

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE**

SUSAN SZUCS, ANTHONY PARRIZZI,
TERRENCE ERNEST GIDNEY, CHRISTINA
CHURCH, JIMMIE HARDAWAY, JR., SHARON
SIEGLE, PAUL PASCUCCI, JAMES
MARCISZEWSKI, and SHANNON ALLGRIM,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

EXCELSIOR ORTHOPAEDICS, LLP, and
BUFFALO SURGERY CENTER, LLP,

Defendants.

Index No. 812753/2024

**JOINT AFFIRMATION OF
CLASS COUNSEL IN SUPPORT
OF PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, COSTS,
AND SERVICE AWARDS**

We, Class Counsel, being competent to testify, affirm under penalty of perjury and pursuant to CPLR § 2106, based on our personal knowledge, and where stated, upon information and belief:

1. We represent Plaintiffs and the Settlement Class and, based on our active participation in all material aspects of the prosecution and settlement of Plaintiffs' claims against Defendants Excelsior Orthopaedics, LLP and Buffalo Surgery Center, LLP, have personal knowledge of the matters set forth herein and submit this affirmation in support of Plaintiffs' Motion for Attorneys' Fee, Costs, and Service Awards.

2. Our firms have been fully and unequivocally committed to this Action and the time-consuming task of prosecuting the same since its inception. The formidable resources of our law firms, combined with our substantial privacy and data-breach litigation experience, allowed us to achieve a favorable result for the class of consumers who were affected by the Incident which is the subject of this Action.

CLASS COUNSEL'S EFFORTS TO DATE

3. Prior to commencing the Action, Class Counsel conducted a thorough investigation into the Class Members' claims, their damages, and the likelihood of obtaining class certification. Class Counsel also conducted interviews with several prospective clients concerning their experience with Defendants, obtained and reviewed documents, and extensively researched the pertinent case law and facts, including the engagement of a cybersecurity expert.

4. Indeed, Class Counsel has been diligent in and committed to investigating claims on behalf of the Class. Prior to commencing the Action, Class Counsel diligently investigated, along with our expertise in data breach litigation, potential legal claims (and potential defenses) arising from Defendants' alleged failure to implement adequate and reasonable data security procedures and protocols necessary to protect Private Information.

5. Specifically, Class Counsel has performed or assisted in the following work on behalf of Plaintiffs and Class Members:

- a. Investigated the circumstances surrounding the Incident;
- b. Stayed abreast of and analyzed reports, articles, and other public materials discussing the Incident and describing Defendants' challenged conduct;
- c. Reviewed public statements from Defendants concerning the Incident, including the contents of the breach notification letter sent to impacted Settlement Class Members;
- d. Drafted and filed initial Complaints against Defendants and served those Complaints on Defendants;
- e. Prepared and filed a motion to consolidate the cases and appoint interim lead counsel;

- f. Prepared and filed the Consolidated Class Action Complaint; and
- g. Analyzed information provided by Defendants in pre-mediation discovery.

6. Thereafter, the Parties engaged in hard-fought, arm's-length negotiations with the goal of resolving Plaintiffs' claims against Defendants. These efforts included a full-day mediation session with Steven Jaffe of Upchurch Watson White & Max on September 30, 2025.

7. Prior to the mediation, the Parties prepared and exchanged informal discovery and detailed mediation statements setting forth the legal and factual claims in support of their respective positions. The informal discovery provided clarification as to how the Incident occurred, Defendants' response to the Incident, and information relating to the Private Information impacted in the Incident. Class Counsel closely analyzed these materials in advance of the mediation, which informed our assessment of the relative strengths and weaknesses of Plaintiffs' claims against Defendants.

8. While the September 30, 2025 mediation was productive, the Parties did not reach an agreement to settle. However, following additional arm's-length negotiations and communications with the mediator, the Parties eventually agreed to settle Plaintiffs' claims against Defendants on a class-wide basis in November of 2025. The Parties then worked diligently to negotiate remaining elements of the Settlement and finalize the Settlement Agreement, with counsel from both sides zealously advancing their respective clients' interests. Thus, the Settlement is the product of hard-fought, arm's length negotiations.

9. After the Settlement was reached, Class Counsel spent (and continue to spend) significant time and resources developing and overseeing a settlement administration and Notice Plan that comports with both the requirements of CPLR 904 and 908, and the Due Process Clause. Among other tasks, Class Counsel have sought proposals from different settlement administrators,

selected and worked with the Settlement Administrator to prepare Notices and Claims Forms, helped develop a Settlement Website, monitored for potential opt-outs and objections to the Settlement, and spoken with Settlement Class Members regarding the Settlement and the claims process. Notably, the Parties did not discuss payment of any Fee Award and Costs, or Service Awards, other than they would be sought, until after the substantive terms of the Settlement had been agreed upon.

10. Class Counsel will continue to expend time and resources for a considerable length of time to ensure that the Settlement Administrator follows the Court-approved claims process and to see the administration of the settlement to the end.

11. Thus, Class Counsel has committed appropriate and substantial time and resources to organizing and working collaboratively toward the advancement and resolution of Plaintiffs' claims against Defendants, and will continue to do so as needed.

PLAINTIFFS' EFFORTS IN THE ACTION

12. Plaintiffs committed to participate actively in what they knew could be a long and hard-fought lawsuit and to do so on behalf of a Class of thousands of other Settlement Class Members, with no guarantee of ever being compensated. Plaintiffs assisted in the Action, aided in the preparation of the Consolidated Complaint, and approved of the Settlement.

13. Plaintiffs were active participants in all aspects of the Action, including partaking in fact-finding interviews, producing documents, and reviewing and approving the Settlement Agreement. Plaintiffs were ready and willing to participate in all stages of the litigation, and their efforts were fundamental to reaching this settlement.

CLASS COUNSEL'S LODESTAR

14. Through April 28, 2026, Class Counsel has expended 805.3 hours pursuing this matter on behalf of the Settlement Class, with a total lodestar of \$642,470.50, representing a modest lodestar multiplier of 1.25. A summary of their rates and hours expended are as follows:

Sterlington, PLLC

<u>PROFESSIONAL</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
Edward W. Ciolko (Partner)	112.8	\$1,100.00	\$ 124,080.00
Jennifer S. Czeisler (Partner)	33.3	\$1,100.00	\$ 36,630.00
Arturo Peña Miranda (Counsel)	85.4	\$975.00	\$ 83,265.00
Blake H. Yagman (Senior Associate Attorney)	9.0	\$625.00	\$5,625.00
Jennifer Sosa (Associate Attorney)	3.0	\$625.00	\$ 1,875.00
Hope VanEtten (Paralegal)	37.6	\$450.00	\$ 16,920.00
TOTAL	281.1		\$268,395.00

Ahdoot & Wolfson, PC

<u>PROFESSIONAL</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
Andrew W. Ferich (Partner)	167.2	\$950.00	\$158,840.00
Alyssa Brown (Associate Attorney)	34.3	\$850.00	\$29,155.00
Brian Devall (Associate Attorney)	20.2	\$550.00	\$11,110.00
Josh Nguyen (Former Associate Attorney)	6.0	\$550.00	\$3,300.00
Michelle Montecalvo (Paralegal)	79.0	\$480.00	\$37,920.00
TOTAL	306.7		\$240,325.00

Siri & Glimstad LLP

<u>PROFESSIONAL</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
Tyler Bean (Partner)	61.7	\$905.00	\$55,838.50
Neil Williams	96.1	\$625.00	\$60,062.50

(Associate Attorney)			
Tanner Hilton (Associate Attorney)	0.3	\$625.00	\$187.50
Sonal Jain (Associate Attorney)	0.8	\$625.00	\$500.00
Jennifer Malainy (Marketing)	4.5	\$375.00	\$1,687.50
Mike Malainy (Marketing)	6.5	\$225.00	\$1,462.50
Alcira Pena (Paralegal)	15.2	\$325.00	\$4,940.00
Delilah Estefano (Paralegal)	18.0	\$280.00	\$5,040.00
Cherie Cornfield (Paralegal)	14.4	\$280.00	\$4,032.00
TOTAL	217.5		\$133,750.50

15. This substantial time and effort expended by Class Counsel on behalf of Plaintiffs and the Class was undertaken on a contingent fee basis, and we have not been compensated for any of this work to date. Class Counsel took risks in litigating this matter under a complete contingency arrangement with no guarantee of any recovery whatsoever, and there was a substantial risk of no recovery at all given the threshold issues raised by Defendants during the mediation process and the uncertain nature of data breach class action litigation.

16. Class Counsel's hourly rates are reasonable and have been approved by courts in state and federal courts across the country. *See, e.g., Barcomb, et al. v. TracFone Wireless, Inc.*, Case No. 1:24-cv-08710-NRB at Dkt. No. 32 (S.D.N.Y. Feb. 3, 2026) (approving Siri & Glimstad hourly rates); *Tuteur v. Metropolitan Opera Association, Inc.*, Case No. 1:23-cv-03997-KPF at Dkt. No. 72 (S.D.N.Y. Mar. 27, 2025) (same); *Newson v. Landmark Admin, LLC*, Case No. DC-25-07674 (193rd Judicial District Dallas County TX, Jan. 29, 2026) (same); *Anaya v. Cencora, Inc.*, No. 2:24-cv-02961 (E.D. Pa. Feb. 11, 2026), Dkt. No. 140 (granting fee award of one-third of a \$40 million common fund in a medical information data breach settlement, and approving Mr.

Ferich's and other Ahdoot Wolfson lawyers' hourly rates); *Bianucci v. Rite Aid Corp.*, No. 24-3356 (E.D. Pa. July 30, 2025) (approving Mr. Ferich's and other Ahdoot Wolfson lawyers' hourly rates); *Moskowitz v. WellLife Network, Inc.*, Index 615086/2024 (N.Y. Sup. Ct. Nassau County Feb. 24, 2026) (approving one-third fee award in data breach class action involving mental health information and deeming Sterlington, PLLC and co-counsel's lodestar and hourly rates as reasonable); *Nemeth v. New York-Presbyterian Columbia University Irving Medical Center*, 655570/2024 (N.Y. Sup. Ct. NY County Dec. 5, 2025) (approving one-third fee award in data breach class action and finding such award to be "fair and reasonable"). These hourly rates are the current usual and customary rates set by our firms, as periodically adjusted according to the dispute in question and market rates. The rates reflect, at a minimum, what would be charged to a fee-paying client in the private legal marketplace for complex litigation. The rates are also in line with the rates charged by other firms that handle complex cases and class actions.

17. Moreover, Class Counsel have general familiarity with the range of hourly rates typically charged by plaintiffs' class action counsel in data breach and complex consumer class actions throughout the United States, both on a current and historical basis. Having practiced in various states across the country for many years, and litigated hourly and contingency cases, including data breach and consumer class actions, Class Counsel is familiar with the range of hourly rates typical in New York. From that basis, Class Counsel believes that the rates charged by their firms in this Action are within the range of market rates charged by attorneys of equivalent experience, skill and expertise for legal services furnished in complex contingency class action litigation such as this.

18. Class Counsel have kept detailed, contemporaneous time records regarding the amount of time its attorneys spent on this litigation, and the above charts and lodestar calculations are based on such records.

19. In Class Counsel's opinion, this time was reasonable and necessary for the prosecution of this Action and our firms took meaningful steps to ensure the efficiency of our work.

CLASS COUNSEL'S EXPENSES

20. In connection with the Action, Class Counsel also advanced costs and expenses.

21. As of the date of this Affirmation, Class Counsel has incurred \$39,598.21 in costs and expenses in connection with this Action. Below is a table categorizing these expenses.

Sterlington, PLLC

<u>EXPENSE</u>	<u>COST</u>
Filing Fees	\$829.49
Experts	\$12,916.67
Shipping & Miscellaneous	\$80.67
TOTAL	\$ 13,826.83

Ahdoot & Wolfson, PC

<u>EXPENSE</u>	<u>COST</u>
Electronic Research	\$16.80
Filing Fees and Services	\$460.47
Experts	\$7,416.67
Professional Legal Services	\$100.00
TOTAL	\$7,993.94

Siri & Glimstad LLP

<u>EXPENSE</u>	<u>COST</u>
Filing Fees	\$360.47
Expert Fees	\$7,416.97
Mediation Fees	\$10,000.00
TOTAL	\$17,777.44

22. The costs and expenses incurred in this Action are reflected on the books and records of Class Counsel. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the costs and expenses incurred. It is anticipated that costs may continue and expenses to accrue, including, but not limited to, those associated with preparation and filing of the motion for final Settlement approval.

23. The amount of expenses stated above does not include internal and other additional costs that Class Counsel incurred in this litigation but, in an exercise of discretion, do not seek to recover.

24. Based on Class Counsel's experience prosecuting this Action and overseeing the conduct of the litigation, all of these expenses were necessary and reasonable and incurred in connection with the Action.

25. It is Class Counsel's belief, based on our extensive experience generally and our investigation and research into this Action in particular, that the Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class. The experience of Class Counsel regarding similar types of privacy and data protection practices provided substantive knowledge

on the subject which enable us to represent Plaintiffs' and Settlement Class Members' interests without expending learning time that beginners would likely encounter.

26. Copies of Class Counsel's respective firm resumes are attached as Exhibits A-C.

We affirm this 1st day of May, 2026, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

/s/Arturo Peña Miranda
Arturo Peña Miranda

/s/Andrew W. Ferich
Andrew W. Ferich

/s/Tyler J. Bean
Tyler J. Bean