Exhibit 2

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7   UNITED STATES DISTRICT COURT

8   NORTHERN DISTRICT OF CALIFORNIA

9   IN RE: YAHOO! CUSTOMER DATA   )   Case No. 16-MD-02752-LHK
    SECURITY BREACH LITIGATION   )
10   )   DECLARATION OF JOHN YANCHUNIS IN
)   SUPPORT OF PLAINTIFFS' MOTION FOR
11   )   ATTORNEYS' FEES, COSTS, AND
)   EXPENSES AND SERVICE AWARDS
12 _____   )

13

14   I, John A. Yanchunis, declare pursuant to 28 U.S.C. § 1746 as follows:

15   1.   I submit this declaration in support of Class Counsel's application for an award of

16 attorneys' fees and expenses. Following the transfer and consolidation of a number of cases before

17 this Court by the Judicial Panel on Multidistrict Litigation, I was appointed by this Court as

18 Plaintiffs' Lead Counsel in this matter. This Court appointed Gayle Blatt, Stuart Davidson, Karen

19 Hanson Riebel, and Ariana Tadler to the Plaintiffs' Executive Committee. ECF No. 58.

20   2.   Shortly thereafter, months of negotiations commenced between Plaintiffs and

21 Defendants regarding a Protective Order (ECF No. 73), ESI protocol (ECF No. 74), Rule 502

22 Order (ECF No. 76), ESI Search Protocol (ECF No. 104), and multiple rounds of negotiations to

23 reach agreement on hundreds of ESI search terms, (ECF Nos. 151, 153, 163, 167, 170, 171).

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25   3.   Meanwhile, multiple parallel actions were also coordinated in California state

26 court, which, on February 28, 2017, were assigned by the Judicial Council to a coordination trial

27 judge for coordinated pretrial proceedings, in *Yahoo! Inc. Private Information Disclosure Cases*,

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JCCP No. 4895 (Orange Cnty. Sup. Ct.) (the "JCCP Case"). On March 14, 2017, the Orange County Superior Court Presiding Judge assigned the Honorable Thierry P. Colaw (Ret.) to be the coordination trial judge for the JCCP case.

4.   Throughout discovery, MDL and JCCP Class Counsel worked cooperatively in the scheduling and taking of offensive depositions.

5.   Initially, the parties negotiated for Yahoo to produce certain documents prior to the start of formal discovery, including certain investigative reports of malicious activity. Following completion of search-term negotiations, Yahoo produced and Plaintiffs reviewed over 9 million pages of documents. Through this review, we were able to develop a solid understanding of the facts underlying the claims in this case. More particularly, this review, which involved our cybersecurity expert and her team, gave us a through appreciation of the cause and extent of the multiple breaches at issue, and the nature and extent of the data exfiltration.

6.   Plaintiffs deposed the critical information security personnel who worked at Yahoo during the relevant time periods, beginning with the deposition of Yahoo's Rule 30(b)(6) corporate representative, Sean Zadig, Director of Threat Investigations on November 10 and November 20, 2017 and February 22, 2018. This deposition included three days of testimony, creating more than a thousand pages of testimony, and including 46 exhibits. As approved by this Court, the first two days of Mr. Zadig's testimony were taken in advance of MDL Class Counsel's filing their First Amended Complaint ("FAC") (ECF No. 179), with the questioning focused on eliciting facts needed to support the FAC. Between October 28, 2017, and November 5, 2017, Yahoo produced approximately 345,000 documents, comprising approximately 1.4 million pages. Thus, in the weeks leading up to the first two days of this deposition, Plaintiffs were reviewing in excess of a million pages of production while preparing for this crucial deposition.

7.   In light of the importance of this deposition, and the fluid nature of the potentially relevant documents that were being discovered in real time immediately prior to, and during the deposition days, three MDL Class Counsel were involved—John Yanchunis and Ariana Tadler were present, and Patrick Barthle attended remotely in order to better interface with the document database during the testimony.

8.   Mr. Zadig's testimony helped us construct the cornerstones of the factual foundation of our case, and assisted us with identifying the persons we wanted to depose in the case. In particular, we identified the present and former employees who were in charge of the information security environment at Yahoo during the relevant time periods and targeted those persons for deposition.

9.   On April 13 and June 8, 2018, Settlement Class Counsel deposed Robert Lord, former Yahoo Chief Information Security Officer ("CISO") who was employed at Yahoo at the time of the announcement of the Data Breaches in 2016. This deposition included two days of testimony, creating nearly 700 pages of testimony, and including 26 exhibits. As the CISO at the time the Breaches were disclosed, Mr. Lord's emails and personal journal writings shed much light on the state of information security during his tenure and the timing and sequence of the investigations into the Breaches in 2016. Two MDL Class Counsel attorneys were utilized for this deposition, considering its importance and the volume of documentary evidence.

10.   On May 14 and 15, 2018, Settlement Class Counsel deposed Ramses Martinez, the former Incident Response Team leader and Yahoo Interim CISO. This deposition included two days of testimony, creating nearly 800 pages of testimony, and including 59 exhibits. Mr. Martinez was an especially important witness given he was one of the few Yahoo employees whose tenure spanned the entire period of the Breaches—having worked at Yahoo from September 2011 through July 2015.   Mr. Martinez had an intimate understanding of Yahoo's security shortcomings

throughout the relevant time period. In light of his importance, and the volume documents, MDL Class Counsel utilized two attorneys for the deposition, and to juggle the numerous relevant exhibits.

11.   On May 29, 2018 Settlement Class Counsel took the deposition of Justin Somaini, former Yahoo CISO. This deposition included nearly 500 pages of testimony, and 33 exhibits. Mr. Somaini's testimony was particularly pertinent to establishing the inadequacy of Yahoo's information security environment immediately prior to the 2013 Breach and during the 2012 incidents. In light of his importance, and the volume documents, MDL Class Counsel utilized two attorneys for the deposition, and to juggle the numerous relevant exhibits.

12.   On June 26, 2018, Settlement Class Counsel deposed Christopher P. Rohlf, former Yahoo Director of Penetration Testing and Offensive Engineering Team. This deposition included nearly 450 pages of testimony, and 58 exhibits. Mr. Rohlf's position essentially entailed attempting to hack into Yahoo's network in order to demonstrate the systems' weaknesses. Given that chief responsibility, he was especially familiar with Yahoo's insufficiencies and his communications regarding these issues were particularly illuminating, further emphasizing the significance of exhibits related to him and the need to authenticate and admit that evidence. In light of his importance, and the volume documents, MDL Class Counsel utilized two attorneys for the deposition.

13.   Settlement Class Counsel deposed Alexander C. Stamos, who was the CISO during the time of 2014 Breach. This deposition included nearly 450 pages of testimony, and 28 exhibits. In light of his importance, including reporting responsibilities to CEO Marisa Mayer, and the volume documents, MDL Class Counsel utilized two attorneys for the deposition.

14.   On August 16, 2018, Settlement Class Counsel deposed Jay Rossiter, former Yahoo Senior Vice President and Chief Information Officer. During the 2014 Breach timeframe, Mr.

Rossiter oversaw the information security team, Mr. Stamos reported to him, and Mr. Rossiter was a party to numerous conversations with Mr. Stamos, and with Ms. Mayer, regarding the events surrounding the 2014 Breach. His deposition included nearly 300 pages of testimony, and 29 exhibits. In light of his importance, and the volume documents, MDL Class Counsel utilized two attorneys for the deposition.

15.   In connection the Amended Settlement Agreement and the declarations they submitted regarding it, Settlement Class Counsel conducted confirmatory depositions of Yahoo's Senior Principal Software Development Engineer, its Product Manager of Audience Data Engineering, and Verizon's current CISO, in April 2019. These depositions took place in Chicago, Illinois; San Francisco, California; and Reston, Virginia; and explored the analyses used in computing class size and makeup, as well as the business practice changes Defendants committed to as part of the Settlement.

16.   As the Court had requested of me at the beginning of the case, each of these depositions was coordinated in conjunction with attorneys in the California state court coordinated proceedings, *Yahoo! Inc. Private Information Disclosure Cases*, JCCP No. 4895 (Orange County Superior Court) ("JCCP Case"), to eliminate unnecessary costs and duplication.

17.   As stated earlier, given the importance of these depositions—involving the critical information security employees immediately prior to, during, and after the Data Breaches— substantial time was spent reviewing the deponents' custodial files, preparing "hot doc" document review memoranda and deposition outlines, and exchanging documents and deposition strategy with the JCCP attorneys, traveling to the depositions, and examining the witnesses.

18.   Moreover, in conjunction with the document review and depositions, Plaintiffs have utilized the services of cybersecurity expert Mary Frantz, and her team at Enterprise

1   Knowledge Partners, to assist with the review of highly technical documents and with the

2   depositions of information security professionals.

3   19.   Plaintiffs also propounded interrogatories, to which Defendants responded.

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     20.   Overall, Class Counsel undertook immense efforts in document review, discovery,
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motions practice, and negotiations, doing so with an ever-diligent eye towards efficiency.
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7   21.   These discovery efforts provided Plaintiffs with a thorough understanding of

8   Yahoo's complex IT systems, and the deficiencies within them and its information security

9   department that Plaintiffs allege contributed to the Data Breaches and must be remedied.

10   22.   At the time the case was settled, we were also scheduled to take several other

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depositions; including the former Yahoo Chief Executive Officer ("CEO") Marisa Mayer and
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former General Counsel Ronald Bell, and were seeking dates for Yahoo co-founder and former
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Board of Directors member David Filo. In fact, the deposition of Ms. Mayer would have occurred
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prior to the original agreement, but for her counsel's motion for protective order, which was
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16 granted by Judge Cousins. (ECF No. 286). These depositions would have solidified the facts as to

17 liability.

18   23.   Likewise, Yahoo engaged in significant discovery efforts: eight of the nine named

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Plaintiffs in the MDL Case had their devices forensically imaged, they each responded to
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document requests and interrogatories, and they were each deposed.
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22   24.   In connection with Plaintiffs' Motion for Class Certification, Plaintiffs submitted

23 four expert reports. James Van Dyke, Ian Ratner, and Gary Parilis were our damage experts, and

24 Mary Frantz was our cyber security expert. Defendants deposed each of these experts, and then

25 sought their exclusion via *Daubert* motions. Thereafter, Plaintiffs began the preparation of

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responses to these motions, the preparation of a reply to Defendants' opposition to Plaintiffs'
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motion for class certification, and the preparation for depositions of the experts retained by
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1 Defendants who had filed declarations and reports in opposition to the motion for class

2 certification. Defendants' experts would have been deposed in time for the filing of the reply had

3 the parties not reached the initial settlement.

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5   25.   The parties mediated this case with the assistance of the Honorable Daniel

6 Weinstein, and also with the assistance of additional mediators Jed Melnik and Simone Lelchuk,

7 (all of JAMS), on August 14, 2018, and September 7, 2018. The mediation sessions were held in

8 San Francisco, California. Plaintiffs also engaged in a pre-mediation session with Mr. Melnick on

9 August 10, 2018, in New York City, New York.

10   26.   As a result of these mediation sessions, on September 7th the parties reached an

11 agreement in principle to resolve this action and the parallel JCCP Case.

12   27.   During the last session, the parties agreed to terms forming the substance of the

13 Settlement. Negotiations of attorneys' fees, costs, and expenses did not commence until agreement

14 on behalf of the Settlement Class had been reached.

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16   28.   On September 14, 2018, the parties finalized and agreed to a written term sheet

17 containing all material terms of their agreement to settle the case and provide substantial relief to

18 the class.

19   29.   Negotiation of the $50 million Settlement Fund, at least two years of Credit

20 Monitoring Services for the entire class to be paid for outside of the Fund, the costs of notice and

21 administration to also be paid separately by Defendants, and the Business Practice Changes was

22 hard fought and at arms-length. Defendants also agreed to pay attorneys' fees in an amount not to

23 exceed $35 million, and costs and expenses not to exceed $2.5 million.

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25   30.   Subsequently, following the entry of the Court's order denying approval to the

26 settlement (ECF No. 357), the parties returned to the process of negotiating a settlement to address

27 issues raised in the Court's order. These arm's length negotiations consisted of numerous

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communications and finally resulted in the settlement now before the Court. More specifically, Defendants, subject to approval by the Court, have agreed to create a common fund of $117,500,000, which sum which be used to pay the costs of notice and administration (capped per agreement with Heffler at $6 million), identify theft protection for the class (capped by agreement with AllClear at $24 million), at least $55 million for out of pocket claims, small business and paid users relief, and alternative compensation; for attorneys' fees not to exceed $30 million, and costs and expenses not to exceed $2.5 million. In addition to the monetary relief, the parties also negotiated substantial business practice changes to ensure the protection of the personal identification information of consumers. The details of those business practice changes are identified in the Settlement Agreement, and their implementation will be overseen by an independent third party assessor. The report by the third party assessor will be provided to counsel for Plaintiffs, who along with their cyber expert will ensure its completeness.

31.   Due to the extensive discovery efforts which occurred during this litigation, I, along with the other members of the PEC, know the strengths and weaknesses of the claims in this matter. We have worked extensively with experts to best understand those claims, as well as to value those claims.

32.   At the time the case was settled, I believe that we were in possession of the evidence needed to not only support our motion to certify the class, but also to try the liability portion of the case, and in fact, and as the Court is aware, Plaintiffs had filed a motion for class certification.

33.   I believe the proposed Settlement is extremely beneficial for Settlement Class Members, it provides for the creation of the second largest common fund to date in a data breach case, it provides substantial and valuable improvements to Defendants' information security environment, and as a result is a fair, adequate, and reasonable settlement of their claims.

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34.   Based on my knowledge of this case, knowledge gathered from working with the experts in this matter, and my knowledge of claims rates in other data breach cases, I believe the $117,500,000 million fund will be sufficient to accommodate the amounts drawn from it, but, in the event it is not, all claims for Out-of-Pocket Costs, Alternative Compensation, Paid User Costs, and Small Business User Costs will be reduced *pro rata*. *See* Settlement Agreement § 6.9.

35.   By settling now, the Settlement Class will be able to take advantage of the monetary relief, including the Credit Monitoring Services that as a practical matter will be unavailable or worth substantially less by the time this case could be litigated to a final judgment. Similarly, changes to Yahoo's data security practices will be most effective the sooner they are implemented.

36.   Plaintiffs have built a very strong liability case, compiling copious evidence concerning the shortcomings in Yahoo's information security environment at the time of the Data Breaches, including the understaffing and underfunding of Yahoo's information security team (the Paranoids), inadequate security logs, and the failure to give notice of the 2014 Breach despite contemporaneous knowledge thereof.

37.   While I believe that Plaintiffs had a reasonably good chance of proving that Yahoo's data security was inadequate, I am also cognizant of the risks Plaintiffs faced in further litigation, including at the certification stage.

38.   Plaintiffs put forth three sound damages models, supported by experts Van Dyke, Parilis, and Ratner. These models are premised upon three separate theories: benefit of the bargain and restitution, lost value of Personally Identifiable Information ("PII"), and identity theft losses. Plaintiffs' firmly believe in these models and the results they potentially produce here. Nonetheless, each of these theories is untested beyond the motion to dismiss setting, especially in a data breach case of this scope, and unproven before a jury.

39.   Plaintiffs' benefit of the bargain theory was proposed by Plaintiffs' experts James Van Dyke and Gary Parilis, and was supported by a conjoint analysis to determine the amount Paid Users and Small Business Users overpaid for Yahoo's services because of the concealed security inadequacies.

40.   Plaintiffs proposed two methods of identifying lost value of PII. In the first, statistical sampling would determine the PII in an average users' account and its value in order to calculate aggregate damages. In the second, a market-based approach—analyzing the value of PII in comparable transactions—would be utilized to determine damages resulting from the diminution in value of class members' PII as a result of the Data Breaches.

41.   Finally, identity theft losses were proposed to be established through a claims process, where: (1) temporally, the identity theft followed the Breach(es) in which the PII was taken, and (2) the PII taken must have been the same kind needed to commit the identity theft suffered.

42.   Thus, while the legal theory behind the largest potential outcomes may be sound, it is untested, and, as a practical matter, Plaintiffs' counsel recognize that taking such large numbers to a jury presents substantial strategic risks. Understanding these risks after over three decades in the courtroom allowed me to make the assessments necessary to negotiate the Settlement achieved in this case. Certainly compromise was required here but the relief provided by this Settlement does address the types of damages that I have seen in my experience litigating privacy rights since 1999.

43.   To date, Settlement Class Counsel has expended considerable time and effort vigorously litigating this case. Settlement Class Counsel have devoted thousands of attorney hours and hundreds of thousands of dollars in out-of-pocket costs to cover the expenses of litigation.

44.   Settlement Class Counsel expect to spend additional hours in connection with the final approval and consummation of the settlement, including responding to objections and any appeals therefrom, overseeing the claims process and interfacing with Class Members regarding same, and monitoring Yahoo's compliance with the settlement.

45.   MDL Class Counsel seeks fees for 32,867 hours, for a lodestar of $16,518,130; as well as 1,500 anticipated future hours yielding additional lodestar of $753,862; JCCP Counsel seeks fees for 7,180.4 hours, for a lodestar total of $2,906,661; for a total of $20,178,653. The 1,500 hours for anticipated future work includes the preparation, filing, and argument of the Motion for Final Approval and the Motion for Fees, as well as responding to objections and any appeals thereof, assisting with the claims process for the Class Members, and overseeing and ensuring Defendants' compliance with the Settlement via our role in the third-party assessments and review.

46.   I assert that the attorneys' fees of $20,178,653 sought in the motion for attorneys' fees is reasonable and seeks fair and reasonable compensation for undertaking this case on a contingency basis, and for obtaining the very substantial relief for Plaintiffs and the class.

47.   As directed by the Court, I implemented efficiency protocols and ensured that work performed in this matter was unnecessarily non-duplicative and contemporaneously recorded, successfully managing this litigation to ensure efficiency. I ensured that Class Counsel were assigned defined roles and that they maintained focus on these roles to efficiently and effectively prosecute the case. Specifically, Stuart Davidson was primarily tasked with research and writing, wherein he had primary responsibility for responding to Defendants' motions to dismiss and preparing Plaintiffs' Motion for Class Certification. Ariana Tadler was tasked with overseeing discovery efforts, especially the process of obtaining and reviewing documents from Defendants and related e-discovery issues. Gayle Blatt was tasked with the drafting of complaints and the legal

research supporting them. Later Ms. Blatt was also tasked with assisting with the preparation of expert reports and defense of expert depositions. Karen Riebel was tasked with plaintiff vetting and interaction, wherein she was responsible for maintaining open lines of communication with named plaintiffs and their counsel, and with discovery requests directed at Plaintiffs. Ms. Riebel also oversaw the privilege log review and challenge process the Plaintiffs engaged in. I, and those in my firm, oversaw general case strategy and took an active role in deposition discovery as well as the attendance at hearings and preparation of periodic status reports for the Court. I constantly endeavored to ensure that MDL Class Counsel remained focused on the specific tasks they had been assigned.

48.   After being appointed, Class Counsel took measures to reduce the billing rates that figure into the lodestar. As noted in the Declaration of Karen Riebel, we imposed standardized capped billing, based upon years of experience, for the work to be performed in this case. In light of this Court's Order in *In re Anthem*, 2018 WL 3960068, at *20, we reduced the cap on document review rates from $350 per hour to $240 per hour, a drop of over 30%, for all counsel performing document review tasks, whether full-time, contract, or staff attorney.

49.   To reflect the collective efforts of all firms involved in this litigation, time of non-appointed firms prior to the appointment of Lead Counsel and the PEC has been included in the submitted lodestar.

50.   As this Court is aware, many law firms filed actions which were consolidated in this litigation. After this Court directed Plaintiffs to file applications for leadership positions, I organized and conducted in-person meeting of Plaintiffs' counsel in Atlanta, Georgia, on December 14, 2016. During this meeting, Plaintiffs cooperatively and voluntarily developed the leadership structure, adopted by this Court.

51.   Consistent with the representations in their leadership application, at the beginning of this litigation, MDL Class Counsel involved non-appointed attorneys in performing discrete tasks in the litigation of this matter, giving careful consideration and assessment of direct client representation, skillset, and efficiency. Plaintiffs were reviewing approximately 7.7 million pages of documents, and trying to do so as expeditiously as possible in order to begin depositions so as to meet the July 13, 2018, class certification deadline. Accordingly, immense labor was involved in that effort, including by non-appointed attorneys. Outside of document review, some limited time was devoted by non-appointed attorneys to client contact, and to Plaintiffs' Response to Defendants' First Motion to Dismiss.

52.   After this Court's February 1, 2018 Order, directing that all work by non-appointed firms would require prior Court approval, MDL Class Counsel instructed all non-appointed firms to cease performing any work in this matter pending further order of the Court.

53.   All billers, for both MDL Class Counsel and non-appointed firms, have submitted biographical information justifying their rates, as well as references to other federal and state court matters in which those rates have been found reasonable.

54.   Settlement Class Counsel request $1,497,609.54 in litigation costs and expenses reasonably incurred ($1,341,230.41 for MDL Counsel and $156,379.13 for JCCP Counsel), plus a $60,000 reserve for expert costs to monitor compliance with the settlement, for a total of $1,557,609.54.

55.   As part of the settlement, Yahoo is required to undergo annual security program maturity assessments, subject to review by a third party appointed by Settlement Class Counsel. Thus, Settlement Class Counsel will need to engage a cybersecurity expert to conduct reviews of these assessments to ensure that Yahoo is fulfilling its obligations under the Settlement. Settlement

Class Counsel expect the cost for these reviews to be a maximum of $60,000 and, thus, a reserve is requested to permit payment of a cybersecurity expert for this purpose.

56.   Plaintiffs' extensive discovery efforts and comprehensive work with experts, which necessitated thousands of hours and significant expenditures, were essential for the prosecution of this case and to reach the ensuing settlement.

57.   The time pressures in this case were extraordinary. The time necessary to complete document review and depositions in the time frame provided was complicated because of the novelty and uncertainty of the legal issues, the substantial size of the class, the highly technical matters at the core of the case, and other factors that contributed to the magnitude of the undertaking.

58.   Settlement Class Counsel prosecuted this case on a contingent-fee basis with no guarantee of recovery. Each firm was forced to forgo other employment in order to devote the time necessary to pursue this litigation. Settlement Class Counsel advanced expenses with the understanding that we would be paid a fee and receive reimbursement for expenses only in successful.

59.   The Settlement Class Representatives have been integral to litigating this matter. All nine have been significantly and personally involved in the case. Each of the Settlement Class Representatives devoted substantial time and effort to this matter, responding to interrogatories and document requests, gathering and producing documents, being deposed about searching and invasively private topics, and, for many, having their devices forensically examined. The time and effort devoted by the Settlement Class Representative benefitted the Class and none of the Settlement Class Representatives will receive any personal benefit beyond what any Class member will receive.

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1   60.   Plaintiffs seek Service Awards of $7,500 for the eight Plaintiffs, all from the MDL

2   Case, who had their computers forensically imaged and were deposed. Plaintiffs seeks Service

3   Awards of $5,000 for three Plaintiffs who were either deposed or had their computers forensically

4   imaged, but not both. Plaintiffs seek Service Awards of $2,500 for five Plaintiffs, all from the

5   JCCP Case, who were neither deposed and nor had their computers forensically imaged. The tiered

6   service awards requested are based upon the individual circumstances of each Settlement Class

7   Representative, including additional time and effort expended for sitting for their deposition or

8   having their computer forensically examined, as well as the intrusive nature and personal difficulty

9   of the discovery faced. Combined, the Service Award request totals $87,500.00.

10   61.   Based upon my years of experience in privacy litigation, the proposed settlement is

11 very fair, reasonable, and adequate outcome within the context of the facts presented.

12   I declare under penalty of perjury under the laws of the United States of America that the

13 foregoing is true and correct. Executed January 31, 2020 in Tampa, Florida.

By: /s/ *John A. Yanchunis*
John A. Yanchunis