JEM (S.D. Fla.). Subsequently, I also served as co-Lead Counsel in the DPPA class cases, *Davis v. Bank of America*, No. 05-cv-80806 (S.D. Fla.) (\$10 million class settlement), and *Kehoe v. Fidelity Fed. Bank and Trust*, No. 03-cv-80593 (S.D. Fla.) (\$50 million class settlement).

He has been appointed and served in leadership positions a number of multidistrict litigation in the area of privacy and data breaches: *In re: Capital One Consumer Data Security Breach Litigation*, No. 1:19-MD-2915-AJT (E.D. Va.) (settlement for \$190,000,000 preliminarily approved ) *In re Yahoo! Inc. Customer Data Security Breach Litigation*, No. 5:16-MD-02752-LHK (N.D. Cal.) (“Yahoo”) (Lead Counsel) (Court approved \$117,500,000.00 common fund settlement for approximately 194 million US residents and 270,000 Israeli citizens ); *In re The Home Depot, Inc. Consumer Data Sec. Data Breach Litig.*, No. 1:14-md-02583-TWT (N.D. Ga.) (co-Lead Counsel) (final judgment entered approving a settlement on behalf of a class of 40 million consumers with total value of \$29,025,000); *In Re: Equifax, Inc. Customer Data Security Breach Litigation*, 1:17-md-2800-TWT (N.D. Ga.) (member of the Plaintiffs’ Steering Committee) (final judgment entered approving \$380.5 million fund for 145 million consumers ); *In re: U.S. Office of Personnel Management Data Security Breach Litigation*, 1:15-mc-01394-ABJ (D.D.C.) (“OPM”) (member of the Executive Committee) (motion for preliminary approval of a \$60,000,000 common fund ); *In re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 2522 (D. Minn.) (Executive Committee member) (final judgment approving a settlement on behalf of a class of approximately 100 million consumers ).

His court-appointed leadership experience in non-MDL, data breach class actions extends to dozens of cases which he has litigated and settled, and includes one of the few contested certifications in a data breach case : *Schmidt, et al., v. Facebook, Inc.*, No. 3:18-cv-05982 (N.D. Cal.) (Co-Lead Counsel) (“Facebook”) (class certified for 8 million residents , subsequently settlement of the class was approved by the court), and a contested certification in *Brown, et al., v. Google, LLC*, 4:20-cv-03664-YGR (N.D. Cal.). The case against Google is set for trial at the end of January 2024.

His experience in these major data breach matters extends far beyond simply briefing threshold issues and negotiating settlements. Rather, he has personally deposed dozens of corporate representatives, software engineers, cyber professionals and CISOs in major data breach cases such as Capital One, Yahoo, Kimpton, and Facebook. In addition, he has defended experts used in these cases and also deposed defense liability and damage experts.

Presently he leads his firm’s efforts in two major class cases pending against Google for data misuse.

As result of his experience in the area of class litigation and ethics, he has served as an expert for The Florida Bar on ethical issues arising in class action litigation. He was also appointed by The Florida Supreme Court to enforce one of its orders for indirect criminal contempt, which led to the incarceration of the respondent.

He is a frequent lecturer on privacy and class litigation nationally and internationally, including at international conferences, having presented at the University of Haifa's 2019 Class Action Conference, in Haifa, Israel, attended by lawyers, judges and law professors from around the world. In he lectured on data privacy in Mexico, the United Kingdom and the Netherlands.

He has served in a number of leadership positions in The Florida Bar, having been elected to two terms in The Young Lawyers Division of The Florida Bar, to two terms to The Board of Governors of The Florida Bar, and he was appointed by The Florida Supreme Court to serve a 5 year term as a Member of The Florida Board of Bar Examiners , and today he continues to serve as an emeritus member . He has been a member of numerous committees of The Florida Bar , and been appointed chair of many of them . He

While at the University of Florida Mr. Yanchunis was a member of Florida Blue Key and Omicron Delta Kappa. He received his Juris Doctor degree from the South Texas College of Law in 1980, where he graduated magna cum laude. During law school, Mr. Yanchunis was a member of the Order of the Lytae, Associate Editor-in-Chief and Technical Editor of the South Texas Law Journal.

**Michael F. Ram.** Mr. Ram is a consumer class action lawyer with 40 years of experience. He graduated cum laude from Harvard Law School in 1982. He has co-tried several class action trials and frequently lectures on class trials. In 1992 he was a co-recipient of the Trial Lawyer of the Year Award given by Trial Lawyers for Public Justice for *National Association of Radiation Survivors v. Walters* No. 83-c-1861 (N.D. Cal.) (tried to class-wide judgment on remand from Supreme Court).

From 1993 through 1997, Mr. Ram was a partner with Lief, Cabraser, Heimann and Bernstein where he represented plaintiffs in several major class actions, including: *Cox v. Shell*, Civ. No 18,844 (Obion County Chancery Court, Tenn.) national class of six million owners of property with defective polybutylene plumbing systems; *In re Louisiana-Pacific Inner-Seal Litigation*, No. 95-cv-879 (D. Oregon) (co-lead counsel) national class of homeowners with defective siding; *ABS Pipe Litigation*, Cal. Judicial Council Coordination Proceeding No. 3126 (Contra Costa County) national class of homeowners.

In 1997, Mr. Ram founded Levy, Ram & Olson which became Ram & Olson and then Ram,

Olson, Cereghino & Kopczynski. He was co-lead counsel in many consumer class actions including a national class of half a million owners of dangerous glass pane gas fireplaces in *Keilholtz et al. v. Superior Fireplace Company*, No. 08-cv-00836 (N.D. Cal. 2008). He was co-lead counsel for plaintiffs in *Chamberlan v. Ford Motor Company*, No. 03-cv-2628 (N.D. Cal.), a class action involving defective intake manifolds that generated four published opinions, including one by the Ninth Circuit, 402 F.3d at 950, and settled one court day before the class trial. He was also co-counsel for plaintiffs in a number of other consumer class actions, including: *In re General Motors Corp. Product Liability Lit.* MDL No. 1896 (W.D. Wash.) (defective speedometers); *Richison v. American Cemwood Corp.*, San Joaquin Superior Court Case No. 005532 (defective Cemwood Shakes); *Williams v. Weyerhaeuser*, San Francisco Superior Court Case No. 995787 (defective hardboard siding); *Naef v. Masonite*, Mobile County, Alabama Circuit Court Case No. CV-94-4033 (defective hardboard siding on their homes); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998) (approving class action settlement); *McAdams v. Monier, Inc.* (2010) 182 Cal. App. 4th 174 (reversing denial of class certification in consumer class action involving roof tiles); *Gardner v. Stimson Lumber Co.* (King County Wash. No. 2-17633-3-SEA) (defective siding); *Rosenberg v. U-Haul* (Santa Cruz Superior Ct. No. CV-144045 (certified consumer class action for false and deceptive conduct; tried successfully to judgment); *In re Google Buzz User Privacy Litigation*, No. 10-cv-00672-JW (N.D. Cal. 2011) (international class action settlement for false and deceptive conduct); *Whitaker v. Health Net of California, Inc., and International Business Machines Corp.*, No. 2:11-cv-0910 KJM DAD (E.D. Cal.) (electronic privacy class action under the California Confidentiality of Medical Information Act); and *In re Kitec Plumbing System Products Liab. Litigation MDL No 2098*, N.D. Texas, No. 09-MD-2098 (MDL class action involving claims concerning defective plumbing systems).

From 2017 to 2020, Mr. Ram was a partner at Robins Kaplan LLP. In August, 2020, Mr. Ram joined Morgan & Morgan to open a San Francisco office for them. He is currently co-lead counsel in numerous consumer class actions, including *Gold v. Lumber Liquidators*, N.D. Cal. No. 14-cv-05373-RS, a certified multistate class action involving bamboo floors, and *Fowler v. Wells Fargo*, N.D. Cal. No. 3:17-cv-02092-HSG, a class action involving interest charges that settled for \$30 million. He is currently serving on the Plaintiffs' Steering Committee *In re Philips Recalled CPAP, Bi-Level Pap, And Mechanical Ventilator Products Litigation*, MDL No. 3014, where he is co-chair of the Law and Briefing Committee. In addition, Mr. Ram is also currently serving on the Plaintiffs' Expert Discovery Committee *In re Kia Hyundai Vehicle Theft Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 3052.

**Jean Sutton Martin** is one of the lead attorneys in the Class Action Department of Morgan & Morgan, devoting her practice to data privacy, consumer protection, and defective products class actions. In addition to consumer class actions, Ms. Martin has practiced in the areas of mass tort and catastrophic personal injury, starting mass torts practice groups at two plaintiffs' firms. Prior to joining Morgan and Morgan, Ms. Martin ran her own law firm in North Carolina concentrating

on consumer class actions and mass tort litigation.

Ms. Martin received her Juris Doctor degree from Wake Forest University School of Law, where she served as Editor-in-Chief of the *Wake Forest Law Review*. Ms. Martin graduated from Wake Forest University with a Bachelor of Science in Mathematical Economics and earned a Master of International Business from the University of South Carolina. She also has served as an adjunct professor at her alma mater, Wake Forest University School of Law. She obtained eDiscovery certification from the eDiscovery Training Academy at Georgetown Law Center in 2017.

Ms. Martin has been honored with the prestigious “AV” rating by Martindale-Hubbell. In 2016, Ms. Martin was selected by her peers as the foremost Litigation attorney in the State of North Carolina for *Business North Carolina Magazine’s Legal Elite*, gaining membership in the *Legal Elite* Hall of Fame. In 2022, she was recognized by Law360 as an MVP in the area of cybersecurity and data privacy. She was named as one of National Law Journal’s Class Action/Mass Tort Litigation Trailblazers of 2023.

Ms. Martin concentrates her practice on complex litigation, including consumer protection, data privacy, and defective products class action. Ms. Martin concentrates her practice on complex litigation, including consumer protection, data privacy, and defective products class action. She presently serves by appointment as interim co-lead counsel in *In re HCA Healthcare Data Security Litigation*, No. 3:23-cv-00684 (M.D. Tenn.), *Combs, et al. v. Warner Music Group*, Case No. 1:20-cv-07473-PGG (S.D.N.Y.) and *Johnson, et al. v. Yuma Regional Medical Center*, 2:22-cv-01061-SMB (D. Ariz.). She also serves as a member of the Plaintiffs’ Steering Committee for the cases proceeding against LabCorp, Inc. in *In re: American Medical Collection Agency Data Breach Litigation*, 19-md-2904 (D. N.J.) and a steering committee member *In re: Allergan Biocell Textured Breast Implant Products Liability Litigation*, No. 19-md-2921 (D. N.J.).

In a case in which she serves as interim co-lead counsel, Ms. Martin argued the motion for class certification which resulted in the first order in the country granting Rule 23(b)(3) certification in a consumer payment card data breach. She also argued the appeal of that decision. The Eleventh Circuit found standing for Ms. Martin’s client and embraced the presented damages model, remanding the case for further predominance inquiry given the District Court’s modification of the class definition. *In re Brinker Data Incident Litigation*, No. 3:18-cv-686-TJC-MCR, 2021 WL 1405508 (M.D. Fla. Apr. 14, 2021) *vacated in part sub nom. Green-Cooper v. Brinker International, Inc.*, 73 F.4th 883 (11 Cir. 2023).

She has served in leadership positions in many consumer class actions and consolidated proceedings in federal courts around the country, including *inter alia: In Re: Ambry Genetics Data Breach Litigation*, Case No. 8:20-cv-00791-CJC (C.D. Cal.), (settlement valued in excess of \$20 million for a class of approximately 230,000 patients); *Desue, et al. v. 20/20 Eye Care Network, Inc. et al.*, 21-cv-61275 (S.D. Fla.) (Chair of the Plaintiffs’ Executive Committee) (settlement on

behalf of more than 4 million class members, including minors); *In re Morgan Stanley Data Security Litigation*, 1:20-cv-05914 (S.D.N.Y.) (\$68 million settlement for 15 million class members); *Aguallo, et al. v. Kemper Corp., et al.*, Case No.: 1:21-cv-01883 (N.D. Ill.) (data breach settlement valued at over \$17.5 million) (co-lead counsel); *Gordon, et al. v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415 (D. Colo.) (data breach) (co-lead counsel); *Linnins v. HAECO Americas, Inc., et al.*, No. 16-cv-486 (M.D.N.C.) (employee data disclosure) (co-lead counsel); *Torres v. Wendy's International, LLC*, No. 6:16-cv-210 (M.D. Fla.) (data breach) (class counsel); *Fuentes, et al. v. UniRush, LLC, et al.*, No. 1:15-cv-08372 (S.D.N.Y.) (disruption in servicing of financial accounts) (co-lead counsel); *Lewis, et al., v. Green Dot Corp., et al.*, No. 2:16-cv-03557 (C.D. Cal.) (disruption in servicing of financial accounts) (class counsel); *Brady, et al. v. Due North Holdings, LLC, et al.*, No. 1:17-cv-01313 (S.D. Ind.) (employee data disclosure) (class counsel); *Foreman v. Solera Holdings, Inc.*, No. 6:17-cv-02002 (M.D. Fla.) (employee data disclosure) (class counsel); *In Re: Outer Banks Power Outage Litigation*, No. 4:17-cv-141 (E.D.N.C.) (extended island power outage due to defective construction practices) (class counsel); and, *McCoy v. North State Aviation, LLC, et al.*, No. 17-cv-346 (M.D.N.C.) (WARN Act violations) (class counsel).

Ms. Martin has been a presenter on a variety of topics related to class actions including: *Fantasy Gaming Webinar: FanDuel and DraftKings Litigation*, AAJ (December 2015); *Thinking Outside the Black Box: Drug Cases in the Class Context*, Mass Torts Made Perfect (October 2019); *Mass Torts and MDLs*, Western Alliance Class Action Forum (March 2020); *Consumer Class Actions*, Western Alliance Class Action Forum (March 2022); *How to Maximize Efficiency in Document Production and Review*, Mass Torts Made Perfect (April 2022); *Class Action Takeover: The Rise of Class Actions within MDLs*, HarrisMartin (July 2023).

Beyond her legal work, Ms. Martin organized the first Class of Our Own women's summit which was held in Nashville, Tennessee in May 2023. The invitation-only summit for female class action attorneys featured two days of legal panels while also promoting female empowerment. More than 100 women from multiple disciplines from across the country attended the event. Plans are underway for 2024 with the goal to make this summit an annual event.

Before entering law school, Ms. Martin worked with the sales finance team of Digital Equipment Company in Munich, Germany developing sales forecasts and pricing models for the company's expansion into the Eastern European market after the fall of the Berlin wall. She also worked as a practice management consultant for a physician consulting group and as a marketing manager for an international candy manufacturer where her responsibilities included product development, brand licensing, market research, and sales analysis.

Ms. Martin is a member of the North Carolina bar, having been admitted in 1998. She is also admitted to practice before the United States Supreme Court, the United States Court of Federal Claims, the United States Court of Appeals for the Fourth Circuit, the Western, Middle, and Eastern Districts of North Carolina, and the United States District Court of Colorado.

**Marie Noel Appel.** Ms. Appel has dedicated her career to representing consumers, primarily in class action cases, involving claims under consumer protection laws and other statutory and common law claims.

For the first fifteen years of her career, Ms. Appel litigated class claims on behalf of consumers, including actively participating in the following cases: *Lussier v. The Lucas Dealership Group*, No. CGC-95-391224 (San Mateo Super. Ct.) (unfair business practices suit for automobile repair overcharges resulting in confidential settlement after three weeks of trial in 1998); *Pang v. Jani King of Calif., Inc.*, No. CGC-98-396258 (San Mateo Super. Ct.) (class action unfair business practice suit alleging improper franchise practices settled in 1999 on appeal); *Capers v. Pac. Bell Internet Serv.*, No. CGC-01-318733 (San Francisco Sup. Ct.) (unfair business practice suit for improper DSL billing practices resulting in refunds of more than \$1.6 million to 20,000 class members and distribution of more than \$40,000 to charitable organizations in 2004); *Clark v. Santa Barbara Bank & Trust*, No. CGC-04-427959 (San Francisco Super. Ct.) (unfair business practices for improper debt collection practices resulting in refunds of more than \$2 million and distribution of more than \$200,000 in cy pres relief in 2007); *Dubray v. City of Dublin*, No. 2002057128 (Alameda County Super. Ct.) (class action against the City of Dublin for illegal governmental cost collection practices); *Donovan v. RRL Corp.*, 26 Cal. 4th 261 (2001) (one of amicus counsel for National Association of Consumer Advocates regarding whether automobile price advertisement was a contract offer); *Buick v. World Sav. Bank*, No 2:07-CV-01447 (E.D. Cal.) (individual Truth in Lending action regarding home equity loan which settled in 2011); and *Briggs v United States*, No. CV-07-5760 WHA (N.D. Cal.) (statutory violations resulting in \$7.4 million settlement in 2009 on behalf of a nationwide class of veterans whose tax refunds and benefits the government withheld to recover time-barred debts to the Army & Air Force Exchange Service).

From 2012 to 2019, Ms. Appel left private practice to become the Supervising Attorney of the Consumer Project and the Medical-Legal Project at the Justice & Diversity Center of the Bar Association of San Francisco which provides free legal services to low-income persons. In that position, Ms. Appel trained and supervised volunteer attorneys assisting clients facing debt collection lawsuits, and provided a range of direct legal services to clients, primarily patients at low-income medical clinics, as well as collaborating with, and training, medical interns, residents, nurses, and staff regarding legal issues impacting patient health outcomes. Ms. Appel also presented on topics relating to providing pro bono services to consumers, including, *Disaster-Related Consumer Issues Including Consumer Protection Laws and Debtors' Rights and Responsibilities*, *Providing Legal Assistance in Aftermath of Disaster*, Practising Law Institute (September 2015); *Successful Pro Bono Based Projects to Assist Self-Represented Litigants: Partnering with Bar Associations, Small & Solo Practitioners, New Attorneys, Law Schools, and*

Courts, Self-Represented Litigation Network Conference (February 2017); Successful Pro-Bono Based Projects to Assist Self-Represented Litigants, Self-Represented Litigation Network Conference (February 2018), and Helping Clients Facing Collection Actions For Covid-19 Rental Debt, Tenants Together, Tenant Lawyer Network (January 2022).

In April 2019, Ms. Appel returned to private practice as Counsel at Robins Kaplan, LLP, then joined Morgan & Morgan in August 2020 where she again focuses on class action consumer litigation including the following litigations: *Gold v. Lumber Liquidators*, No. 14-cv-05373-RS (N.D. Cal.) (settlement approval and distribution of a certified multistate class action involving bamboo floors); *In Re: Philips Recalled CPAP, Bi-Level PAP, and Mechanical Ventilator Prod. Litig.*, MDL No. 3014 (Medical Monitoring Working Group); and *Weston v. Subaru of America, Inc.*, No. 1:20-cv-05876-CPO-SAK (D.N.J.) (informal Plaintiffs' Steering Committee).

In addition to her legal practice, Ms. Appel also has served as an Adjunct Professor at Golden Gate University School of Law in San Francisco where she has taught legal research and writing, and taught and supervised students at the Consumer Rights Clinic, in which students performed legal work at the Justice & Diversity Center's Consumer Debt Defense and Education Clinics.

Ms. Appel has a long history of pro bono involvement and currently is a regular volunteer at the Community Legal Assistance Saturday Program, a monthly free legal clinic sponsored by the Alameda County Bar Association. From 1997 to 2012, Ms. Appel provided pro bono representation for numerous low-income consumers facing debt collection lawsuits, and volunteered regularly at free legal clinics through the Justice & Diversity Center in San Francisco which, on multiple years, designated her as one of the Outstanding Volunteers in Public Service.

Ms. Appel earned a B.A. in French from San Francisco State University in 1992, and a Juris Doctor from University of San Francisco School of Law in 1996 where she was an Associate Literary Editor of the *USF Maritime Law Journal*.

Ms. Appel is admitted to the State Bar of California and to United States District Courts in the Central District of California, the Eastern District of California, the Northern District of California, the Southern District of California, the Northern District of Illinois, the Western District of Michigan, and the Ninth Circuit Court of Appeals.

***Kenya Reddy.*** Ms. Reddy represents consumers in class action litigation. She graduated from Duke University in 1997 with a degree in political science. In 2000, she received her law degree from the University of Virginia School of Law. Prior to joining Morgan & Morgan, Ms. Reddy was a shareholder at Carlton Fields, P.A., where her primary areas of practice were

antitrust, complex civil litigation, class action defense, and business litigation. She also has experience in including labor and employment, products litigation, ERISA and employee benefits law, insurance, healthcare, and securities litigation.

Ms. Reddy has served as a law clerk for the Honorable Charles R. Wilson, United States Circuit Court Judge, Court of Appeals for the Eleventh Circuit, the Honorable Anne C. Conway, former Chief Judge of the United States District Court for the Middle District of Florida, the Honorable Mary S. Scriven, United States District Judge, Middle District of Florida, and the Honorable Karla R. Spaulding, United States Magistrate Judge, Middle District of Florida.

Ms. Reddy was a guest speaker in January 2019 at HarrisMartin's Marriott Data Breach Litigation Conference on the topic of standing in data breach cases. In October 2019, she presented on the topic of third-party litigation funding at the Mass Torts Made Perfect Conference.

Ms. Reddy is admitted to practice in the Northern, Middle, and Southern Districts of Florida.

**Ryan J. McGee.** Mr. McGee joined Morgan & Morgan's Complex Litigation Group in March 2018, and has since extensively practiced in the areas of privacy and consumer protection class action litigation. His work since 2018 resulted in Law360 recognizing him as one of only three Rising Stars in the area of cybersecurity and privacy for 2023.

He has substantially supported the following representative litigations resulting in the recovery of more than half a billion dollars for consumers: *Rodriguez v. Google LLC*, No. 3:20-cv-04688-RS (N.D. Cal.); *Brown v. Google LLC*, No. 4:20-cv-03664-YGR (N.D. Cal.); *In re Morgan Stanley Data Security Litigation*, No. 20-cv-5914-AT (S.D.N.Y.); *Adkins v. Facebook, Inc.*, No. 3:18-cv-05982-WHA (N.D. Cal.); *In Re: Ambry Genetics Data Breach Litigation*, No. 20-cv-00791 (C.D. Cal.); *Pfeiffer et al. v. RadNet, Inc.*, No. 2:20-cv-09553-RGK (C.D. Cal.); *Ford et al. v. [24]7.ai, Inc.*, No. 5:18-cv-02770-BLF (N.D. Cal.); *In re Yahoo! Inc. Customer Data Security Breach Litigation*, No. 16-md-02752-LHK (N.D. Cal.); *In re Equifax, Inc. Customer Data Security Breach Litigation*, No. 1:17-md-02800 (N.D. Ga.); *In re: U.S. Office of Personnel Management Data Security Breach Litigation*, 1:15-mc-01394-ABJ (D.D.C.); *Henderson v. Kalispell Regional Healthcare*, No. CDV-19-0761 (Montana Eighth Judicial Court – Cascade County); *Morrow v. Quest*, No. 2:17-cv-0948 (CCC) (JBC) (D.N.J.); *In re Google Plus Profile Litigation*, No. 5:18-cv-06164 EJD (N.D. Cal.); *Stoll et al. v. Musculoskeletal Institute, Chartered d/b/a Florida Orthopaedic Institute*, No. 8:20-cv-01798-CEH (M.D. Fla.); and *Kuss v. American HomePatient, Inc., et al.*, No. 8:18-cv-02348 (M.D. Fla.).

His experience in privacy litigation extends well beyond drafting pleadings, briefing legal



disputes, and negotiating settlements. He has personally deposed dozens of corporate representatives, software engineers, and cyber professionals in major privacy cases such as *Brown v. Google*, *Capital One*, and *Facebook*. He has also deposed defense liability and damages experts in these (and other) cases, and defended experts in those fields at deposition and in *Daubert* hearings. Mr. McGee cross-examined two (of four) technical witnesses during the hearing that resulted in the successful pursuit of multiple sanctions against Google.

Ryan studied business economics and history at the University of Florida, where he was a teaching assistant for technology classes in the business school, and received his law degree from Stetson University College of Law, where he was an editor on the *Stetson Law Review*, a research assistant for antitrust and consumer protection laws, and a teaching assistant for Stetson's trial advocacy program. He began his legal career as a state-appointed prosecutor, where he tried over 50 jury trials to verdict, mostly felonies, as well as a special prosecutor appointed to investigate police officers' deadly use-of-force and corruption within various law enforcement agencies. Ryan also served as a law clerk for two years for the Honorable Elizabeth A. Kovachevich, the former Chief United States District Judge, Middle District of Florida. Before joining Morgan & Morgan, Ryan's practice involved complex business disputes, antitrust, trade secret, data security, and class action investigations and defense-side litigation in state and federal courts across the country.

Ryan was admitted to the Florida Bar in 2009 and is also admitted to practice in the Northern, Middle, and Southern Districts of Florida; the District of Colorado; and the Ninth Circuit Court of Appeals.

**Patrick Barthle.** Mr. Barthle is the second-longest tenured attorney in the Class Action Department of Morgan & Morgan. He was born and raised in Dade City, Florida. He attended the University of Florida where he was admitted to the Honors Program and graduated, *cum laude*, with a double major in History and Criminology in 2009. While at UF, Patrick was inducted into the Phi Beta Kappa Honor Society and served as President of the Catholic Student Center. Patrick attended Washington and Lee University School of Law, graduating *summa cum laude* in 2012; where he was a Lead Articles Editor for the Wash. & Lee Law Review, a member of the Order of the Coif and the Phi Delta Phi Legal Honor Society, and President of the W&L Law Families organization.

Before joining Morgan & Morgan in 2015, Patrick worked at one of the country's largest law firms, Greenberg Traurig, LLP, and then served as a judicial law clerk for two years to the Honorable Mary S. Scriven, United States District Judge, Middle District of Florida. Patrick has extensive privacy and consumer fraud class action experiencing, having actively participated in the following litigations: *In re: Capital One Consumer Data Security Breach Litigation*, No. 1:19-MD-2915-AJT (E.D. Va.); *In re: U.S. Office of Personnel Management Data Security Breach*

*Litigation*, 1:15-mc-01394-ABJ (D.C.); *Torres v. Wendy's International, LLC*, No. 6:16-cv-210 (M.D. Fla.); *In Re: Equifax, Inc. Customer Data Security Breach Litigation*, 1:17-md-2800-TWT (N.D. Ga.); *In re The Home Depot, Inc. Customer Data Security Data Breach Litigation*, No. 1:14-md-02583-TWT (N.D. Ga.); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, 16-md-02752-LHK (N.D. Cal.); and *Finerman v. Marriott Ownership Resorts, Inc.*, Case No.: 3:14-cv-1154-J-32MCR (M.D. Fla.).

Patrick has deep substantive experience in data breach cases. He has deposed multiple C-suite-level executives, prepared and examined expert witnesses, as well as briefed and argued motions for class certification and summary judgment in any number of data breach cases. For example, in *In re: Yahoo! Inc. Customer Data Security Breach Litigation*, Case No. 16-md-2752, (N.D. Cal.), a data breach class action involving approximately 3 billion Yahoo user accounts, Patrick was deeply involved in discovery, including with the depositions of multiple Chief Information Security Officers (“CISO”) and other cybersecurity related witness, including the Chief Information Officer (“CIO”); as well as assisting with the reports, and defending the depositions, of Plaintiffs’ cybersecurity and identity theft experts. Likewise, in the *In re Capital One Customer Data Security Breach Litigation*, Case No.: 1:19-md-2915 (E.D. Va.) case, Patrick was heavily involved in all aspects of discovery including drafting and arguing myriad motions to compel and the taking of various depositions, including multiple corporate representative witnesses for both Capital One and Amazon Web Services, as well as arguing and briefing summary judgment and class certification.

Patrick has been appointed as Co-Lead Counsel in multiple pending data breach class actions, including *Hernandez et al. v. Advance America, Cash Advance Centers, Inc. et al*, Case No. 7:23-cv-4256 (D. S.C.), and *In re Great Expressions Data Security Incident Litigation*, Case No. 2:23-cv-11185 (E.D. Mich.).

Apart from data privacy cases, Patrick has been appointed as Class Counsel in other consumer class action cases, including in *Swaney v. Regions*, Case No. 2:13-cv-00544-JHE (N.D. Ala.) (TCPA class action, Final Approval entered), *Peterson v. Apria Healthcare Group, Inc.*, Case No. 6:19-cv-00856 (M.D. Fla.) (TCPA class action, Final Approval entered), and *Guidry v. Penn Credit*, Case No.: 6:19-cv-1936-Orl41LRH (M.D. Fla.) (TCPA class action, Final Approval entered); and in *Richards et al. v. Chime Financial, Inc., et al.*, Case No. 4:19-cv-06864 (N.D. Cal.), a case involving a payment disruption for certain payment card users.

Patrick is also no stranger to contested class certifications, having certified nationwide and multi-state classes in cases such as *Still v. Selene Finance, LP*, Case No. CJ-2013-51 (Okla. Dist. Ct, Nowata County) (multi-state certified class action concerning property inspections fees related to HUD-backed mortgages); and *Nolen et al. v. Fairshare Vacation Owners Association*, Case No.

6:20-cv-330-PGB-EJK (M.D. Fla.) (nationwide class certified concerning alleged breaches of fiduciary duties involving a Wyndham timeshare program).

Patrick was selected as a Florida Super Lawyer Rising Star in 2019, 2020, and 2021 in the field of Class Actions. He is also active in speaking on privacy and class action topics, having spoken in June 2018, October 2022, and March 2023 at the NetDiligence Cyber Risk Summit on various privacy related topics; in November 2018 at the American Association for Justice's Advanced 30(b)(6) Seminar, on the topic of 30(b)(6) Depositions in Data Breach Cases; in January 2019 at HarrisMartin's Marriott Data Breach Litigation Conference on the topic of damage models and settlements in data breach cases; and in October 2019 at the Mass Torts Made Perfect conference on Rule 23(c)(4) classes.

Mr. Barthle was admitted to the Florida Bar in 2012 and is also admitted to practice in the Middle District of Florida, the Southern District of Florida, the District of Colorado, the Northern District of Illinois, the Eastern District of Michigan, the Northern District of Oklahoma, the Southern District of Texas, and the Eleventh Circuit Court of Appeals.

**Ron Podolny.** Ron Podolny joined our Complex Litigation Group after practicing for 15 years in Canada, 10 of which were dedicated exclusively to representing the plaintiffs in class actions and mass torts. At Morgan & Morgan, his practice is focused on representing the plaintiffs in class actions arising out of data breaches, misleading advertising, defective consumer and pharmaceutical products and other matters.

Ron has served as an adjunct professor at the University of Toronto, Faculty of Law and Osgoode Hall Law School, York University. He speaks frequently in professional conferences on matters relating to class actions and commercial litigation. In particular, Ron has presented repeatedly on cross-border class actions at the American Association for Justice conferences, across the U.S.

Ron has authored articles on a variety of topics in class actions and commercial litigation in leading industry and academic publications. His articles have been cited with approval by the courts, including the Supreme Court of Canada. He has been interviewed on legal matters in television, radio and print media.

In 2018, Ron was the recipient of the Precedent Setter Award, which recognizes lawyers called to the bar in the last 10 years who have shown excellence and leadership in their practice and their community.

In 2019, Ron was the recipient of the “Lexpert Rising Stars Award: Leading Lawyers Under 40.”

In 2022, Ron was awarded the Osgoode Hall Law School Faculty Teaching and Service Award for his contribution to legal education as an Adjunct Professor.

In 2023, Ron was recognized by Best Lawyers™ in the category of Securities Law. This prestigious recognition is awarded on the basis of an exhaustive evaluation process of lawyers’ professional expertise, in the form of a national peer-review survey.

In 2024, Ron was recognized as Repeatedly Recommended (Class Actions) in the Canadian Legal Lexpert Directory.

Ron is called to the bars of New York and Ontario, and practices in the Tampa office.

**Francesca Kester Burne.** Ms. Burne was born and raised in Scranton, Pennsylvania. She attended The Pennsylvania State University’s Dickinson School of Law, where she received her Juris Doctor degree in 2017. While at Dickinson, Ms. Burne competed in the American Bar Association’s National Appellate Advocacy Competition, where she was awarded the highest honor for her legal brief writing, and the Texas Young Lawyer’s National Trial Competition, where she finished as a regional finalist. Ms. Burne also served as Executive Chair of the Dickinson Law Moot Court Board, Founder of the Dickinson Law partnership with Big Brothers Big Sisters, and Student Director of the Bethesda Mission Men’s Shelter legal clinic.

Ms. Burne completed an externship with United States Magistrate Judge Martin C. Carlson while in law school. After graduation, she served for two years as a law clerk to the Honorable James M. Munley in the United States District Court for the Middle District of Pennsylvania. Ms. Burne now focuses her class action practice on complex litigation, including consumer protection, data privacy, and defective products class actions.

She has been honored with the D. Arthur Magaziner Human Services Award for outstanding academic achievement and service to others and the Pennsylvania Bar Association’s Joseph T. McDonald Memorial Award for excellence in trial advocacy.

Ms. Burne is admitted to practice law in both Pennsylvania and Florida as well as various federal courts throughout the country, to include the Southern District of Florida.

**Ross Berlin.** Ross Berlin is a member of the Complex Litigation Group. Mr. Berlin earned his law degree with honors from the Northwestern University Pritzker School of Law. After law

school, Mr. Berlin completed two judicial clerkships, first for the Honorable Kevin G. Ross of the Minnesota Court of Appeals and then for Judge Paul C. Huck of the United States District Court for the Southern District of Florida. Following his clerkships, Mr. Berlin returned to his hometown of West Palm Beach, Florida, to continue his public service as an appellate public defender, where he represented indigent defendants on appeal from their criminal convictions. Mr. Berlin's appellate-litigation and clerkship experience attracted one of the largest law firms in the world, and Mr. Berlin entered private practice. In that role, Mr. Berlin represented multi-billion-dollar corporations in both trial and appellate-level litigation in federal and state courts in high-stakes matters spanning the entire United States and the world. Mr. Berlin's passion for protecting the most vulnerable in society led him to join Morgan & Morgan's Complex Litigation team, where he now represents the people in litigation against the world's most powerful corporations.

**Antonio Arzola, Jr.** Mr. Arzola was born and raised in Miami, Florida to first-generation Cuban-American parents. In 2018, Antonio obtained a Bachelor of Science degree in Criminal Justice from Florida International University. After graduating, Antonio worked as a North American Language and Culture Assistant in a primary school in Barxeta, Spain, where he taught English to primary school Spaniard students for a year. During his teaching assistantship, Antonio obtained a Bachelor of Arts degree in Portuguese from Florida International University in 2019. In 2022, he obtained his Juris Doctor degree, *cum laude*, from Florida International University. While at Florida International University College of Law, he received the “Book Award” for achieving the highest grade in his Legal Writing III course. Also, he represented Florida International University in the 2022 Moot Madrid International Arbitration Competition, where he conducted oral arguments in Spanish in mock arbitration proceedings in Madrid, Spain. Before joining Morgan & Morgan, Antonio served as a judicial law clerk to the Honorable Federico A. Moreno, United States District Judge, Southern District of Florida. Antonio is fluent in English, Spanish, and Portuguese and is an avid runner. Antonio was admitted to the Florida Bar in 2022 and is a Certified Information Privacy Professional (United States).

**Riya Sharma.** Ms. Sharma is a dual-qualified attorney admitted to the Texas Bar and the New Delhi Bar, licensed to practice throughout India. After her Juris Doctor/B.A LL.B. from the Jindal Global Law School, she earned her LL.M. from the University of California, Berkeley, School of Law, where she graduated with High Honors in Information Privacy Law, Legal Research and Writing, Contract Law, Fundamentals of U.S. Law, and Legal Ethics and Compliance. She graduated from Berkeley as the highest performer in Contract Law. At Berkeley, she furthered her commitment to legal advocacy and served as a Pro-Bono Student Advocate with the Workers’ and Tenants’ Rights Clinic and contributed as a member of the Berkely Center for Law and Technology and the Privacy Lab, and also worked towards

advancing the rights of women in Technology Law. Prior to obtaining her Masters in Law, Ms. Sharma worked as a Judicial Law Clerk to Justice Abdul S. Nazeer, a Judge of the Supreme Court of India, handling complex federal matters. Alongside her judicial clerkship, she collaborated with UNICEF to provide e-education to underprivileged children during the COVID-19 pandemic. Fluent in both English and Hindi, Ms. Sharma is also certified by the World Intellectual Property Organization for coursework in U.S Intellectual Property.

***Christopher Pollack.*** Chris Pollack was born and raised in Florida. Mr. Pollack studied finance at the University of Central Florida, and then earned his law degree from the University of Michigan Law School. While in law school, Mr. Pollack worked on the Civil Rights Litigation Clearinghouse, and he earned Certificates of Merit in both Evidence and Jurisdiction & Choice of Law.

Upon graduating, Mr. Pollack spent the first several years of his career as a judicial clerk, first spending 20 months with the Honorable Jeffrey J. Helmick in the U.S. District Court for the Northern District of Ohio, and then a year with the Honorable Robin S. Rosenbaum in the U.S. Court of Appeals for the Eleventh Circuit. Prior to joining Morgan & Morgan's Complex Litigation Group, Mr. Pollack worked for law firms in D.C. and Michigan, representing businesses across the country and gaining experience that he now uses to advocate for consumers in class action litigation.

Mr. Pollack is admitted to practice in Illinois, D.C., and Michigan.

***Abraham Barkhordar, Law Clerk.*** Abraham Barkhordar was born and raised in Los Angeles, California. He attended Santa Monica college where he played on the school water polo team before transferring to UCLA where he was admitted to the Honors Program and graduated, summa cum laude, with a major in History. While at UCLA, Abraham volunteered with Americorps' Justicecorps program and also volunteered at a local immigration law firm.

Thereafter, Mr. Barkhordar attended Harvard Law School where he co-founded and served as innagural co-president of the Harvard Plaintiffs' law association—the first law student organization of its kind in the country. Since graduating from Harvard, Mr. Barkhordar has joined the San Francisco office of Morgan & Morgan's Complex Litigation Group where he focuses on consumer class action litigation.

**THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

MICHAEL EVERETTS,  
  
on behalf of himself and all others similarly  
situated,

Plaintiff,

v.

PERSONAL TOUCH HOLDING CORP.,  
a Delaware corporation,

Defendant.

CASE NO.: 2:21-cv-02061 (JMA) (ARL)

CLASS ACTION

DECLARATION OF  
SCOTT M. FENWICK OF KROLL  
SETTLEMENT ADMINISTRATION LLC  
IN CONNECTION WITH CLASS NOTICE  
AND CLAIM ACTIVITY

I, Scott M. Fenwick, declare as follows:

**INTRODUCTION**

1. I am a Senior Director of Kroll Settlement Administration LLC (“Kroll”),<sup>1</sup> the Claims Administrator<sup>2</sup> appointed in the above-captioned case, whose principal office is located at 2000 Market Street, Suite 2700, Philadelphia, Pennsylvania 19103. I am over 21 years of age and am authorized to make this declaration on behalf of Kroll and myself. The following statements are based on my personal knowledge and information provided by other experienced Kroll employees working under my general supervision. This declaration is being filed to provide the Court with a preliminary report on the status of the Notice Program, claims filed as well as an estimate of the Costs of Claims Administration. A more up-to-date report will be provided in conjunction with the motion for final approval of the settlement, to be filed twenty-one (21) days prior to the Final Fairness Hearing.

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in that certain Settlement Agreement entered into in this Litigation.

<sup>2</sup> The Settlement Agreement and Preliminary Approval Order appoint “Kroll” as the Claims Administrator. Kroll Settlement Administration LLC is the actual Claims Administrator in this case.

2. Kroll has extensive experience in class action matters, having provided services in class action settlements involving antitrust, securities fraud, labor and employment, consumer, and government enforcement matters. Kroll has provided notification and/or claims administration services in more than 3,000 cases.

### **BACKGROUND**

3. Kroll was appointed as the Claims Administrator to provide notification and Claims Administration services in connection with the Settlement Agreement. Kroll's duties in connection with the settlement have and will include: (a) preparing and sending notices in connection with the Class Action Fairness Act; (b) establishing a toll-free telephone number; (c) establishing a post office box for the receipt of mail; (d) creating a website (the "Settlement Website") with online claim filing capabilities; (e) receiving and analyzing the Settlement Class Member contact list (the "Class List") from PTHC's counsel; (f) preparing and sending the Short-Form Notice via first-class mail; (g) receiving and processing mail from the United States Postal Service ("USPS") with forwarding addresses; (h) receiving and processing undeliverable mail, without a forwarding address, from the USPS; (i) receiving and processing Claim Forms; (j) receiving and processing opt outs; and (k) such other tasks as counsel for the Parties or the Court request Kroll to perform.

### **NOTICE PROGRAM**

#### **The CAFA Mailing**

4. As noted above, on behalf of the Defendant, Kroll provided notice of the proposed settlement pursuant to the Class Action Fairness Act, 28 U.S.C. §1715(b) ("the CAFA Notice"). At PTHC's counsel's direction, on May 15, 2023, Kroll sent the CAFA Notice identifying the documents required, a true and correct copy of which is attached hereto as **Exhibit A**, via first-class certified mail, to (a) the Attorney General of the United States and (b) the fifty-six (56) state and territorial Attorneys General identified in the service list for the CAFA Notice, attached hereto as **Exhibit B**. The CAFA Notice directed the Attorneys General to the website



[www.CAFANotice.com](http://www.CAFANotice.com), a site that contains all the documents relating to the settlement referenced in the CAFA Notice.

### **Data and Case Setup**

5. On January 29, 2024, Kroll established a toll-free telephone number, 833-462-3481, for Settlement Class Members to call and obtain additional information regarding the settlement through an Interactive Voice Response (“IVR”) system and/or by being connected to a live operator.

6. On January 29, 2024, Kroll designated a post office box with the mailing address *Personal Touch Holding Corp., c/o Kroll Settlement Administration LLC*, PO Box 225391, New York, NY 10150-5391, in order to receive requests for exclusion, Claim Forms, and correspondence from Settlement Class Members.

7. On January 31, 2024, Kroll created a dedicated Settlement Website entitled [www.personaltouchdatasettlement.com](http://www.personaltouchdatasettlement.com). The Settlement Website “went live” on February 21, 2024, and contains information about the settlement, including important dates and deadlines, answers to frequently asked questions, contact information for the Claims Administrator, copies of the Settlement Agreement, Preliminary Approval Order, Class Action Complaint, Claim Form, and Long-Form Notice, and allowed Settlement Class Members an opportunity to file a Claim Form online.

8. On February 5, 2024, Kroll received one (1) data file from PTHC’s counsel. The file contained 753,107 names and physical mailing addresses. Kroll undertook several steps to reconcile the list, including the de-duplication of records, and compile the eventual Class List for the mailing of Notices. This resulted in a Class List of 744,561 unique Settlement Class Members. Kroll also identified 673 records where there was not a complete address, resulting in a final Class List of 743,888 unique Settlement Class Members to whom Kroll was able to send Notice. Additionally, in an effort to ensure that Notices would be deliverable to Settlement Class Members, Kroll ran the Class List through the USPS’s National Change of Address (“NCOA”) database and updated the Class List with address changes received from the NCOA.

**The Notice Program**

9. On February 21, 2024, Kroll caused 743,888 Notices to be mailed via first-class mail. A true and correct copy the Short-Form Notice, along with the Long-Form Notice and Claim Form, are attached hereto as **Exhibits C, D, and E**, respectively.

10. Any Short-Form Notice returned by the USPS with a forwarding address will be re-mailed to the updated address provided by the USPS.

11. Any Short-Form Notice returned by the USPS undeliverable-as-addressed will be sent through an advanced address search process in an effort to find a more current address for the record. If an updated address is obtained through that process, Kroll will re-mail the Short-Form Notice to the updated address. Kroll will provide the Court with updated information on the process, as stated above.

**CLAIM ACTIVITY**

12. The Claims Deadline is May 21, 2024. As of May 1, 2024, Kroll has received 111 Claim Forms through the mail and 2,022 Claim Forms filed electronically through the Settlement Website. Kroll has been and is still in the process of reviewing and validating Claim Forms.

13. The Claim Form allows Settlement Class Members to file a claim as either an Exposure Class Member or a Non-Exposure Class Member.

14. To prevent Claim Forms from being filed by individuals outside the Settlement Class and to curtail fraud, Settlement Class Members were provided a unique “Class Member ID” on their respective notices. The Class Member ID is required for Settlement Class Members to file a Claim Form online.

15. As of May 1, 2024, Kroll has validated 1,567 Claim Forms. Of the 1,576 validated Claim Forms, 808 were submitted by potential Exposure Class Members and 759 were submitted by potential Non-Exposure Class Members. The remaining 566 Claim Forms are still under

review. The following is a summary of the 1,576 Claim Forms and the types of benefits validated therein.<sup>3</sup>

- *Attested Time (submitted by potential Exposure Class Members)*: 808 Settlement Class Members claimed their personally identifiable information or protected health information was potentially exposed in the Data Breach and filed claims for Attested Time spent remedying issues related to the Data Breach. The aggregate value of these Attested Time claims is \$46,950.
- *Attested Time (submitted by potential Non-Exposure Class Members)*: 759 Settlement Class Members claimed their personally identifiable information or protected health information was not potentially exposed in the Data Breach and filed claims for Attested time spent remedying issues related to the Data Breach. The aggregate value of these Attested Time claims is \$27,900.

16. In summary, as of May 1, 2024, the aggregate value of the Attested Time claims received and validated is \$74,850. As noted above, Kroll is still in the process of validating claims. Accordingly, the number of Approved Claims and the aggregate value of such claims is subject to change.

#### **EXCLUSIONS AND OBJECTIONS**

17. The Opt-Out Date is May 21, 2024.

18. Kroll has received two (2) timely requests for exclusion from the settlement. An Opt-Out List is attached hereto as **Exhibit F**. Settlement Class Members were not instructed to submit their objection to the Claims Administrator, and none have been received by Kroll.

#### **COSTS OF NOTICE PROGRAM**

19. As of May 1, 2024, Kroll has billed \$369,030.80 for Costs of Claims Administration incurred in the administration of this matter. True and correct copies of the invoices generated to date are attached hereto as **Exhibit G**. Kroll estimates that it will bill an

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<sup>3</sup> Claimants had the ability to submit claims for multiple benefit types.

additional \$130,000 to complete the administration of this settlement. The current estimate is subject to change depending on factors such as the number of claims remaining to be reviewed, number of claims filed, and/or any Claims Administration scope change not currently under consideration.

**CERTIFICATION**

I declare under penalty of perjury under the laws of the United States that the above is true and correct to the best of my knowledge and that this declaration was executed on May 1, 2024, in Philadelphia, Pennsylvania.

  
SCOTT M. FENWICK

# Exhibit A

  
**RUSKIN MOSCOU FALTISCHEK P.C.**  
*Counselors at Law*

Writer's Direct Dial: (516) 663-6603  
Writer's Direct Fax: (516) 663-6703  
Writer's E-Mail: [jsullivan@rmfpc.com](mailto:jsullivan@rmfpc.com)

May 15, 2023

By Certified Mail, Return Receipt Requested

To: All "Appropriate" Federal and State Officials Per 28 U.S.C. § 1715  
(see attached Service List)

Re: Notice of Proposed Class Action Settlement - *Everetts v. Personal Touch Hold'g Corp.* U.S.D.C., E.D.N.Y. Docket No. 21-cv-2061

Dear Sir or Madam:

We represent defendant Personal Touch Holding Corp. in the above-referenced class action. We write, pursuant to Section 3 of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, to provide your office with the required notice of the proposed settlement of this Litigation.

Eight items must be provided to you in connection with any proposed class action settlement pursuant to 28 U.S.C. § 1715(b). Each of these items is addressed below, and all exhibits are available for download at [www.CAFANotice.com](http://www.CAFANotice.com) under the folder entitled *Everetts v. Personal Touch Hold'g Corp.*

1. 28 U.S.C. § 1715(b)(1) – a copy of the complaint and any materials filed with the complaint and any amended complaints.

A copy of the complaint filed in the action, including the exhibits thereto is available as ***Exhibit A***.

2. 28 U.S.C. § 1715(b)(2) – notice of any scheduled judicial hearing in the class action.

The Motion for Preliminary Approval of Settlement filed by Plaintiff, for which a hearing has not yet been scheduled by the Court is available as ***Exhibit B***.

3. 28 U.S.C. § 1715(b)(3) – any proposed or final notification to class members.

RUSKIN MOSCOU FALTISCHEK



May 15, 2023  
Page 2

Copies of the proposed Long-Form Notice, Short-Form Notice, and Claim Form will be provided to Settlement Class Members and will be available on the website created for the administration of this matter. These are available as *Exhibits C, D, and E*, respectively. The Notices describe, among other things, the claim submission process and the Settlement Class Members' rights to object or exclude themselves from the Settlement Class.

4. 28 U.S.C. § 1715(b)(4) – any proposed or final class action settlement.

The proposed Settlement Agreement is available as *Exhibit F*.

5. 28 U.S.C. § 1715(b)(5) – any settlement or other agreement contemporaneously made between class counsel and counsel for defendants.

There are no other settlements or other agreements between Class Counsel and counsel for Defendant beyond what is set forth in the Settlement Agreement.

6. 28 U.S.C. § 1715(b)(6) – any final judgment or notice of dismissal.

The Court has not yet entered a final judgment or notice of dismissal. Accordingly, no such document is presently available.

7. 28 U.S.C. § 1715(b)(7) – (A) If feasible, the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement to that State's appropriate State official; or (B) if the provision of the information under subparagraph (A) is not feasible, a reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement.

The definition of the Settlement Class in the proposed Settlement Agreement means all individuals who are a member of the Exposure Class or the Non-Exposure Class. The Settlement Class specifically excludes: (i) PTHC and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge assigned to evaluate the fairness of this settlement; (iv) the attorneys representing the Parties in the Litigation; and (v) any other individual found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing,



RUSKIN MOSCOU FALTISCHEK P.C.

*Counselors at Law*

May 15, 2023

Page 3

aiding or abetting the criminal activity involved in the Data Breach or who pleads nolo contendere to any such charge. PTHC represents that the Settlement Class contains approximately 753,107 individuals who received notice from PTHC of the Data Breach.

An estimated breakdown by state for known Settlement Class Members is available as *Exhibit G*.

8. 28 U.S.C. § 1715(b)(8) – any written judicial opinion relating to the materials described in 28 U.S.C. § 1715(b) subparagraphs (3) through (6).

There has been no written judicial opinion. Accordingly, no such document is presently available.

If you have any questions about this notice, the Litigation or the materials available for download at [www.CAFANotice.com](http://www.CAFANotice.com) under the folder entitled Everetts v. Personal Touch Hold'g Corp, please contact the undersigned below.

Respectfully,

A handwritten signature in black ink, appearing to read 'Jonathan C. Sullivan', is written over a horizontal line. The signature is fluid and cursive.

Jonathan C. Sullivan  
For the Firm

992246



# Exhibit B



May 15, 2023  
Page 4

**SERVICE LIST**

<p>The Hon. Merrick Garland Attorney General of the United States United States Department of Justice 950 Pennsylvania Avenue Washington, D.C. 20530-0001</p>	<p>The Hon. Treg Taylor Attorney General of Alaska 1031 W. 4<sup>th</sup> Avenue, Suite 200 Anchorage, AK 99501-1994</p>
<p>The Hon. Steve Marshall Attorney General of Alabama 501 Washington Avenue P.O. Box 300152 Montgomery, AL 36130-0152</p>	<p>The Hon. Kris Mayes Attorney General of Arizona 2005 N. Central Avenue Phoenix, AZ 85004-2926</p>
<p>The Hon. Tim Griffin Attorney General of Arkansas 323 Center Street, Suite 200 Little Rock, AR 72201-2610</p>	<p>The Hon. Phil Weiser Attorney General of Colorado Ralph L. Carr Colorado Judicial Center 1300 Broadway, 10<sup>th</sup> Floor Denver, CO 80203</p>
<p>The Hon. Rob Bonta Attorney General of California 1300 I Street, Suite 1740 Sacramento, CA 95814</p>	<p>The Hon. Brian Schwalb Attorney General of the District of Columbia 400 6th St., NW Washington, DC 20001</p>
<p>The Hon. Kathy Jennings Attorney General of Delaware Carvel State Office Bldg. 820 N. French Street Wilmington, DE 19801</p>	<p>The Hon. Ashley Moody Attorney General of Florida The Capitol, PL 01 Tallahassee, FL 32399-1050</p>
<p>The Hon. Chris Carr Attorney General of Georgia 40 Capitol Square, SW Atlanta, GA 30334-1300</p>	<p>The Hon. Anne E. Lopez Attorney General of Hawaii 425 Queen Street Honolulu, HI 96813</p>



May 15, 2023

Page 5

<p>The Hon. Brenna Bird                  Attorney General of Iowa                  Hoover State Office Bldg. 1305 E.                  Walnut Des Moines, IA 50319</p>	<p>The Hon. Raul Labrador                  Attorney General of Idaho                  700 W. Jefferson Street, Suite 210                  P.O. Box 83720                  Boise, ID 83720-1000</p>
<p>The Hon. Kwame Raoul                  Attorney General of Illinois                  James R. Thompson Ctr.                  100 W. Randolph St.                  Chicago, IL 60601</p>	<p>The Hon. Todd Rokita                  Attorney General of Indiana                  Indiana Government Center So., 5th Fl.                  302 West Washington Street                  Indianapolis, IN 46204</p>
<p>The Hon. Kris Kobach                  Attorney General of Kansas                  120 S.W. 10th Avenue, 2nd Fl.                  Topeka, KS 66612-1597</p>	<p>The Hon. Daniel Cameron                  Attorney General of Kentucky                  700 Capitol Avenue                  Capitol Building, Suite 118                  Frankfort, KY 40601</p>
<p>The Hon. Jeff Landry                  Attorney General of Louisiana                  P.O. Box 94095                  Baton Rouge, LA 70804-4095</p>	<p>The Hon. Andrea Campbell                  Attorney General of Massachusetts                  1 Ashburton Place                  Boston, MA 02108</p>
<p>The Hon. Anthony G. Brown                  Attorney General of Maryland                  200 St. Paul Place                  Baltimore, MD 21202-2202</p>	<p>The Hon. Aaron Frey                  Attorney General of Maine                  State House Station 6                  Augusta, ME 04333</p>
<p>The Hon. Dana Nessel                  Attorney General of Michigan                  P.O. Box 30212                  525 W. Ottawa Street                  Lansing, MI 48909-0212</p>	<p>The Hon. Keith Ellison                  Attorney General of Minnesota                  Suite 102, State Capital                  75 Dr. Martin Luther King, Jr. Blvd.                  Saint Paul, MN 55155</p>



May 15, 2023

Page 6

<p>The Hon. Andrew Bailey                  Attorney General of Missouri                  Supreme Ct. Bldg.                  207 W. High St.                  Jefferson City, MO 65101</p>	<p>The Hon. Austin Knudsen                  Attorney General of Montana                  Justice Bldg.                  215 N. Sanders                  Helena, MT 59620-1401</p>
<p>The Hon. Lynn Fitch                  Attorney General of Mississippi                  Department of Justice                  P.O. Box 220                  Jackson, MS 39205</p>	<p>The Hon. Drew Wrigley                  Attorney General of North Dakota                  State Capitol                  600 E. Boulevard Avenue                  Bismarck, ND 58505-0040</p>
<p>The Hon. Josh Stein                  Attorney General of North Carolina                  Dept. of Justice                  P.O. Box 629                  Raleigh, NC 27602-0629</p>	<p>The Hon. John Formella                  Attorney General of New Hampshire                  33 Capitol Street                  Concord, NH 03301</p>
<p>The Hon. Mike Hilgers                  Attorney General of Nebraska                  State Capitol                  P.O. Box 98920                  Lincoln, NE 68509-8920</p>	<p>The Hon. Raul Torrez                  Attorney General of New Mexico                  P.O. Drawer 1508                  Santa Fe, NM 87504-1508</p>
<p>The Hon. Aaron D. Ford                  Attorney General of Nevada                  Old Supreme Ct. Bldg.                  100 N. Carson Street                  Carson City, NV 89701</p>	<p>The Hon. Letitia A. James                  Attorney General of New York                  Department of Law                  The Capitol, 2nd Fl.                  Albany, NY 12224</p>
<p>The Hon. Dave Yost                  Attorney General of Ohio                  State Office Tower                  30 E. Broad Street                  Columbus, OH 43266-0410</p>	<p>The Hon. Gentner Drummond                  Attorney General of Oklahoma                  313 NE 21st Street                  Oklahoma City, OK 73105</p>



May 15, 2023  
Page 7

<p>The Hon. Ellen F. Rosenblum Attorney General of Oregon Justice Bldg. 1162 Court Street NE Salem, OR 97301</p>	<p>The Hon. Michelle Henry Attorney General of Pennsylvania 16th Floor, Strawberry Square Harrisburg, PA 17120</p>
<p>Hon. Dominigo Emanuelli Hernandez Attorney General of Puerto Rico PO Box 9020192 San Juan, PR, 00902-0192</p>	<p>The Hon. Peter F. Neronha Attorney General of Rhode Island 150 S. Main Street Providence, RI 02903</p>
<p>The Hon. Alan Wilson Attorney General of South Carolina Rembert C. Dennis Office Bldg. P.O. Box 11549 Columbia, SC 29211-1549</p>	<p>The Hon. Marty Jackley Attorney General of South Dakota 1302 East Highway 14, Suite 1 Pierre, SD 57501-8501</p>
<p>The Hon. Jonathan Skrmetti Attorney General of Tennessee 425 5th Avenue North Nashville, TN 37243</p>	<p>The Hon. Ken Paxton Attorney General of Texas Capitol Station P.O. Box 12548 Austin, TX 78711-2548</p>
<p>The Hon. Sean Reyes Attorney General of Utah State Capitol, Rm. 236 Salt Lake City, UT 84114-0810</p>	<p>The Hon. Jason Miyares Attorney General of Virginia 202 North Ninth Street Richmond, VA 23219</p>
<p>The Hon. Bob Ferguson Attorney General of Washington 1125 Washington Street SE P.O. Box 40100 Olympia, WA 98504-0100</p>	<p>The Hon. Charity R. Clark Attorney General of Vermont 109 State Street Montpelier, VT 05609-1001</p>



RUSKIN MOSCOU FALTISCHEK P.C.

*Counselors at Law*

May 15, 2023

Page 8

<p>The Hon. Patrick Morrisey Attorney General of West Virginia State Capitol, 1900 Kanawha Blvd. E. Charleston, WV 25305</p>	<p>The Hon. Josh Kaul Attorney General of Wisconsin Wisconsin Department of Justice State Capitol, Room 114 East P. O. Box 7857 Madison, WI 53707-7857</p>
<p>The Hon. Matthew J. Platkin Attorney General of New Jersey Richard J. Hughes Justice Complex 25 Market Street, P.O. Box 080 Trenton, NJ 08625</p>	<p>The Hon. Bridget Hill Attorney General of Wyoming State Capitol Bldg. Cheyenne, WY 82002</p>
<p>The Hon. William Tong Attorney General of Connecticut 165 Capitol Avenue Hartford, CT 06106</p>	<p>The Hon. Douglas Moylan Attorney General of Guam Office of the Attorney General ITC Building 590 S. Marine Corps Dr, Ste 706 Tamuning, Guam 96913</p>
<p>The Hon. Edward E. Manibusan Attorney General of Northern Mariana Islands Administration Building P.O. Box 10007 Saipan, MP 96950</p>	<p>The Hon. Carol Thomas-Jacobs Attorney General of U.S. Virgin Islands 34-38 Kronprindsens Gade GERS Building, 2nd Floor St. Thomas, Virgin Islands 00802</p>

# Exhibit C

Personal Touch Holding Corp. Settlement  
c/o Kroll Settlement Administration  
P.O. Box 225391  
New York, NY 10150-5391

FIRST CLASS MAIL  
U.S. POSTAGE PAID  
CITY, ST  
PERMIT NO. XXXX

Electronic Service Requested

<<Barcode>>

Class Member ID: <<Refnum>>

**Postal Service: Please do not mark or cover barcode**

<<FirstName>> <<LastName>>

<<Address1>>

<<Address2>>

<<City>>, <<State>> <<Zip>>-<<zip4>>



**Notice of Proposed Settlement of Class Action**

**If you received a notice of Data Breach regarding the Data Breach from Personal Touch Holding Corp. ("PTHC") on or around March 24, 2021, you may be eligible for a class action settlement payment.**

A settlement has been reached in a class action lawsuit about a Data Breach that occurred in or about January 2021, which potentially exposed personally identifiable information ("PII") and/or protected health information ("PHI") of patients and employees of PTHC or its subsidiaries, (the "Data Breach"). The lawsuit alleges that PTHC was responsible for the Data Breach because it did not take appropriate care to protect PII and PHI from unauthorized disclosure. The lawsuit is called *Michael Everetts v. Personal Touch Holding Corp.*, Case No. 2:21-cv-02061 (JMA) (ARL), pending in the United States District Court for the Eastern District of New York (the "Litigation"). PTHC denies the claims and denies any wrongdoing.

**PTHC records show you are a likely a Settlement Class Member.** Individuals whose information **was** potentially exposed in the Data Breach may submit a Settlement Claim of up to \$7,500 for documented unreimbursed, Out-of-Pocket Losses and Attested Time fairly traceable to the Data Breach. Individuals whose information **was not** potentially exposed in the Data Breach may submit a Settlement Claim for documented unreimbursed, Out-of-Pocket Losses of up to \$125 and Attested Time fairly traceable to receiving notice of the Data Breach. The settlement also includes two years of Identity Defense Total Service for individuals whose PII or PHI was potentially exposed in the Data Breach.

**If you are a Settlement Class Member and you want to receive any benefits from the settlement, you must complete and submit a Claim Form along with any required supporting information.**

**Claim Forms can be found and completed on the website, [www.personaltouchdatasettlement.com](http://www.personaltouchdatasettlement.com).**

**The Claims Deadline to submit a Claim Form is May 21, 2024.**

Settlement Class Members may also request exclusion from the settlement or object to it. Requests for exclusion are due by the Opt-Out Date of **May 21, 2024**. Settlement Class Members who do not request exclusion can object to the settlement. Objections are due by the Objection Date of **May 21, 2024**. The Court will hold a Final Fairness Hearing on **July 22, 2024 at 10:00 a.m.** at the United States District Court for the Eastern District of New York, 100 Federal Plaza, Central Islip, NY 11722, Courtroom 920, to consider whether to approve the settlement. The Court will hear objections, determine if the settlement is fair, and consider Proposed Class Counsel's request for attorneys' fees, costs, and expenses of \$510,000 and service award of up to \$2,500 for the Representative Plaintiff. You or your own lawyer may ask to appear at the hearing to be heard by the Court, but you do not have to. The motion for attorneys' fees and costs and service awards for the Representative Plaintiff will be posted on the website after it is filed with the Court.

The Court has appointed the following Proposed Class Counsel to represent the Settlement Class in this Litigation: John A. Yanchunis of Morgan & Morgan Complex Litigation Group, 201 N. Franklin St., 7th Floor, Tampa, Florida 33602 and Ryan D. Maxey of Maxey Law Firm, 107 N. 11th St. #402, Tampa, FL 33602.

**This is only a summary.** For detailed information visit **[www.personaltouchdatasettlement.com](http://www.personaltouchdatasettlement.com)** or call **(833) 462-3481**. You may contact the Claims Administrator at Personal Touch Holding Corp. Settlement, c/o Kroll Settlement Administration, PO Box 225391, New York, NY, 10150-5391.

Postage  
Required

***Personal Touch Holding Corp. Settlement***

c/o Kroll Settlement Administration

P.O. Box 225391

New York, NY 10150-5391



# Exhibit D

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

**If you received a notice of Data Breach regarding the Data Breach from Personal Touch Holding Corp. (“PTHC”) on or around March 24, 2021, you may be eligible for a class action settlement payment.**

*A Court authorized this Notice. This is not a solicitation from a lawyer.*

- A settlement has been reached in a class action lawsuit about a Data Breach that occurred in or around January 2021, which potentially exposed personally identifiable information (“PII”) and/or protected health information (“PHI”) of patients and employees of PTHC or its subsidiaries (the “Data Breach”).
- PTHC, through its subsidiaries, provides home health and home care personnel and related services to individuals in their homes. The circumstances giving rise to this case occurred in or about January 2021 and involved an unauthorized person who accessed PTHC’s private cloud hosted by its managed service providers and may have accessed private cloud business records of PTHC and its direct and indirect subsidiaries. The exposed information may have included medical treatment information, insurance card and health plan benefit numbers, medical record numbers, first and last name, address, telephone numbers, date of birth, Social Security Numbers, and financial information, including check copies, credit card numbers, and bank account information. Subsequently, a lawsuit was filed against PTHC, alleging that it did not take appropriate care to protect the patients and employees from the Data Breach.
- PTHC denies all of the Plaintiff’s claims in the lawsuit and maintains it did not do anything wrong but has agreed to settle the case to avoid the expense and burdens of litigation.
- The settlement includes all Persons to whom PTHC sent notification, whether by direct written notice or substitute notice, that their PII and/or PHI may have been or was exposed to unauthorized third parties as a result of the Data Breach.
- The settlement provides payments to individuals who submit Approved Claims for Out-of-Pocket Losses and Attested Time that are fairly traceable to the Data Breach or fairly traceable to receiving notice of the Data Breach.
- The settlement also includes two years of Identity Defense Total Service for individuals whose PII or PHI was potentially exposed in the Data Breach. You must submit a Settlement Claim to receive this benefit.

**Your legal rights are affected even if you do nothing. Read this Notice carefully.**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>Submit a Claim</b>	The only way to get a payment and/or credit monitoring. You must submit a Settlement Claim by the Claims Deadline, <b>May 21, 2024.</b>
<b>Ask to be Excluded</b>	Get no payment. The only option that allows you to sue PTHC over the claims resolved by this settlement. You must exclude yourself by the Opt-Out Date of <b>May 21, 2024.</b>
<b>Object</b>	Write to the Court about why you do not like the settlement. You must object by the Objection Date of <b>May 21, 2024.</b>
<b>Do Nothing</b>	Get no payment. Give up rights.

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case still has to decide whether to grant final approval of the settlement. Payments will only be made after the Court grants final approval of the settlement and after any appeals are resolved.

**WHAT THIS NOTICE CONTAINS**

**BASIC INFORMATION.....PAGE 3**

1. Why was this Notice issued?

2. What is this lawsuit about?

3. Why is this lawsuit a class action?

4. Why is there a settlement?

**WHO IS IN THE SETTLEMENT?..... PAGE 3**

5. How do I know if I am included in the settlement?

6. What if I am not sure whether I am included in the settlement?

**THE SETTLEMENT BENEFITS ..... PAGE 4-5**

7. What does the settlement provide?

8. What payments are available for individuals whose personally identifiable information or protected health information *was* potentially exposed in the Data Breach?

9. What payments are available for individuals whose personally identifiable information or protected health information *was not* potentially exposed in the Data Breach?

**HOW TO GET BENEFITS .....PAGE 5**

10. How do I get benefits?

11. How will Settlement Claims be decided?

**REMAINING IN THE SETTLEMENT .....PAGE 5**

12. Do I need to do anything to remain in the settlement?

13. What am I giving up as part of the settlement?

**EXCLUDING YOURSELF FROM THE SETTLEMENT .....PAGE 5-6**

14. If I exclude myself, can I get a payment from this settlement?

15. If I do not exclude myself, can I sue PTHC for the same thing later?

16. How do I exclude myself from the settlement?

**THE LAWYERS REPRESENTING YOU .....PAGE 6**

17. Do I have a lawyer in this case?

18. How will the lawyers be paid?

**OBJECTING TO THE SETTLEMENT..... PAGE 6-7**

19. How do I tell the Court that I do not like the settlement?

20. What is the difference between objecting and asking to be excluded?

**THE COURT’S FAIRNESS HEARING .....PAGE 7-8**

21. When and where will the Court decide whether to approve the settlement?

22. Do I have to attend the hearing?

23. May I speak at the hearing?

**IF YOU DO NOTHING .....PAGE 8**

24. What happens if I do nothing?

**GETTING MORE INFORMATION.....PAGE 8**

25. How do I get more information?

## BASIC INFORMATION

### 1. Why was this Notice issued?

The Court authorized this Notice because you have a right to know about the proposed settlement in this class action lawsuit and about all of your options before the Court decides whether to give “final approval” to the settlement. This Notice explains the legal rights and options that you may exercise before the Court decides whether to approve the settlement.

This matter involves a lawsuit styled *Everetts v. Personal Touch Holding Corp.*, in the United States District Court for the Eastern District of New York, Case No. 2:21-cv-02061 (the “Litigation”). The Person who sued is called the Plaintiff. PTHC is called the Defendant.

### 2. What is this Litigation about?

The Litigation claims that PTHC (“Defendant”) was responsible for the Data Breach and asserts claims such as: negligence, breach of contract, and breach of confidence. The Litigation seeks compensation for people who experienced unreimbursed, documented Out-of-Pocket Expenses, fraudulent charges, and/or Attested Time related the Data Breach or to receiving notice of the Data Breach.

PTHC denies all of the Plaintiff’s claims and maintains it did not do anything wrong.

### 3. Why is this Litigation a class action?

In a class action, one person called the “Representative Plaintiff” sues on behalf of all people who have similar claims. All of these people together are the “Settlement Class” or “Settlement Class Members.” In this case, the Representative Plaintiff is Michael Everetts. One Court resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Settlement Class.

### 4. Why is there a settlement?

By agreeing to settle, both sides avoid the cost and risk of a trial, and people who submit valid timely Claim Forms will get compensation. The Representative Plaintiff and his attorneys believe the settlement is fair, reasonable, and adequate and, thus, best for the Settlement Class and its members. The settlement does NOT mean that PTHC did anything wrong.

## WHO IS IN THE SETTLEMENT?

### 5. How do I know if I am included in the settlement?

You are included in the Settlement Class if you are a Person to whom PTHC sent notification, whether by direct written notice or substitute notice, on or about March 24, 2021, that PII and/or PHI may have been exposed to unauthorized third parties as a result of the Data Breach occurring in or about January 2021.

Specifically excluded from the Settlement Class are: (i) PTHC and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class;

(iii) the Judge assigned to evaluate the fairness of this settlement; (iv) the attorneys representing the Parties in the Litigation; and (v) any other individual found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity involved in the Data Breach or who pleads *nolo contendere* to any such charge.

### 6. What if I am not sure whether I am included in the settlement?

If you are not sure whether you are included in the settlement, you may call (833) 462-3481 with questions or visit [www.personaltouchdatasettlement.com](http://www.personaltouchdatasettlement.com). You may also write with questions to Personal Touch Holding Corp., c/o Kroll Settlement Administration, PO Box 225391, New York, NY 10150-5391. Please do not contact the Court with questions.

## THE SETTLEMENT BENEFITS

### 7. What does the settlement provide?

The settlement will provide payments to people who submit valid timely Claim Forms. There are two types of general payments that are available:

- (1) Reimbursement for Out-of-Pocket Losses and Attested Time for individuals whose PII or PHI *was* potentially exposed in the Data Breach (Question 8) and
- (2) Reimbursement for Out-of-Pocket Losses and Attested Time for individuals whose PII or PHI *was not* potentially exposed in the Data Breach (Question 9).

You must provide proof of your Settlement Class membership in the form of either (1) the unique identifier provided in the Notice you received by postcard or e-mail; or (2) name and physical address you provided to PTHC or its subsidiaries for healthcare or employment purposes.

If you provide a bill or payment card statement as part of required proof for any part of your Settlement Claim, you may redact unrelated transactions and all but the first four and last four digits of any account number. In order to claim each type of payment, you must provide related documentation with the Claim Form, and the expense for which you are submitting a Claim Form cannot have been reimbursed through any other source.

For individuals whose PII or PHI was potentially exposed in the Data Breach, the settlement also includes Identity Defense Total Service for a period of 2 years from the effective date of the settlement. You must submit a Settlement Claim to receive this benefit.

Finally, as part of the settlement, PTHC has agreed to adjust its internal controls and systems to further secure its PII and PHI. More details are provided in the Settlement Agreement, which is available at [www.personaltouchdatasettlement.com](http://www.personaltouchdatasettlement.com).

### 8. What payments are available for individuals whose personally identifiable information or protected health information *was* potentially exposed in the Data Breach?

Settlement Class Members whose PII or PHI *was* potentially exposed in the Data Breach are each eligible to receive reimbursement of up to \$7,500

(in total, per person) for the following categories of unreimbursed, Out-of-Pocket Losses and Attested Time fairly traceable to the Data Breach, including:

- unreimbursed costs, expenses, losses or charges incurred a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of Settlement Class Member's personal information;
- other miscellaneous expenses incurred related to any Out-of-Pocket Expense such as notary, fax, postage, copying, mileage, bank, and long-distance telephone charges;
- credit monitoring or other mitigative costs that were incurred on or after January 20, 2021, through the date of the Settlement Class Member's claim submission;
- unpaid time off work to address issues fairly traceable to the Data Breach at the actual hourly rate of that Settlement Class Member;
- up to three (3) hours of unreimbursed Attested Time (at \$25 per hour) spent remedying issues related to the Data Breach.

### 9. What payments are available for individuals whose personally identifiable information or protected health information *was not* potentially exposed in the Data Breach?

Settlement Class Members whose PII or PHI *was not* potentially exposed in the Data Breach are each eligible to receive reimbursement for the following categories of unreimbursed, Out-of-Pocket Losses up to a cap of One Hundred Twenty-Five Dollars (\$125) and Attested Time fairly traceable to receiving notice of the Data Breach, including:



- miscellaneous expenses incurred related to any Out-of- Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges; and
- credit monitoring or other mitigative costs that were incurred on or after January 20, 2021 (or the earliest verifiable date of receipt of notice from Defendant of the Data Breach) through the date of the Settlement Class Member’s claim submission.

## HOW TO GET BENEFITS

### 10. How do I get benefits?

To ask for a payment or, if applicable, to sign up for credit monitoring, you must complete and submit a Claim Form. Claim Forms are available at [www.personaltouchdatasettlement.com](http://www.personaltouchdatasettlement.com), or you may request one by mail by calling (833) 462-3481. Read the instructions carefully, fill out the Claim Form, and mail it postmarked no later than **May 21, 2024** to:

Personal Touch Holding Corp.  
c/o Kroll Settlement Administration  
PO Box 225391  
New York, NY 10150-5391

### 11. How will Settlement Claims be decided?

The Claims Administrator will decide in their professional judgment whether the information provided on a Claim Form is complete, timely and valid. The Claims Administrator may require additional information from any claimant. If the required information is not provided timely, the Settlement Claim will be considered invalid and will not be paid.

## REMAINING IN THE SETTLEMENT

### 12. Do I need to do anything to remain in the Settlement?

You do not have to do anything to remain in the Settlement, but if you want a payment you must submit a Claim Form postmarked by **May 21, 2024**.

### 13. What am I giving up as part of the Settlement?

If the settlement becomes final, you will give up your right to sue for the claims being resolved by this settlement. The specific claims you are giving up are described in Section 1.27 of the Settlement Agreement. You will be “releasing” PTHC and all related people or entities as described in Sections 1.26 and 1.28 of the Settlement Agreement. The Settlement Agreement is available at [www.personaltouchdatasettlement.com](http://www.personaltouchdatasettlement.com).

The Settlement Agreement describes the Released Claims with specific descriptions, so read it carefully. If you have any questions you can talk to the law firm listed in Question 17 for free or, you can, of course, talk to your own lawyer at your own expense if you have questions about what this means.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this settlement, but you want to keep the right to sue PTHC about issues in this case, then you must take steps to get out of the Settlement Class. This is called excluding yourself from – or is sometimes referred to as “opting out” of – the Settlement Class.

### 14. If I exclude myself, can I get a payment from this settlement?

No. If you exclude yourself, you will not be entitled to any benefits of the settlement, but you will not be bound by any judgment in this case.

**15. If I do not exclude myself, can I sue PTHC for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue for the claims that this settlement resolves. You must exclude yourself from the Settlement Class to start your own lawsuit or to be part of any different lawsuit relating to the claims in this case. If you exclude yourself, do not submit a Claim Form to ask for a payment.

**16. How do I exclude myself from the Settlement?**

To exclude yourself, send a letter that says you want to be excluded from the settlement in the Litigation styled *Everetts v. Personal Touch Holding Corp.*, in the United States District Court for the Eastern District of New York, Case No. 2:21-cv-02061. Include your name, address, and signature. You must mail your exclusion request postmarked by **May 21, 2024**, to:

Personal Touch Holding Corp. Settlement Exclusions  
c/o Kroll Settlement Administration  
PO Box 225391  
New York, NY 10150-5391

**THE LAWYERS REPRESENTING YOU**

**17. Do I have a lawyer in this case?**

Yes. The Court appointed the following lawyers as “Proposed Class Counsel”: John A. Yanchunis of MORGAN & MORGAN COMPLEX LITIGATION GROUP, 201 N. Franklin St., 7th Floor, Tampa, Florida 33602 and Ryan D. Maxey of Maxey Law Firm, P.A., 107 N. 11th St. #402 Tampa, Florida, 33602.

You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

**18. How will the lawyers be paid?**

Proposed Class Counsel will request the Court’s approval of an award for attorneys’ fees and reasonable costs and expenses of up to \$510,000. Proposed Class Counsel will also request approval of a service award of \$2,500 for the Representative Plaintiff. Any amount that the Court awards for attorneys’ fees, costs, expenses, and a service award will be paid separately per the terms of the Settlement Agreement and will not reduce the amount of payments to Settlement Class Members who submit Approved Claims.

**OBJECTING TO THE SETTLEMENT**

You can tell the Court that you do not agree with the settlement or some part of it.

**19. How do I tell the Court that I do not like the settlement?**

You can object to the settlement if you do not like it or some part of it. The Court will consider your views. To do so, you must **file** a written objection in this case, *Everetts v. Personal Touch Holding Corp.*, in the United States District Court for the Eastern District of New York, Case No. 2:21-cv-02061, with the Clerk of the Court at the address below.

Your objection must include all of the following:

- the name or caption of this Litigation;
- your full name, address, telephone number, and e-mail address (if any);
- information identifying you as a Settlement Class Member, including proof that you are a member of the Settlement Class, which is described in response to Question 5;

- a written statement of all grounds for the objection, accompanied by any legal support for the objection that you believe is applicable;
- the identity of all counsel representing you, if any, in connection with your objection;
- a statement confirming whether you intend to personally appear and/or testify at the Final Fairness Hearing;
- a statement identifying all class action settlements objected to by the Settlement Class Member in the previous 5 years; and
- your signature or the signature of your duly authorized attorney or other duly authorized representative.

To be timely, your objection must be **filed** with the Clerk of the Court for the United States District Court for the Eastern District of New York no later than **May 21, 2024**.

In addition, you must **mail** a copy of your objection to both Proposed Class Counsel and PTHC’s counsel, postmarked no later than **May 21, 2024**:

<b>Court</b>	<b>Proposed Class Counsel</b>	<b>PTHC’s Counsel</b>
Clerk of the Court United States District Court for the New York Eastern District 100 Federal Plaza Central Islip, NY 11722	John A. Yanchunis  MORGAN & MORGAN COMPLEX LITIGATION GROUP 201 N. Franklin St., 7 <sup>th</sup> Floor, Tampa, Florida 33602  Ryan D. Maxey Maxey Law Firm, P.A. 107 N. 11th St. #402 Tampa, Florida, 33602	RUSKIN MOSCOU FALTISCHEK, P.C. Jonathan C. Sullivan, Esq. Michael A.H. Schoenberg, Esq. 1425 RXR Plaza East Tower, 15 <sup>th</sup> Floor Uniondale, New York 11566

**20. What is the difference between objecting and asking to be excluded?**

Objecting is telling the Court that you do not like the settlement and why you do not think it should be approved. You can object only if you do not exclude yourself from the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

**THE COURT’S FINAL FAIRNESS HEARING**

The Court will hold a hearing to decide whether to grant final approval of the settlement.

**21. When and where will the Court decide whether to approve the settlement?**

The Court will hold a Final Fairness Hearing at 10:00 a.m. on **July 22, 2024**, at the United States District Court for the Eastern District of New York, 100 Federal Plaza, Central Islip, NY 11722, Courtroom 920 (or by Zoom if the Court so orders). The hearing may be moved to a different date or time without additional notice, so it is a good idea to check [www.personaltouchdatasettlement.com](http://www.personaltouchdatasettlement.com) or call (833) 462-3481. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are timely objections, the Court will consider them and will listen to people who have asked to speak at the hearing if such a request has been properly made. The Court will also rule on the request for an award of attorneys’ fees and reasonable costs and expenses, as well as the request for an service award for the Representative Plaintiff. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

**22. Do I have to attend the hearing?**

No. Proposed Class Counsel will present the Settlement Agreement to the Court. You or your own lawyer are welcome to attend at your expense, but you are not required to do so. If you send an objection, you do not have to come to the Court to talk about it. As long as you filed your written objection on time with the Court and mailed it according to the instructions provided in Question 19, the Court will consider it.

**23. May I speak at the hearing?**

You may ask the Court for permission to speak at the Final Fairness Hearing. To do so, you must file an objection according to the instructions in Question 19, including all the information required therein. Your objection must be **filed** with the Clerk of Court for the United States District Court for the Eastern District of New York by mailing it postmarked no later than **May 21, 2024**. In addition, you must **mail** a copy of your objection to both Class Counsel and PTHC's counsel listed in Question 19, postmarked no later than **May 21, 2024**.

**IF YOU DO NOTHING**

**24. What happens if I do nothing?**

If you do nothing, you will get no benefits from this settlement. Unless you exclude yourself, after the settlement is granted final approval and the Judgment becomes Final, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit about the legal issues in this case, ever again against PTHC or any related people or entities as described in Sections 1.26 and 1.28 of the Settlement Agreement. The Settlement Agreement is available at [www.personaltouchdatasettlement.com](http://www.personaltouchdatasettlement.com).

**GETTING MORE INFORMATION**

**25. How do I get more information?**

This Notice summarizes the proposed settlement. More details are in a Settlement Agreement. You can get a copy of the Settlement Agreement at [www.personaltouchdatasettlement.com](http://www.personaltouchdatasettlement.com). You may also write with questions to the Claims Administrator, Personal Touch Holding Corp., c/o Kroll Settlement Administration, PO Box 225391, New York, NY 10150-5391. You can also get a Claim Form at the website, or by calling the toll-free number, (833) 462-3481.

# Exhibit E



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## **PERSONAL TOUCH HOLDING CORP. SETTLEMENT CLAIM FORM**

**This Claim Form should be filled out online or submitted by mail if you received a notice of Data Breach regarding the Data Breach from Personal Touch Holding Corp. (“PTHC”) on or around March 24, 2021, and you (i) had your personal information or protected health information potentially exposed in the Data Breach and had unreimbursed costs or expenditures that are fairly traceable to the Data Breach and/or time spent remedying issues related to the Data Breach, (ii) did not have your personal information or protected health information potentially exposed in the Data Breach and had unreimbursed costs or expenditures that are fairly traceable to receipt of notice from Defendant of the Data Breach and/or time spent remedying issues related to the receipt of notice from Defendant of the Data Breach, and/or (iii) had your personal information or protected health information potentially exposed in the Data Breach and would like credit monitoring services and identity theft insurance. You may get a check or electronic payment if you fill out this Claim Form, if the settlement is approved, and if you are found to be eligible for a payment.**

The settlement Notice describes your legal rights and options. To obtain the settlement Notice and find more information regarding your legal rights and options, please visit the official settlement website, [www.personaltouchdatasettlement.com](http://www.personaltouchdatasettlement.com), or call toll-free (833) 462-3481.

If you wish to submit a Settlement Claim for a settlement payment electronically, you may go online to the settlement website, [www.personaltouchdatasettlement.com](http://www.personaltouchdatasettlement.com), and follow the instructions on the “Submit a Claim” page.

If you wish to submit a Settlement Claim for a settlement payment via standard mail, you need to provide the information requested below and mail this Claim Form to Personal Touch Holding Corp., c/o Kroll Settlement Administration, PO Box 225391, New York, NY 10150-5391, postmarked by **May 21, 2024**. Please print clearly in blue or black ink.



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Page 1 of 8



712780000000

**1. SETTLEMENT CLASS MEMBER INFORMATION**

*Required Information:*

\_\_\_\_\_  
First Name MI Last Name

\_\_\_\_\_  
Address 1

\_\_\_\_\_  
Address 2

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
Country

( \_\_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_  
Phone Number

\_\_\_\_\_  
E-mail @

**PAYMENT ELIGIBILITY INFORMATION**

To prepare for this section of the Claim Form, please review the settlement Notice and the Settlement Agreement (available for download at [www.personaltouchdatasettlement.com](http://www.personaltouchdatasettlement.com)) for more information on who is eligible for a payment and the nature of the expenses or losses that can be claimed.

To help us determine if you are entitled to a settlement payment, please provide as much information as possible.

**A. Verification of Class Membership**

You are only eligible to file a Settlement Claim if you are a person to whom PTHC sent notification, whether by direct written notice or substitute notice, that personal information and/or protected health information may have been or was exposed to unauthorized third parties as a result of the Data Breach occurring in or about January 2021.

By submitting a Settlement Claim and signing the certification below, you are verifying that you were notified by mail or via substitute notice of the Data Breach announced by PTHC on or about March 24, 2021.



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Page 2 of 8



712780000000

In addition, to allow the Claims Administrator to confirm your membership in the Settlement Class, you must provide either:

- (1) The Class Member ID provided in the Notice you received by postcard or e-mail  
or
- (2) name and physical address you provided to PTHC for healthcare or employment related purposes. Thus, please **EITHER:**

(1) Provide the Class Member ID provided in the Notice you received:

7 1 2 7 8 \_\_\_\_\_

**OR**

(2) Provide your name \_\_\_\_\_

and physical address you provided to PTHC for healthcare or employment related purposes:

\_\_\_\_\_

**DOCUMENTATION IS REQUIRED**

**B. Out-Of-Pocket Losses and Attested Time**

Check the box for each category of Out-of-Pocket Losses or Attested Time that you incurred as a result of the Data Breach. Please be sure to fill in the total amount you are claiming for each category and attach the required documentation as described in **bold type** (if you are asked to provide account statements as part of required proof for any part of your claim, you may redact unrelated transactions and all but the first four and last four digits of any account number). Please round total amounts down or up to the nearest dollar.

**I. Expenses and Time Fairly Traceable to the Data Breach**

Only complete section I if **your personally identifiable information or protected health information was potentially exposed in the Data Breach**, and you incurred expenses that are fairly traceable to the Data Breach, you may be entitled to compensation for these expenses. **If your information was NOT exposed, skip this section.** To obtain reimbursement under this category, you must attest to the following:

I attest I incurred unreimbursed fees or other charges from your bank or credit card company incurred from January 20, 2021 to May 21, 2024 (the “Claims Deadline”) due to the Data Breach.

DATE	DESCRIPTION	AMOUNT
____ / ____ / ____		
____ / ____ / ____		

Examples: Unreimbursed overdraft fees, over-the-limit fees, late fees, or charges due to insufficient funds or interest.

**Documentation Required: A copy of a bank or credit card statement or other proof of claimed fees or charges (you may redact unrelated transactions and all but the first four and last four digits of any account number)**



71278



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Page 3 of 8





712780000000

I attest I incurred unreimbursed fees relating to your account being frozen or unavailable incurred from January 20, 2021 to May 21, 2024 due to the Data Breach.

DATE	DESCRIPTION	AMOUNT
___ / ___ / ___	_____	\$ _____
___ / ___ / ___	_____	\$ _____

Examples: You were charged interest by a payday lender due to card cancellation or due to an over-limit situation, or you had to pay a fee for a money order or other form of alternative payment because you could not use your debit or credit card, and these charges and payments were not reimbursed.

**Documentation Required: Attach a copy of receipts, bank statements, credit card statements, or other proof that you had to pay these fees (you may redact unrelated transactions and all but the first four and last four digits of any account number).**

I attest I incurred unreimbursed fees or other charges relating to the reissuance of your credit or debit card incurred from January 20, 2021 to May 21, 2024 due to the Data Breach.

DATE	DESCRIPTION	AMOUNT
___ / ___ / ___	_____	\$ _____
___ / ___ / ___	_____	\$ _____

Examples: Unreimbursed fees that your bank charged you because you requested a new credit or debit card.

**Documentation Required: Attach a copy of a bank or credit card statement or other receipt showing these fees (you may redact unrelated transactions and all but the first four and last four digits of any account number).**

I attest I incurred other unreimbursed incidental telephone, internet, mileage or postage expenses directly related to the Data Breach incurred from January 20, 2021, to May 21, 2024 due to the Data Breach.

DATE	DESCRIPTION	AMOUNT
___ / ___ / ___	_____	\$ _____
___ / ___ / ___	_____	\$ _____

Examples: Unreimbursed long distance phone charges, cell phone charges (only if charged by the minute), or data charges (only if charged based on the amount of data used).

**Documentation Required: Attach a copy of the bill from your telephone company, mobile phone company, or internet service provider that shows the charges (you may redact unrelated transactions and all but the first four and last four digits of any account number).**



71278



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Page 4 of 8



712780000000

I attest I purchased credit reports or credit monitoring charges purchased from January 20, 2021, to May 21, 2024 due to the Data Breach. This category is limited to services purchased primarily as a result of the Data Breach and if purchased from January 20, 2021, to May 21, 2024.

To obtain reimbursement under this category, you must attest to the following:

I attest I purchased credit reports from January 20, 2021, to May 21, 2024, primarily due to the Data Breach and not for other purposes.

DATE	Cost
___ ___ / ___ ___ / ___ ___	\$ _____
___ ___ / ___ ___ / ___ ___	\$ _____

Examples: The cost of a credit report(s) that you purchased after hearing about the Data Security Incident.

**Documentation Required: Attach a copy of a receipt or other proof of purchase for each product or service purchased (you may redact unrelated transactions).**

I attest I incurred between one (1) and three (3) hours of time spent monitoring accounts or otherwise dealing with the aftermath / clean-up of the Data Breach from January 20, 2021 to May 21, 2024 (round down to the nearest hour and check only one box).

- 1 Hour     
  2 Hours     
  3 Hours

Examples: You spent at least one (1) full hour calling customer service lines, writing letters or e-mails, or on the internet in order to get fraudulent charges reversed or in updating automatic payment programs because your card number changed. Please note that the time that it takes to fill out this Claim Form is not reimbursable and should not be included in the total number of hours claimed.

Check all activities, below, which apply.

- Time spent obtaining credit reports.
- Time spent dealing with a credit freeze.
- Time spent dealing with bank or credit card fee issues.
- Time spent monitoring accounts.
- Other

If you choose any of the options above, please provide a brief description of (1) the actions taken in response to the Data Breach; and (2) the time associated with each action.

Description: \_\_\_\_\_  
 \_\_\_\_\_





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To recover for Attested Time under this section, you must select one of the boxes above and provide a narrative description of the activities performed during the time claimed, and you must have at least one hour of lost time in order to claim this benefit.

**Attestation (You must check the box below to obtain compensation for Attested Time)**

I attest under penalty of perjury that I spent the number of hours claimed above making reasonable efforts to deal with the Data Security Incident.

II. Expenses and Time Fairly Traceable to Receiving Notice of the Data Breach

If you completed section I, do not complete this section. If your personally identifiable information or protected health information *was not* potentially exposed in the Data Breach, and you incurred expenses or spent time as a result of receiving the notice of Data Breach, you may be entitled to compensation for these expenses. To obtain reimbursement under this category, you must attest to the following:

I attest the timing of the loss occurred from January 20, 2021, to the May 21, 2024.

I attest I incurred the miscellaneous expenses incurred related to any Out-of-Pocket Losses such as notary, fax, postage, copying, mileage, and long-distance telephone charges

DATE	DESCRIPTION	AMOUNT
___ / ___ / ___	_____	\$ _____
___ / ___ / ___	_____	\$ _____

I attest I incurred credit monitoring or other mitigative costs that were incurred on or after January 20, 2021.

DATE	DESCRIPTION	AMOUNT
___ / ___ / ___	_____	\$ _____
___ / ___ / ___	_____	\$ _____

I attest I incurred between one (1) and three (3) hours of time spent remedying issues related to the receipt of notice from Defendant of the Data Breach from January 20, 2021, to May 21, 2024 (round down to the nearest hour), which has not already been claimed in Section I, above. (round down to the nearest hour and check only one box).

1 Hour

2 Hours

3 Hours



71278



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Page 6 of 8



712780000000

Examples: You spent at least one (1) full hour calling customer service lines, writing letters or e-mails, or on the internet in updating automatic payment programs because your card number changed. Please note that the time that it takes to fill out this Claim Form is not reimbursable and should not be included in the total number of hours claimed.

Check all activities, below, which apply.

- Calling bank/credit card customer service lines regarding potential fraudulent transactions.
- Time on the internet checking for potential fraudulent transactions.
- Time on the internet updating automatic payment programs due to new card issuance.
- Calling credit reporting bureaus regarding potential fraudulent transactions and/or credit monitoring.
- Other.

If you choose any of the options above, please provide a brief description of (1) the actions taken in response to the Data Breach; and (2) the time associated with each action. \_\_\_\_\_

**To recover for lost time under this section, you must select one of the boxes above and provide a narrative description of the activities performed during the time claimed, and you must have at least one hour of lost time in order to claim this benefit.**

**Attestation (You must check the box below to obtain compensation for Attested Time)**

**I attest under penalty of perjury that I spent the number of hours claimed above making reasonable efforts to deal with the Data Breach.**

III. Identity Defense Total Service

All Settlement Class Members whose personally identifiable information or protected health information was potentially exposed in the Data Breach are eligible to receive two (2) years of Identity Defense Total Service.

Do you wish to sign up for free Identity Defense Total Service?

Yes, I want to sign up to receive free Identity Defense Total Service.

Email Address: \_\_\_\_\_@\_\_\_\_\_

If you select “yes” for this option, you will need to follow instructions and use an activation code that you receive after the settlement is Final. Identity Defense Total Service will not begin until you use your activation code to enroll. Activation instructions will be provided to your email address or, if you do not have an email address, to your home address. If you do not select “yes” for this option, then you will not receive free Identity Defense Total Services.



71278



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Page 7 of 8



7127800000000

C. Certification

I declare under penalty of perjury under the laws of the United States that the information supplied in this Claim Form by the undersigned is true and correct to the best of my recollection, and that this form was executed at \_\_\_\_\_ [City], \_\_\_\_\_ [ State] on the date set forth below:

I understand that I may be asked to provide supplemental information by the Claims Administrator before my Settlement Claim will be considered complete and valid.

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

D. Submission Instruction

Once you've completed all applicable sections, please mail this Claim Form and all required supporting documentation to the address provided below, postmarked by **May 21, 2024**.

Personal Touch Holding Corp.  
c/o Kroll Settlement Administration  
PO Box 225391  
New York, NY 10150-5391



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Page 8 of 8

# Exhibit F

## **Exclusion List**

<b>Count</b>	<b>Record Identification Number</b>
1	712789WPG7D6J
2	71278CPNH5NJW

# Exhibit G



Jonathan Sullivan and Michael Schoenberg  
1425 RXR Plaza East Tower  
15th Floor Uniondale  
New York, NY 11566  
United States  
jsullivan@rmfpc.com;MSCHOENBERG@rmfpc.com

<b>Total Amount:</b>	<b>USD 350,000.00</b>
Invoice No:	TI000000128-2010
Invoice Date:	February 13, 2024
Due Date:	February 13, 2024
Contract No.	ORD-08326-F0H2N6
Contact:	Paul Ferruzzi

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Important Note: Please include our invoice number and name of your organization with all payments and send remittance advice to AR@kroll.com.**



Jonathan Sullivan  
Micheal Schoenberg  
Morgan & Morgan  
1425 RXR Plaza East Tower  
15th Floor Uniondale  
New York, NY 11566  
jsullivan@rmfpc.com  
MSCHOENBERG@rmfpc.com

**Total Due: USD 19,030.80**  
Invoice No: INV-14861-W6M9Q6M  
Invoice Date: April 26, 2024  
Due Date: May 19, 2024  
Contact: Paul Ferruzzi

**PRIVILEGED & CONFIDENTIAL**

Through February 29, 2024

**RE: Everetts v Personal Touch Holding Corp.**

Fees for Hourly Professional Services Rendered		USD 18,928.50
Other Professional Services Rendered		66,474.98
		283,627.32
Out-of-Pocket Expenses		
Postage Courier Expense	499.32	
Postage Supplies	283,128.00	
Applied Retainer		-350,000.00
<b>Total:</b>		<b>USD 19,030.80</b>

***Please note this invoice covers current charges only and may not include previous unpaid invoice balances.***

**Remittance Instructions:**

Account Name: Kroll Settlement Administration LLC

Bank Name:

[Redacted]

**Billing Questions:**

T: [Redacted]

**Important Note: Please include our invoice number and name of your organization with all payments and send remittance advice to AR@kroll.com.**

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

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

Plaintiff,

v.

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

Defendants.

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

**PLAINTIFF’S OBJECTION TO REPORT AND RECOMMENDATION**

Plaintiff Steven K. Farmer (“Plaintiff”), individually and on behalf of all others similarly situated, pursuant to Federal Rule of Civil Procedure 72(a), objects to the Magistrate Judge’s Report and Recommendation (Doc. 43) (the “R&R”) granting in part and denying in part Plaintiff’s Unopposed Motion for Fee Award and Litigation Costs (Doc. 42) (the “Fee Motion”). Plaintiff respectfully submits that the Court should award Plaintiff \$300,000.00 in attorney’s fees and litigation costs, instead of the \$220,000.00 proposed in the R&R.

**Standard of Review**

“In the Eleventh Circuit, a district judge may accept, reject, or modify the magistrate judge’s report and recommendation after conducting a careful and

complete review of the findings and recommendations.” *Denning v. Mankin Law Grp., P.A.*, No. No: 8:21-cv-2822-MSS-MRM, 2022 WL 4139242, at \*1 (M.D. Fla. Sept. 12, 2022) (citing 28 U.S.C. § 636(b)(1); *Williams v. Wainwright*, 681 F.2d 732, 732 (11th Cir. 1982)). “A district judge ‘shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.’” *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)). “This requires that the district judge ‘give fresh consideration to those issues to which specific objection has been made by a party.’” *Id.* (quoting *Jeffrey S. v. State Bd. of Educ.*, 896 F.2d 507, 512 (11th Cir. 1990)). “In the absence of specific objections, there is no requirement that a district judge review factual findings *de novo*, *Garvey v. Vaughn*, 993 F.2d 776, 779 n.9 (11th Cir. 1993), and the court may accept, reject, or modify, in whole or in part, the findings and recommendations.” *Id.* (citing 28 U.S.C. § 636(b)(1)(C)). “The district judge reviews legal conclusions *de novo*, even in the absence of an objection.” *Id.* (citing *Cooper-Houston v. Southern Ry.*, 37 F.3d 603, 604 (11th Cir. 1994)).

## Argument

### **I. Background**

In the unopposed Fee Motion, Plaintiff requested an attorney’s fee and litigation costs award of \$300,000.00, which the Defendants agreed to pay separate from the sum provided for recompense for the class. (Doc. 42 at 3). In requesting

this award, Plaintiff explained the benefits to the class members resulting from the parties' proposed settlement, as follows:

In addition to the agreement to pay claims of class members up to a cap of \$500,000, the Court should consider as additional benefits the agreement by Defendants to pay settlement expenses, including notice and claims administration, and Class Counsel's attorneys' fees, costs, and expenses up to \$300,000, a sum which will not reduce or diminish the monetary benefits made available to class members. Finally, and as set forth in the settlement agreement, the parties negotiated invaluable injunctive relief designed to protect consumer information in Defendants' possession, and to protect a similar incident from occurring again.

In the R&R, the Magistrate Judge applied a constructive common fund approach and calculated the total settlement amount as \$800,000.00 by combining the \$500,000.00 cap for payments to class members and the \$300,000.00 requested for attorney's fees and litigation costs. (Doc. 43 at 7 n.1). The Magistrate Judge made no mention of the value of injunctive relief or the costs of settlement administration in calculating this amount.

The Magistrate Judge then reasoned that the requested \$300,000.00 fee and cost award would be 37.5% of the total settlement amount of \$800,000.00, and that such a percentage was unreasonable. *Id.* At 7. The Magistrate Judge concluded that a fee and cost award consisting of 30% of the total settlement amount was instead appropriate. *Id.*

**II. The Magistrate Judge should have considered the value of injunctive relief in calculating the total settlement amount.**

Plaintiff does not challenge the Magistrate Judge’s application of a constructive common fund approach in determining the total settlement amount. However, Plaintiff respectfully submits that, in addition to the \$500,000.00 cap for payments to class members and the amount of attorney’s fees and litigation costs, the Magistrate Judge should have also considered the value of injunctive relief designed to protect consumer information in Defendants’ possession, and to protect a similar incident from occurring again.

“The Eleventh Circuit recently confirmed that class counsel’s fee award also should be based on the value of ‘any non-monetary benefits conferred upon the class by the settlement,’ such as injunctive relief, as well as ‘the economics involved in prosecuting a class action.’” *M.D. v. Centene Corp.*, NO. 1:18-cv-22372-JB, 2020 WL 7585033, at \*8 (S.D. Fla. Oct. 7, 2020) (quoting *Poertner v. Gillette Co.*, 618 F. App’x 624, 628 (11th Cir. 2015)); see *Marty v. Anheuser-Busch Cos., LLC*, No. 13-cv-23656-JJO, 2015 WL 6391185, at \*2 (S.D. Fla. Oct. 22, 2015) (“Under Eleventh Circuit law, injunctive changes ... represent a benefit to the class and should be considered when [considering class counsel’s fee as part of] approving a class settlement.” (citations omitted); *Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1343 (S.D. Fla. 2007) (“Moreover, when determining the total value

of a class action settlement for purposes of calculating the attorneys' fee award, courts usually consider not only the compensatory relief, but also the economic value of any prospective injunctive relief obtained for the class.”) (citations omitted).

The injunctive relief required under the Settlement Agreement is as follows:

## 2.5 Equitable Relief.

For a period of 18 months following the execution of this Settlement Agreement, Humana and Cotiviti will maintain their vendor compliance and oversight policies that contain provisions protecting information security. Actual costs for the maintenance of such policies will be paid by Humana and Cotiviti separate and apart from the settlement consideration set forth in ¶¶ 2.1, 2.2, and 2.3 (above).

(Doc. 39-1 at 14). The injunctive relief was of particular importance given the data elements potentially impacted in the data incident, including names, partial or full social security numbers, dates of birth, addresses (with city, state, and zip code), phone numbers, email addresses, member identification numbers, subscriber identification numbers, dates of service, dates of death, provider names, medical record numbers, treatment information, and actual images (x-rays, photographs, etc.). (Doc. 39-1 at 2-3).

Considering that Humana sent notices related to the data incident to 64,653 Humana members (Doc. 39-1 at 3), calculating the value of the injunctive relief at a mere five dollars for each Humana member who received notice of the data incident

would put the value of the injunctive relief at \$323,265.00, or \$17,959.17 per month for each of the eighteen (18) months. The value to 64,653 Humana members in Humana and Cotiviti maintaining their vendor compliance and oversight policies that contain provisions protecting information security for eighteen (18) months is certainly worth at least five dollars to each of these individuals, particularly with information such as social security numbers and treatment information at issue.

Combining a \$500,000.00 cap for payments to class members, \$300,000.00 for attorney's fees and litigation costs, and \$323,265.00 for injunctive relief would result in a total settlement amount of \$1,123,265.00. The requested \$300,000.00 in attorney's fees and litigation costs would be 26.7% of this amount, well below the 30% the Magistrate Judge deemed reasonable.

**III. The Magistrate Judge should have considered the value of settlement expenses in calculating the total settlement amount.**

Plaintiff submits that the Magistrate Judge should have additionally considered the value of settlement expenses, including notice and claims administration for 64,653 Humana members that received notice of the data incident from Humana. *See* (Doc. 39-1 at 3).

Plaintiff admittedly did not provide the Magistrate Judge with the estimated costs of settlement administration when Plaintiff filed the Fee Motion. Plaintiff subsequently requested and obtained this information from Defendant's counsel.



The estimated cost of settlement administration is \$80,057.00. This amount should also be considered in determining the total settlement amount. Adding this amount would only further reduce the percentage of the total settlement value allocating to Plaintiff's requested attorney's fees and litigation costs.

### **Conclusion**

The Magistrate Judge calculated the total settlement value by considering only the cap on payments to class members and the requested attorney's fees and litigation costs. The Magistrate Judge should have additionally considered the value of the injunctive relief and the value of settlement. Given the information at issue for 64,653 Humana members, the value of the injunctive relief is clearly worth at least five dollars per individual, or at least \$323,265.00 altogether. After properly accounting for this amount, Plaintiff's request for \$300,000.00 in attorney's fees and litigation costs, consisting of 26.7% of the total settlement amount, is more than reasonable and well below the 30% that the Magistrate Judge deemed appropriate. Factoring in the \$80,057.00 for settlement administration further justifies the requested award.

Dated: January 11, 2023

/s John A. Yanchunis

John A. Yanchunis  
Ryan D. Maxey  
**MORGAN & MORGAN COMPLEX  
LITIGATION GROUP**  
201 N. Franklin Street, 7th Floor  
Tampa, Florida 33602  
(813) 223-5505  
[jyanchunis@ForThePeople.com](mailto:jyanchunis@ForThePeople.com)  
[rmaxey@ForThePeople.com](mailto:rmaxey@ForThePeople.com)

## CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on January 11, 2023, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to counsel of record by operation of the Court's electronic filing system.

/s/ John A. Yanchunis

John A. Yanchunis

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

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

Plaintiff,

v.

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

Defendants.

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

**ORDER GRANTING PLAINTIFF’S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND OTHER RELIEF AND MOTION FOR FEE AWARD AND LITIGATION COSTS AND ENTERING FINAL JUDGMENT**

On June 23, 2022, this Court entered an Order Granting Plaintiff’s Unopposed Motion to Direct Class Notice and Grant Preliminary Approval of Class Action Settlement (the “Preliminary Approval Order”). (Dkt. 40)

Pursuant to the notice requirements set forth in the Settlement Agreement and in the Preliminary Approval Order, the Settlement Class was notified of the terms of the proposed Settlement, of the right of members of the Settlement Class to opt-out or object, and of the right of members of the Settlement Class to be heard at a Final Approval Hearing to determine, *inter alia*: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate for the release of the claims

contemplated by the Settlement Agreement; and (2) whether judgment should be entered dismissing this Action with prejudice.

A Final Approval Hearing was held on February 8, 2023. (Dkt. 47) Prior to the Final Approval Hearing, on September 16, 2022, Plaintiff filed his Unopposed Motion for Fee Award and Litigation Costs. (Dkt. 42) That motion was referred to Magistrate Judge Flynn, who recommended granting the motion in part. (Dkt. 43) On January 17, 2023, Plaintiff filed his Unopposed Motion for Final Approval of Class Action Settlement and Other Relief. (Dkt. 45) Counsel for the parties appeared via telephone and presented arguments in support of final approval of the Settlement.

Having heard the presentation of Class Counsel and Defendants' counsel, having reviewed all of the submissions presented with respect to the proposed Settlement, having considered the Attorney's Fees and Costs application, and having reviewed the materials in support thereof, for the reasons stated on the record during the February 8, 2023 hearing and for good cause appearing,

**IT IS HEREBY ORDERED** that:

Plaintiff's Motion for Final Approval of Class Action Settlement and Other Relief, (Dkt. 45), and Motion for Fee Award and Litigation Costs, (Dkt. 42), are **GRANTED as stated herein**.

The Settlement, including the exhibits attached thereto, is approved as fair, reasonable, and adequate, in accordance with Rule 23(e) of the Federal Rules of Civil Procedure. This Final Approval Order and Judgment incorporates by reference the definitions in the Settlement Agreement (Dkt. 39-1), and all capitalized terms used

herein shall have the same meaning as set forth in the Settlement Agreement unless otherwise set forth in this Order.

1. Jurisdiction: The Court has jurisdiction over the subject matter of this Action and over all claims raised therein and all parties thereto, including the Settlement Class.

2. The Settlement is Fair, Reasonable, and Adequate: The Court finds that the Settlement was entered into by the parties for the purpose of settling and compromising disputed claims, and is fair, reasonable, and adequate, and in the best interests of all those affected by it. The Settlement Agreement was entered in good faith following informed, arm's length negotiations conducted by experienced counsel with the assistance of a well-respected mediator and is non-collusive.

3. Class Certification for Settlement Purposes Only: For purposes of the Settlement only, the Court finds and determines that the Action may proceed as a class action under Rule 23(b)(3) of the Federal Rules of Civil Procedure, and that: (a) the Settlement Class certified herein is sufficiently numerous, as it includes approximately 64,653 people, and joinder of all such persons would be impracticable, (b) there are questions of law and fact that are common to the Settlement Class, and those questions of law and fact common to the Settlement Class predominate over any questions affecting any individual Settlement Class Member; (c) the claims of the Plaintiff are typical of the claims of the Settlement Class they seek to represent for purposes of settlement; (d) a class action on behalf of the Settlement Class is superior to other available means of adjudicating this dispute; and (e) as set forth below, Plaintiff and

Class Counsel are adequate representatives of the Settlement Class. The proposed Class satisfies all of Rule 23's requirements, so the court will finally certify the Settlement Class. Defendants retain all rights to assert that this action may not be certified as a class action, other than for settlement purposes.

4. Class Definition: The Court hereby certifies, for settlement purposes only, a Class defined as:

“All individuals residing in the United States whose personal information was or may have been compromised in the data breach that is the subject of the Notice of Privacy Incident that Humana sent to Plaintiff and others in substantially the same form on or around March 1, 2021.”

Excluded from the Settlement Class are: (i) Humana Inc. and Cotiviti, Inc. and their officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge assigned to evaluate the fairness of this settlement; (iv) the attorneys representing the Parties in the Litigation; and (v) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity involved in the Data Incident or who pleads nolo contendere to any such charge.

5. Class Notice: The approved Notice Program provided for a copy of the Notice to be e-mailed to all members of the Class who have been identified by Defendants through their records with an e-mail address, and via U.S. mail to those whose personal e-mail addresses were not available within Defendants' records. For postcards returned with a forwarding address, the Settlement Administrator mailed Notices to the forwarding addresses. The Settlement Administrator maintained the

Settlement Website, which provided information about the Settlement, including copies of relevant Court documents, the Settlement Agreement, the Long Form Notice, and the Claim Form.

6. Findings Concerning Notice: The Court finds and determines that the Notice Program, preliminarily approved on June 23, 2022, and implemented on July 18, 2022, constituted the best notice practicable under the circumstances, constituted due and sufficient notice of the matters set forth in the notices to all persons entitled to receive such notices, and fully satisfies the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, and all other applicable laws and rules. The Notice Program involved direct notice via e-mail and postal mail providing details of the Settlement, including the benefits available, how to exclude or object to the Settlement, when the Final Fairness Hearing would be held, and how to inquire further about details of the Settlement. The Court further finds that all of the notices are written in plain language and are readily understandable by Class Members. The Court further finds that notice has been provided to the appropriate state and federal officials in accordance with the requirements of the Class Action Fairness Act, 28 U.S.C. § 1715, drawing no objections.

7. Appointment of Class Representative: The Court appoints Plaintiff Steven K. Farmer as Class Representative of the Settlement Class pursuant to Federal Rule of Civil Procedure 23(a).

8. Appointment of Class Counsel: The Court appoints Plaintiff's attorneys John A. Yanchunis and Ryan D. Maxey as Settlement Class Counsel.



9. Exclusion from Class: Any person falling within the definition of the Class had the opportunity, upon request, to be excluded or “opt out” from the Class. The one person who opted to be excluded from the Settlement, (Dkt. 45-1 at 35), shall have no rights under the Settlement, shall not share in the distribution of the Settlement benefits, and shall not be bound by the Settlement or any final judgment entered in this Action.

10. Objections and Appearances: Any Class Member had the opportunity to enter an appearance in the Action, individually or through counsel of their own choice. Any Class Member also had the opportunity to object to the Settlement and the Fee Award and Litigation Costs, or to appear at the Fairness Hearing and show cause, if any, why the Settlement should not be approved as fair, reasonable, and adequate to the Class, why a final judgment should not be entered thereon, why the Settlement should not be approved, or why the Fee Award and Litigation Costs should not be granted, as set forth in the Court’s June 23, 2022 Order Granting Preliminary Approval of Class Action Settlement. There were no objections to either the Settlement or the Fee Award and Litigation Costs filed in this case. Any Class Member who did not make their objections in the manner and by the date set forth in ¶ 11 of the Court’s June 23, 2022 Order Granting Preliminary Approval of Class Action Settlement shall be deemed to have waived any objections and shall be forever barred from raising such objections in this or any other action or proceeding, absent further order of the Court.

11. Release: Upon the entry of this Order, the Class Representative and all Class Members, whether or not they have filed a Claim Form within the time

provided, shall be permanently enjoined and barred from asserting any claims or causes of action against Defendants and the Released Persons based on, relating to, concerning, or arising from the Data Incident and alleged theft or misuse of Humana members' PII or PHI, and the Class Representative and all Class Members conclusively shall be deemed to have fully, finally, and forever released any and all such Released Claims.

12. Attorneys' Fees and Costs: Class Counsel moved for their Fee Award and Litigation Costs on September 16, 2022, which Defendants did not oppose. (Dkt. 42) Class Counsel requested \$300,000.00 in attorneys' fees and litigation costs. The motion was referred to Magistrate Judge Flynn, who took the matter under advisement and authored a Report and Recommendation that Class Counsel's Fee Award and Litigation Costs be granted in part, approving \$220,000.00 in attorney's fees and litigation costs. (Dkt. 104) The Court has considered Class Counsel's Motion for Fee Award and Litigation Costs along with the declarations submitted therewith setting forth their time and expenses incurred with this litigation, and substantially agrees with the Report and Recommendation from Magistrate Judge Flynn; however, the Court includes in the calculation of the total value of the constructive common fund the following: (i) \$80,000.00 for the cost of settlement administration and (ii) \$2.50 for each of the 64,652 Settlement Class Members (after accounting for the single exclusion), or \$161,630.00. Adding these amounts to the aggregate claims cap of \$500,000.00 and the requested attorney's fees and litigation costs of \$300,000.00 results in a total constructive common fund of \$1,041,630.00. The requested attorney's

fees and litigation costs are 28.8% of the constructive common fund, below the 30% that the Magistrate Judge found appropriate. The Court finds that Class Counsel's request for attorneys' fees and costs is fair and reasonable, particularly in light of the results achieved through this litigation as well as the contingent nature of the fee award. Accordingly, Class Counsel are awarded attorneys' fees and litigation costs in the amount of \$300,000.00. This amount shall be paid by Cotiviti in accordance with the terms of the Settlement.

13. Service Award: Because the Eleventh Circuit has forbidden service awards, the Court will not order a service award to the Class Representative.

14. Payment to Class Members: Cotiviti shall pay the balance of the approved claims to the Settlement Administrator, and the Settlement Administrator shall make all required payments in accordance with the amounts and the times set forth in the Settlement Agreement, including all payments to Settlement Class Members who submitted an Approved Claim, to IDX for the Identity Protection Services, for the attorneys' fees and costs, and for all settlement administration costs.

15. Funds Held by Settlement Administrator: All funds held by the Settlement Administrator shall be deemed and considered to be *in custodia legis* of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds are distributed pursuant to the Settlement or further order of the Court.

16. Dismissal with Prejudice: The above-captioned Action is hereby **DISMISSED WITH PREJUDICE**. Except as otherwise provided in this Final Approval Order and Judgment, the parties shall bear their own costs and attorney's

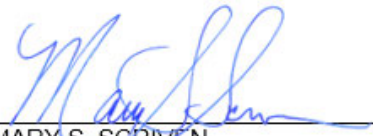
fees. Without affecting the finality of the Judgment hereby entered, the Court reserves jurisdiction over the implementation of the Settlement, including enforcement and administration of the Settlement Agreement for one year.

17. Plaintiff's Motion for Final Approval of Class Action Settlement and Other Relief, (Dkt. 45), is **GRANTED**. The Report and Recommendation on Plaintiff's Motion for Fee Award and Litigation Costs, (Dkt. 43), is **APPROVED** in large part and modified for the reasons set forth at the hearing and in this Order. Plaintiff's Motion for Fee Award and Litigation Costs, (Dkt. 42), is **GRANTED as stated herein**. Final Judgment is hereby entered.

18. The Clerk is directed to **CLOSE THIS CASE** and **TERMINATE** any pending motions as **MOOT**.

**IT IS SO ORDERED.**

Entered this 13th day of February 2023.

  
\_\_\_\_\_  
MARY S. SRIVEN  
UNITED STATES DISTRICT JUDGE

Copies furnished to:  
*Counsel of record*