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10 *Attorneys for Plaintiffs and the Proposed Class*

11
12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 JUAN ROMERO, FRANK
15 TISCARENO, and KENNETH
16 ELLIOTT, on behalf of themselves, and
all others similarly situated,

17 Plaintiffs,

18 v.

19 SECURUS TECHNOLOGIES, INC,

20 Defendant.

Case No.: 16-cv-1283-JM-MDD

CLASS ACTION

**DECLARATION OF ROBERT
TEEL IN SUPPORT OF
PLAINTIFFS' MOTION FOR
LITIGATION COSTS,
INCENTIVE AWARDS, AND
ATTORNEYS' FEES**

Date: September 28, 2020

Time: 10:00 a.m.

Ctrm: 5D

Judge: Hon. Jeffrey T. Miller

1 Pursuant to 28 U.S.C. § 1746, I, Robert Teel, hereby declare and state as
2 follows:

3 1. I am a member in good standing of the State Bar of California, and the
4 United States District Court for the Southern District of California. I, along with
5 my co-counsel, represent Plaintiffs Juan Romero, Frank Tiscareno, and Kenneth
6 Elliott (“Plaintiffs”) and serve as Class Counsel pursuant to the Court’s Order
7 granting in part Plaintiffs’ motion for class certification (D.E. 141) in the
8 above-captioned matter. I make this declaration in support of Plaintiffs’ Motion for
9 Litigation Costs, Incentive Awards, and Attorneys’ Fees (the “Fee Motion”). This
10 declaration is based on my own personal knowledge, and if called to testify, I could
11 and would do so competently on the matters stated herein.

12 2. I was admitted to the State Bar of California on January 2, 1987 and
13 have been a member in good standing since that time. Over the years, I have
14 acquired extensive experience in successfully prosecuting, defending, and advising
15 plaintiffs and defendants in complex litigation, including without limitation matters
16 pertaining to federal and state class actions, over 800 state court cases, adversary
17 bankruptcy proceedings, several state and federal regulatory actions, and a grand
18 jury investigation. Over the course of my legal career, I have obtained settlements
19 worth in excess of one hundred million dollars as counsel to plaintiffs.

20 3. My practice is devoted to prosecuting and litigating class action and
21 other complex cases. In addition to the present action, I am currently class counsel
22 in the following cases: *Romero, et al. v. Securus Technologies, Inc.*, Case No. 3:16-
23 cv-1283-JM-MDD (USDC S.D. Cal.); *Owino v. CoreCivic, Inc.*, Case No. 3:17-cv-
24 01112 (USDC S.D. Cal.); and *Versetto v. Adtalem Global Education*,
25 Case No. 2018-CH-04872 (Cook Co., Ill. Cir. Ct.). A motion is also currently
26 pending seeking my appointment as settlement class counsel in the class action case
27 *Fox, et al. v. Iowa Health System*, Case No. 2018-CV-327 (USDC W.D. Wisc.).
28

1 4. I have served as counsel for the Plaintiffs in this action since May 2016
2 when the case was initially filed. I had a primary role in the pre-filing investigation
3 of this matter, and have been actively and personally involved in prosecuting and
4 resolving the litigation.

5 5. This action has been vigorously litigated on behalf of the Class for over
6 four years as described below and as more fully set forth in my Declaration in
7 Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement
8 (D.E.175-2). Prosecution of this litigation necessarily required the commitment of
9 a substantial amount of time, labor, and effort from myself and my co-counsel at
10 the Law Offices of Ronald A. Marron, APLC and Foley & Lardner LLP.
11 D.E. 175-2, ¶¶ 3-7.

12 6. The settlement agreement in this case was negotiated at arm’s-length
13 and was part of settlement discussions spanning over a year and half.
14 D.E. 175-2, ¶¶ 13-15. A true and correct copy of the First Amended and Restated
15 Class Action Settlement Agreement (the “Amended Agreement”) in the form and
16 content preliminarily approved by the Court and executed by all parties is attached
17 to Plaintiffs’ motion for final approval of the settlement as Exhibit 1. (D.E. 179-3.)
18 The Amended Agreement is the operative settlement document pursuant to the
19 Court’s Order dated June 16, 2020 granting preliminary approval of the settlement.
20 (D.E. 178.)

21 7. In undertaking to prosecute this case on a contingent fee basis, Class
22 Counsel assumed a significant risk of nonpayment or underpayment. Despite the
23 efforts in litigating this action, Class Counsel remains completely uncompensated
24 for the time invested in the action in addition to the substantial amount of
25 unreimbursed litigation costs that were advanced.

26 8. During the past four years of litigation I have personally been deeply
27 involved in working on this case, including without limitation:
28

1 • propounding and/or litigating eight separate Freedom of Information
2 Act and/or public records act requests;

3 • identifying over 100 potential witnesses and conducted dozens of
4 witness interviews;

5 • reviewing tens of thousands of pages of documents;

6 • preparing and drafting the first, second, and third amended complaints;

7 • responding to three motions to dismiss and overseeing the response to
8 a motion to strike class allegations;

9 • propounding and responding to written discovery requests with
10 Defendant;

11 • preparing 11 third-party subpoenas and meeting and conferring with the
12 San Diego, Riverside and San Bernardino Sheriffs' and District Attorneys' offices,
13 the San Diego and San Bernardino Public Defenders' offices, and the United States
14 Attorneys' offices for the Southern, Central, and Northern Districts of California;

15 • engaging in numerous written and telephonic meet and confers with
16 Defendant's counsel;

17 • engaging in substantial discovery motion practice;

18 • preparing and drafting the initial class certification motion;

19 • participating in preparing and responding to other substantial law and
20 motion matters, including Plaintiffs' summary judgment motion and renewed
21 motion for class certification;

22 • participating in the response to Defendant's class certification appeal;

23 • conducting settlement negotiations and negotiating the original and
24 Amended Agreements; and

25 • preparing and drafting the motion for preliminary approval of the
26 settlement.

27 9. During the four years I have been litigating this matter, I have incurred
28 \$4,007.45 in the following costs that were reasonably necessary for the prosecution

1 of this litigation and would normally have been billed to a client paying for
 2 counsel’s services on a regular basis.

3 Airfare and travel from Seattle to San	\$2,358.13
4 Diego, including hotel accommodations,	
5 parking, and other travel costs	
6 Computerized search and other computer	\$1,015.24
7 and database charges	
8 Meals while travelling	\$ 299.33
9 Business supplies for discovery	\$ 52.12
10 Ninth Circuit registration fee	\$ 230.00
11 Postage and Delivery	\$ 52.63
12 TOTAL	\$4,007.45

13 10. It is my understanding that the Foley firm and the Marron firm have
 14 incurred \$19,222.25 and \$3,229.27 in necessary costs, respectively. Class Counsel
 15 is therefore seeking total costs of \$26,458.97.

16 11. It is my understanding that the total lodestar for co-counsel at the
 17 Marron firm is \$336,249.00 based on 589.3 hours of work (468.7 attorney hours
 18 and 120.6 paralegal and law clerk hours). It is also my understanding that
 19 co-counsel at Foley & Lardner has a total lodestar of \$509,287.05.

20 12. In the normal course of my practice I keep contemporaneous time
 21 entries recorded in six-minute intervals (1/10th of an hour), which is how I kept my
 22 time in this case. I have reviewed in detail my time entries and expenditures for
 23 this matter, and in the exercise of my billing judgment I have reduced or eliminated
 24 entries and hours that were unproductive, duplicative, or would not properly be
 25 billed at my current hourly rate for the functions performed (*i.e.*, those functions
 26 that could be performed by less skilled or less senior attorneys or other personnel).

27 13. Since this case was initially filed in May 2016, my requested hourly
 28 billing rate has increased from \$600 per hour to my current billing rate of \$700 per

1 hour. The resulting total lodestar I am submitting after all reductions and
2 eliminations for my time entries is \$974,804.95 (1,392.6 hours at \$700 per hour).

3 14. Survey data confirms that my requested rate falls within the average
4 prevailing market rates for attorneys of similar experience, skill, and reputation in
5 the community. For example, a 2010 survey by the National Law Journal (NLJ)
6 shows rates of firms in Los Angeles for \$495-\$820 for partners and \$270-\$620 for
7 associates. A 2011 survey by the NLJ shows partner rates of \$275-\$860 in the
8 Southern California area, with a range of \$205-\$635 for associates in the same
9 geographic region. Copies of the NLJ surveys are available for the Court upon
10 request and a summary chart of the NLJ surveys from 2010-2012 is attached to
11 Mr. Marron's declaration submitted concurrently herewith as Exhibit B.

12 15. In the interest of settling the matter, Class Counsel and the Plaintiffs
13 have agreed to a total sum of \$900,000 for litigation costs, service awards, and
14 attorneys' fees. This sum includes not more than \$60,000 for incentive awards for
15 the three class representatives (\$20,000 each), and not less than \$840,000.00 to
16 cover attorneys' fees and costs in this litigation. This sum represents a significant
17 negative multiplier for Class Counsels' respective lodestars.

18 16. My detailed billing records in this case approach 90 pages of entries
19 and contain information that is protected from disclosure by the attorney-client
20 privilege and the attorney work-product doctrine. I will make my detailed billing
21 records available to the Court for *in camera* review upon the Court's request.

22 17. As further set forth in their declarations submitted concurrently
23 herewith, Plaintiffs Juan Romero, Kenneth Elliott, and Frank Tiscareno not only
24 devoted extensive time and effort to performing work on behalf of the Class to
25 successfully prosecute this case, but also suffered significant and extraordinary
26 adverse financial and reputational collateral consequences as a direct result of
27 serving as Class representatives.

28 18. According to my billing records, Mr. Elliott and I spent 16.5 hours in

1 telephone conferences and exchanging correspondence in this case; Mr. Romero and
2 I spent 12 hours in telephone conferences and exchanging correspondence and 3.3
3 hours meeting in person in this case; and Mr. Tiscareno and I spent 11.8 hours in
4 telephone conferences and exchanging correspondence in this case.

5 19. In addition, Messrs. Elliott and Romero each attended two full day
6 mediations averaging at least eight hours each exclusive of travel time (Mr. Elliott
7 commuted from Vista, California an hour each way while Mr. Romero's commute
8 from Logan Heights was a half hour each way). In addition, Mr. Tiscareno was on
9 standby telephonically for each mediation. Each Plaintiff also spent approximately
10 four to six hours diligently attempting to locate, review, and produce documents and
11 records to respond to Defendant's discovery requests.

12 20. In addition to the dozens of hours spent by Plaintiffs on this case (*in*
13 *toto* approximately 42.5 hours by Mr. Elliott, 37.3 hours by Mr. Romero, and 15.8
14 hours plus telephonic standby time for Mr. Tiscareno), each Plaintiff has suffered
15 adverse collateral consequences in the form of financial and reputational harm
16 directly tied to serving as a Class representative as further set forth in their
17 declarations. In my opinion the value of the general release of each Plaintiff's right
18 to seek and obtain not only the \$5,000 in statutory damages under Cal. Penal
19 Code § 637.2, but also the additional financial and/or reputational harm exceeds the
20 amount of the requested \$20,000 service awards.

21 21. A comparison of this case with the subsequently filed Missouri case of
22 *Johnson v. CoreCivic, Inc. and Securus Technologies, Inc.*, Case No. 4:16-CV-
23 00947-SRB (USDC W.D. Mo.) is illustrative. The *Johnson* case involved a class of
24 approximately 750 class members whose recordings were found in the possession of
25 the U.S. Attorney's Office and a common fund of \$3,700,000. On July 31, 2020 the
26 plaintiffs in *Johnson* filed a motion for preliminary approval of a settlement
27 requesting \$25,000 in service awards for each of two class representatives. A true
28 and correct copy of the *Johnson* preliminary approval motion is attached hereto as

1 Exhibit 1.

2 22. Under the *Johnson* settlement, each of the 750 class members is
3 required to release the defendants from all liability under applicable federal and state
4 law in order to file a claim up to a maximum of \$10,000. There is no injunctive
5 relief in the preliminary approval motion requiring the defendants to change their
6 recording practices.


7 23. This result stands in contrast to the 142,314 similarly situated
8 individual attorneys and detainees involved in this case who are *not* required to
9 release their claims, and the public benefit from the injunctive relief negotiated by
10 Plaintiffs to protect the constitutional sanctity of attorney-client communications.
11 Plaintiffs’ requested service awards in total amount to \$0.42 per individual who was
12 sent notice in this case, less than the cost of a postage stamp, while the *Johnson*
13 service awards in total amount to \$66.67 per person (roughly 158 times higher).

14 24. Plaintiffs’ Fee Motion will be uploaded to the settlement website upon
15 its filing with the Court so that Class Members are afforded an adequate opportunity
16 to object to it and the requested incentive awards if they choose to do so.

17 25. Based on the foregoing, in my opinion the requested litigation cost
18 reimbursement, incentive awards, and attorneys’ fees are reasonable when taking
19 into account: (a) the time, effort, and work done by Class Counsel and the Plaintiffs
20 on behalf of the Class; (b) the financial and reputational risk and harm done to the
21 Plaintiffs as a result of each Plaintiff serving as a Class representative; (c) the value
22 of the general releases given by Plaintiffs; and (d) the settlement achieved for the
23 benefit of the Class and the public at large which does not include a release of any
24 other Class Members’ claims.

25 I declare under penalty of perjury that the foregoing is true and correct.

26
27 DATED: August 17, 2020



Robert Teel

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