

Exhibit 1

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

KURT PHILLIPS, MICHAEL MANSON,
THOMAS GRAHAM, AND AUSTIN
KOHL, *on behalf of themselves and all
others similarly situated,*

Plaintiffs,

v.

BAY BRIDGE ADMINISTRATORS,
LLC,

Defendant.

Case No. 1:23-CV-00022-DAE

**DECLARATION OF TERENCE R. COATES IN SUPPORT OF PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES, EXPENSES, AND CLASS REPRESENTATIVE SERVICE
AWARDS**

I, Terence R. Coates, hereby state that the following is true and accurate and based on my personal knowledge:

1. As preliminarily approved Class Counsel for Plaintiffs Kurt Phillips, Michael Manson, Thomas Graham, and Austin Kohl ("Plaintiffs") and the Settlement Class in this matter, my firm, Markovits, Stock & DeMarco, LLC, has been centrally involved in all aspects of this litigation from the initial investigation to the present. My firm has worked alongside other Plaintiffs' Counsel, including Joe Kendall from Kendall Law Group, LLC, Joseph M. Lyon from The Lyon Firm, Philip J. Krzeski of Chestnut Cambronne PA, and Gary E. Mason of Mason LLP in representing Plaintiffs and the Settlement Class in achieving the robust \$2,516,890 non-reversionary common fund. I have been the primary point of contact for Plaintiffs and Plaintiffs'

Counsel with counsel for Defendant Bay Bridge Administrators, LLC (“Bay Bridge” or “Defendant”).

CLASS COUNSEL, PLAINTIFFS’ COUNSEL, AND PLAINTIFFS’ EFFORTS

2. Plaintiffs filed a consolidated class action complaint (“Complaint”) on June 26, 2023, in this case resulting from their Personal Information being included in Bay Bridge’s September 2022 Data Incident. Before filing the Complaint, Plaintiffs, Class Counsel, and Plaintiffs’ Counsel spent extensive time reviewing and preparing the factual allegations in the Complaint. Class Counsel and Plaintiffs’ Counsel reviewed many states’ attorney general’s website for publicly available information regarding the Data Breach. Furthermore, Class Counsel and Plaintiffs’ Counsel researched the potential viability of the causes of action included in the Complaint. After the Complaint was drafted, the Plaintiffs reviewed and approved the Complaint’s contents including their respective factual allegations.

3. Class Counsel and Plaintiffs’ Counsel then fully researched and drafted a 32-page opposition (ECF 41) to Defendant’s Motion to Dismiss Consolidated Complaint (ECF 39). After the Motion to Dismiss was fully briefed and after Bay Bridge provided responses to Plaintiffs’ settlement discovery requests, the Parties participated in a full-day, in-person mediation with experienced data privacy mediator, Jill R. Sperber. Ultimately, Ms. Sperber was able to guide the Parties to a settlement in principle of a \$2,516,890 non-reversionary common fund settlement for the class of approximately 251,689 individuals. Class Counsel’s extensive experience handling data privacy class action cases along with Defendant’s response to Plaintiffs’ settlement requests permitted Plaintiffs and Class Counsel to make the informed decision to settle this case under Ms. Sperber’s guidance.

4. After reaching the settlement in principle at the November 2023 mediation, Class Counsel and Defendant's Counsel began drafting and negotiating the thorough and detailed terms of the Settlement Agreement. Class Counsel's extensive experience handling similar data breach and data privacy class action cases permitted Plaintiffs to make informed decisions about the types of settlement benefits made available under the Settlement Agreement. Furthermore, Class Counsel sought to ensure that Class Members were provided with a simple, direct claims process so that Class Members could easily complete claim forms to receive cash settlement benefits. Class Counsel were able to attain this goal by utilizing a simple tear-off claim form that was included on the Short Form Notice issued to Class Members and through providing Class Members the opportunity to submit claims to receive cash settlement payments online through the Settlement Website. In addition to the simple claims process, Class Counsel sought an uncapped pro rata cash payment to Class Members who submitted valid claims under the Settlement. Class Counsel was also intentional in selecting Western Alliance Bank ("Western Alliance") to be the escrow agent in control of the Settlement Fund because Western Alliance specializes, in part, in handling qualified settlement funds and the distribution of such qualified settlement funds to class members. Western Alliance also has a digital payment platform that will assist in distributing settlement payment to the Class in this case. Class Counsel has found that being able to distribute settlement funds to Class Members via digital means is more cost effective than sending paper settlement checks that also carry the cost of postage. This distinction is important because any savings resulting from distributing settlement payments digitally instead of through paper checks (with postage) means there will be more funds remaining in the Net Settlement Fund to be distributed to Class Members through the Pro Rata Cash Payment.

5. Class Counsel was also intentional in selecting KCC as the Settlement Administrator in this case. Class Counsel procured three bids from different settlement administrators and KCC's bid price was the most competitive for the settlement administration services required for the benefit of the Class in this case. Class Counsel also understood that the competitive bid process would result in the best settlement administration price for the Class, which is important because the settlement administration costs and expenses will ultimately be paid from the Settlement Fund.

6. From the Settlement Fund, Class Members will receive a projected cash payment of \$50 (subject to a pro rata increase or decrease) and the ability to receive up to \$5,000 for documented out-of-pocket losses, after the deduction of the payment to KCC for Administrative Expenses, for attorneys' fees and expenses, and the Class Representative Service Awards.

CLASS COUNSEL'S ATTORNEYS' FEES & EXPENSES ARE REASONABLE

7. Under the Settlement, Class Counsel may seek up to 1/3 of the Settlement Fund (\$838,963.33) as attorneys' fees and up to \$30,000.00 in expenses, which shall be paid from the Qualified Settlement Fund.

8. Class Counsel have undertaken this case on a contingency fee basis and have not received any payment for their work in this case to date and have not been reimbursed for any of their litigation expenses. By providing legal services to the Class in this case, Class Counsel and Plaintiffs' Counsel were precluded from taking on certain other work. Class Counsel and Plaintiffs' Counsel have expended significant time and efforts achieving the \$2,516,890 Settlement Fund.

9. Courts within the District routinely award attorneys' fees up to 1/3 of the common fund amount in class action settlements. *Eric P. John Fund v. Halliburton Co.*, No. 2018 1942227, at *7, 17 (N.D. Tex. Apr. 25, 2018) (approving attorneys' fees of 1/3 of the settlement fund); *In re*

CaptureRx Data Breach Litigation, No. 5:21-cv-00523 (W.D. Tex; Doc. 54) (approving attorneys' fees of 1/3 of the \$4,750,000 common fund).

10. Plaintiffs' Counsel, including Class Counsel, have spent significant time and expenses pursuing this matter on behalf of the Class. From January 2023 to roughly the present, Plaintiffs' Counsel and Class Counsel have spent more than 476.3 hours for a lodestar total of \$346,004.50, and incurred expenses of \$19,157.68 directly related to this litigation. Lodestar and expense charts for Class Counsel and Plaintiffs' Counsel are attached to this Declaration as **Exhibit A**. The current hourly rates that form the basis of the lodestar calculation reflect the experience of Class Counsel and Plaintiffs' Counsel and have been previously approved by other courts. Class Counsel and Plaintiffs' Counsel's attorneys' fees request of \$838,963.33 represents only a 2.4 multiplier of Plaintiffs' Counsel's current lodestar. As Class Counsel, I sought to ensure that Plaintiffs' Counsel did not duplicate work on behalf of the Class. For example, the opposition to the motion to dismiss was divided into sections so that each firm comprising Plaintiffs' Counsel contributed to the response. Accordingly, Class Counsel and Plaintiffs' Counsel's lodestar to date is reasonable and was incurred for the effective and efficient prosecution and resolution of this litigation.

11. The reasonable expenses incurred all relate to this litigation, were necessary for the quality of result achieved, and were also properly documented and prepared using contemporaneous time records. For example, my firm incurred the majority of expenses of \$14,988.41 consisting of a \$9,375.00 payment to the mediator, \$702.00 in filings fees for complaints and admission applications, \$726.58 in Pacer and research costs, \$45.75 in copy costs, and \$4,139.08 in travel costs for two attorneys from my firm to attend the mediation in Santa Ana, California and for one attorney to attend the upcoming Final Approval Hearing. The remaining

roughly \$4,169.27 in expenses from the other firms representing Plaintiffs in this matter consist of filings fees for the underlying complaints, research costs, copies, admission applications, and travel costs associated with the mediation. Given that there were multiple underlying complaints that were consolidated into this proceeding and mediation alone was \$9,375.00, Plaintiffs' expenses of \$19,157.68 are entirely reasonable and warrant reimbursement. Furthermore, the expenses incurred in this matter are those that would be charged to a fee-paying client in the private legal marketplace. I have reviewed the expenses incurred by each firm comprising Plaintiffs' Counsel and have confirmed they were incurred in this case and are reasonable. The expenses were prepared utilizing Class Counsel and Plaintiffs' Counsel detailed expense records.

12. Class Counsel and Plaintiffs' Counsel will continue to expend substantial additional time and other minimal expenses continuing to protect the Class's interest through the Final Approval Hearing and throughout settlement administration. Class Counsel believes that the fee request of \$838,963.33 and expenses of \$19,157.68 are reasonable and justified in this case understanding that the Settlement provides substantial cash benefits to Class members submitting valid claims from the non-reversionary Settlement Fund and all expenses were incurred to achieve the Settlement for the Class. Any multiplier amount will decrease as Class Counsel and Plaintiffs' Counsel continue to oversee this Settlement on behalf of the Class.

**THE CLASS REPRESENTATIVE SERVICE AWARDS OF \$3,000.00
ARE REASONABLE AND JUSTIFIED**

13. The proposed Class Representatives have been active participants in this case, generally stayed informed about this litigation, reviewed, and approved the settlement demand and final settlement amount and Settlement Agreement, reviewed the factual allegations in the Complaint, participated in plaintiff vetting to confirm they are adequate representatives of the Class in this case, and spent substantial time and effort protecting the Class's interests. Their

participation in this case was vital to establishing the Settlement Fund. Class Representatives have no conflicts of interest with other Settlement Class Members, are subject to no unique defenses, and they and their counsel have and continue to vigorously prosecute this case on behalf of the Settlement Class. Accordingly, the \$3,000 Service Award to each of the four Class Representatives (\$12,000 total) is reasonable given the efforts of each Class Representative on behalf of the Class in this matter. Furthermore, the Class Representative Service Awards here are less than what has been approved in other common fund data breach class action settlements. *See Lutz v. Electromed, Inc.*, No. 0:21-cv-02198 (D. Minn.; Doc. 73) (service award of \$9,900 in a data breach class action); *Tucker v. Marietta Area Health Care*, No. 22-cv-0184 (S.D. Ohio) (service award of \$5,000 in a data breach class action).

**THE SETTLEMENT IS FAIR, REASONABLE AND A SUBSTANTIAL RECOVERY
FOR THE CLASS**

14. Class Counsel believe the Settlement is fair, reasonable, and adequate.

15. Furthermore, in my experience in handling over 70 data breach class action cases for plaintiffs, I hold the informed opinion that the \$2,516,890 non-reversionary common fund settlement is fair and reasonable for 251,689 Class Members. The settlement afforded here, as compared to the uncertainty of damages even following a successful finding of liability, weighs in favor of final approval.

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

Executed on June 10, 2024, at Cincinnati, Ohio.

/s/ Terence R. Coates
Terence R. Coates

Exhibit A

Class Counsel and Plaintiffs' Counsel – Lodestar & Expenses*Phillips v. Bay Bridge Administrators, LLC, No. 1:23-cv-00022 (W.D. Tex.)***LODESTAR**

<u>Firm</u>	<u>Hours</u>	<u>Lodestar</u>	<u>Expenses</u>
Markovits, Stock & DeMarco, LLC	250.1	\$182,504.00	\$14,988.41
The Lyon Firm	62.2	\$49,860.00	\$1,934.80
Mason LLP	50	\$35,342.50	\$0.00
Chestnut Cambronne	86.4	\$52,078.00	\$2,234.47
Kendall Law Group	27.6	\$26,220.00	\$0.00
<u>Total</u>	<u>476.3</u>	<u>\$346,004.50</u>	<u>\$19,157.68</u>

EXPENSES

Westlaw/Pacer	Copies	Mediation	Filing Fees	Travel	TOTAL
\$743.38	\$79.07	\$9,375.00	\$1,404.00	\$7,556.23	\$19,157.68