

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

DAVID LINNINS, KIM WOLFINGTON,
and CAROL BLACKSTOCK, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

HAECO AMERICAS, LLC, formerly
known as TIMCO AVIATION
SERVICES, INC., and HAECO
AMERICAS LINE SERVICES, LLC,

Defendants.

Civil Action No. 16cv486

**PLAINTIFF’S APPLICATION
FOR INCENTIVE AWARDS TO
SETTLEMENT CLASS
REPRESENTATIVES**

Pursuant to the Court’s order granting preliminary approval of the settlement of this class action case, Plaintiffs David Linnins, Kim Wolfington, and Carol Blackstock (“Settlement Class Representatives”), respectfully submit this this application seeking incentive awards of \$500 to the Settlement Class Representatives.

General information regarding this litigation and terms of the Settlement history is presented in the Memorandum in Support of Preliminary Approval. [Doc. 27]. The Settlement Agreement provides that the three Plaintiffs named in this action— David Linnins, Kim Wolfington, and Carol Blackstock— may make an

application to the Court for an Incentive Award of up to \$500 for his or her efforts on behalf of the Settlement Class. *See*, Settlement Agreement (“S.A.”) §IV.B. AS provided in the Settlement Agreement, these Incentive Awards “are intended to compensate [the Settlement Class Representatives] for their efforts in this litigation and commitment on behalf of the Class.” *Id.*

In light of their efforts and time spent advancing this litigation on behalf of the Settlement Class, and the recovery achieved for the Settlement Class, the request for an Incentive Award in the amount of \$500 for each Settlement Class Representative is reasonable and should be awarded.

I. PARTICIPATION OF THE SETTLEMENT CLASS REPRESENTATIVES

The Settlement Class Representatives are current or former employees of Defendant Timco Aviation Services, Inc. (“Timco”) who had their W-2 personal data disclosed to unknown, unauthorized third parties by Timco in 2016 (“Data Disclosure”). As a result of the Data Disclosure, each of the Settlement Class Representatives experienced identity theft and fraud. Accordingly, the interests of the Settlement Class Representatives align with those of the Settlement Class. And most importantly, the Settlement Class Representatives have used their best efforts to advance the interest of the members of the Settlement Class.

Throughout this litigation, the Settlement Class Representatives have demonstrated their commitment to monitor and supervise the prosecution of the case on behalf of the Settlement Class. They have provided invaluable assistance to the Class and Class Counsel. The Settlement Class Representatives secured representation by the Law Office of Jean Sutton Martin PLLC and Morgan & Morgan Complex Litigation Group, two law firm experienced in complex litigation and data security class action matters, for the purposes of bringing a lawsuit to protect and adjudicate the rights and claims of Class members as a result of the Data Disclosure. They provided crucial documents and information to Class Counsel, reviewed the complaint and other pleadings prior to filing, maintained communication with Class Counsel to monitor the progress of the litigation, and discussed the terms of the settlement with Class Counsel. *See* Declaration of Jean Sutton Martin, ¶ 3, attached hereto as Exhibit 1. At all times, the Settlement Class Representatives kept the best interests of the Class as their primary consideration, and the Class has benefitted from their participation in this case. The Declarations of David Linnins, Kim Wolfington, and Carol Blackstock, attached collectively hereto as Exhibit 2, detail the active participation each of the Settlement Class Representatives have taken in this litigation.

II. THE INCENTIVE AWARDS ARE REASONABLE AND SHOULD BE AWARDED

It is very common in class action cases for service or incentive payments to be paid to named Plaintiffs or class representatives in addition to their share of the recovery. *Kay Co. v. Equitable Prod. Co.*, 749 F. Supp. 2d 455, 472 (S.D. W. Va. 2010). *See also Bogosian v. Gulf Oil Corp.*, 621 F.Supp. 27, 32 (E.D. Pa. 1985) ("The propriety of allowing modest compensation to class representatives seems obvious"); *Van Vranken v. Atl Richfield Co.*, 901 F.Supp. 294, 299-300 (N.D. Cal. 1995) (awarding \$50,000 to the named plaintiff); *In re Dunn & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (awarding \$55,000 each to two named plaintiffs). Serving as a class representative is a burdensome task and without class representatives, the class would receive nothing. *Robinson v. Trustee Council of Wateree Cmty. Actions, Inc.*, No. CA: 3:11-CV-00313-CMC, 2012 U.S. Dist. LEXIS 129069, at * 31-32 (D.S.C. Sept. 10, 2012) (*quoting Kay Co*, 749 F. Supp. 2d at 472)). Incentive payments compensate Plaintiffs for their additional efforts, risks, and hardships they have undertaken as class representatives on behalf of the group in filing and prosecuting the action. *See Muhammad v. Nat'l City Mortgage, Inc.*, Civil Action No. 2:07-0423, 2008 U.S. Dist. LEXIS 103534, 2008 WL 5377783, at *7 (S.D. W. Va. Dec. 19, 2008)(incentive awards "encourage socially beneficial litigation by compensating named plaintiffs for their expenses on

travel and other incidental costs, as well as their personal time spent advancing the litigation on behalf of the class and for any personal risk they undertook.").

Although this case centers on data security issues, one should not ignore the unique context of the employee/employer relationship between Plaintiffs and the Defendant. Incentive awards are especially appropriate in employment litigation, where "the plaintiff is often a former or current employee of the defendant, and thus, by lending his name to the litigation, he has, for the benefit of the class as a whole, undertaken the risk of adverse actions by the employer or co-workers." *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 187 (W.D.N.Y. 2005). Accordingly, courts around the country have approved substantial incentive payments in employment-related class actions. *See, e.g., Wineland v. Casey's General Stores, Inc.*, 267 F.R.D. 669 (S.D. Iowa 2009) (approving incentive payments of \$10,000 per named plaintiff in FLSA case on behalf of over 11,000 cooks and cashiers employed by convenience store chain); *Clark v. Ecolab, Inc.*, 2010 U.S. Dist. LEXIS 47036 (S.D.N.Y. May 11, 2010) (approving \$10,000 service awards to each named plaintiff in hybrid class/collective action involving unpaid overtime) (unpublished); and *Hoffman v. First Student, Inc.*, 2010 U.S. Dist. LEXIS 27329, 2010 WL 1176641, *3 (D. Md. Mar. 23, 2010) (affirming \$3,000 service payments to seven lead plaintiffs in FLSA case of over 750 school bus driver and aides) (unpublished). The Settlement Class Representatives lent their names to this case and thereby subjected

themselves to public attention, including being forever linked to the litigation in any internet searches using their names. The public disclosure of their identities by bringing an action against their employer raised the risk of potential adverse actions not only within the workplace, but also within the niche aviation market and local community.

Here, the Awards sought are modest and reasonable and fall well below the amounts considered “presumptively reasonable” by other courts. *See, e.g., Hawthorne v. Umpqua Bank*, No. 11-6700, 2015 WL 1927342, at *8 (N.D. Cal. Apr. 28, 2015) (“Many courts in the Ninth Circuit have also held that a \$5,000 incentive award is ‘presumptively reasonable.’”) (citation omitted); *Resnick v. Frank*, 779 F.3d 934, 941 (9th Cir. 2015) (approving service awards of \$5,000 to class representatives in a consumer case). The combined total of \$1,500 requested as Incentive Awards represents less than ½ of 1% of the \$312,500 Claim Fund to be established to compensate Settlement Class Members for the identity theft and other damages they incurred as a result of the Data Disclosure. Given that the Settlement provides for other relief to be paid to Settlement Class Members in addition to this Claim Fund, the requested Incentive Awards represent far less than the actual total value of the Settlement. *See*, S.A. § III.A. Further, the Settlement Agreement provides that the Incentive Awards will be paid by Defendant separate and apart

from the Claim Fund. S.A. §IV.B. Thus, the \$500 awards sought will not affect the monetary or non-monetary benefits to Settlement Class Members.

The amounts of the proposed Incentive Awards were thoroughly discussed and negotiated between the parties. The proposed amounts were based on the Settlement Class Representatives' risks in bringing this lawsuit and their level of involvement in the case.

CONCLUSION

The Plaintiffs respectfully request that the Court approve Incentive Awards in the amount of \$500 to each of the three Settlement Class Representatives.

Dated: April 17, 2018

Settlement Class Counsel

/s/ Jean Sutton Martin
Jean Sutton Martin (NC Bar No.
25703)
LAW OFFICE OF JEAN SUTTON
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Wilmington, NC 28403
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/s/ John A. Yanchunis
John A. Yanchunis (FL Bar No.
324681)
(admitted *pro hac vice*)
MORGAN & MORGAN
COMPLEX LITIGATION GROUP
201 N. Franklin Street, 7th Floor
Tampa, Florida 33602
Telephone: (813) 223-5505
jyanchunis@ForThePeople.com

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2018, a true and correct copy of the foregoing document was filed with the Court utilizing its ECF system, which will send notice of such filing to all counsel of record.

/s/ Jean S. Martin

Jean S. Martin

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

DAVID LINNINS, KIM WOLFINGTON, and
CAROL BLACKSTOCK, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

TIMCO AVIATION SERVICES, INC.,

Defendant.

Civil Action No. 16cv486

**DECLARATION OF
JEAN SUTTON MARTIN
IN SUPPORT OF
PLAINTIFF'S APPLICATION
FOR INCENTIVE AWARDS TO
SETTLEMENT CLASS
REPRESENTATIVES**

I, Jean Sutton Martin, hereby declare pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I have been appointed by this Court as Settlement Class Counsel in this matter. I submit this declaration in support of the Plaintiffs' Application for Incentive Awards to Settlement Class Representatives. The facts herein stated are true of my own personal knowledge and if called to testify to such facts, I could and would do so competently.

2. Before this case was filed, each of the Settlement Class Representatives was advised on their obligations as a class representative to select adequate and skilled counsel, to cooperate with counsel, and to place the interests of the class on a level equal to or above his or her own interests. The Settlement Class Representatives have met and continue to meet these obligations, cooperating fully with counsel to fulfill their fiduciary duties to the class.

3. The Settlement Class Representatives have kept in close contact with Class Counsel, assisting counsel and acting on behalf of the Class by providing information helpful for

the prosecution of this action, reviewing pleadings, and reviewing and approving the terms of the Settlement.

4. The Settlement Class Representatives have done everything asked of them during the pendency of this litigation. They have always been concerned about obtaining a result that was best for the Settlement Class.

5. For the above reasons, it is my considered opinion as an experienced class action lawyer that the requested Incentive Awards to the Settlement Class Representatives are reasonable and appropriate.

6. On behalf of Plaintiffs and Class Counsel, I respectfully request that the Court award the requested incentive awards.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of April 17, 2018 in Wilmington, North Carolina.

By: s/ Jean Sutton Martin
Jean Sutton Martin, Esq.

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

DAVID LINNINS, KIM WOLFINGTON, and
CAROL BLACKSTOCK, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

TIMCO AVIATION SERVICES, INC.,

Defendant.

Civil Action No. 16cv486

**DECLARATION OF CAROL
BLACKSTOCK IN SUPPORT OF
PLAINTIFFS' APPLICATION FOR
SERVICE AWARDS FOR NAMED
PLAINTIFFS**

I, Carol Blackstock, declare as follows:

1. I am one of the Named Plaintiffs seeking to represent the Settlement Class in this case.
2. I submit this declaration in support of Plaintiffs' Application for Service Awards for Named Plaintiffs. I have personal knowledge of the facts stated herein. If called to testify to the contents of this declaration, I could and would competently do so.
3. I am a former employee of Timco Aviation at the Wallburg, North Carolina facility.
4. I was one of the employees who had their personal data disclosed by Timco.
5. On or about March 28, 2016, I received a letter from the IRS addressed to me and my late husband. The letter was a response to a March 19, 2016 request made to the IRS for an account transcript. The transcript included transcript, which included Social Security Numbers for me and my husband, our 2015 Adjusted Gross Income, 2015 Taxable Income, and tax withholding amounts.
6. Because neither myself nor my husband had requested this transcript, I contacted the IRS. I was instructed on the steps to take to report the identity theft and fraud.

7. Weeks later, after learning that my data had been disclosed by Timco to unknown third parties, I began taking immediate steps to prevent future identity theft and harm.

8. As a result of Timco disclosing my personal data, I have spent numerous hours filing police reports, monitoring my credit reports and completing the IRS paperwork necessary to protect myself from future incidents of identity theft or fraud.

9. Prior to the disclosure of my personal data by Timco, I had no knowledge of being the victim of identity theft. I had never before experienced personal fraud such as I encountered after the Data Disclosure by Timco.

10. After experiencing this fraud, I contacted the law firm of Morgan & Morgan to see if I had a legal claim against Timco. Afterwards, I had multiple conversations with attorney Jean Martin and decided to pursue a class action against Timco. Before this case was filed, I was fully informed of my responsibilities and obligations as a potential class representative.

11. I have actively participated in this litigation, including by discussing with my attorneys the process of the litigation and the ultimate settlement of the lawsuit. I provided information for the complaint filed in this case and reviewed the complaint and other filings in this matter.

12. I have keep in regular contact, by phone and by email, with Ms. Martin, who has responded to any questions that I had.

13. I have spoken with Ms. Martin about the Settlement and have given my approval for the Settlement.

14. I have done my best to pursue this litigation and act in the best interests of the Settlement Class, which I agreed to represent. I have cooperated with the attorneys during this litigation and have actively worked to keep up-to-date with the progress.

15. I have not been promised any compensation for performing my duties as a class representative. I understand that the parties may request that the Court award me up to \$500 for my time and efforts on behalf of the Settlement Class, but that the Court has full discretion to order any award and the amount of such award. I will be grateful if the Court determines that my efforts in assisting with the prosecution of this action on behalf of the Settlement Class justifies an award in any amount.

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

4/17/2018

Executed this _____ day of April, 2018 in Davidson County, North Carolina.



Carol Blackstock

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

DAVID LINNINS, KIM WOLFINGTON, and
CAROL BLACKSTOCK, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

TIMCO AVIATION SERVICES, INC.,

Defendant.

Civil Action No. 16cv486

**DECLARATION OF KIM
WOLFINGTON IN SUPPORT OF
PLAINTIFFS' APPLICATION FOR
SERVICE AWARDS FOR NAMED
PLAINTIFFS**

I, Kim Wolfington, declare as follows:

1. I am one of the Named Plaintiffs seeking to represent the Settlement Class in this case.

2. I submit this declaration in support of Plaintiffs' Application for Service Awards for Named Plaintiffs. I have personal knowledge of the facts stated herein. If called to testify to the contents of this declaration, I could and would competently do so.

3. I am one of the employees who had their personal information disclosed by Timco Aviation.

4. In April 2016, my 2015 tax return was rejected when I tried to electronically submit it to the IRS. I called the IRS and learned that a 2015 tax return using my Social Security number had already been filed.

5. As I had not previously submitted my tax return, I immediately realized that I had been the victim of identity theft.

6. Before this incident, I received notification from the IRS that my Social Security number had been used in an attempt to view my tax information through the IRS's Get Transcript

application. I had assumed that my accountant made this inquiry in conjunction with preparing my tax return. However, after learning that I had been the victim of identity theft, I discovered that my accountant had not made these inquiry and, thus, an unauthorized third party had made this attempt using my Social Security number.

7. Prior to the disclosure of my personal data by my employer, Timco, I had no knowledge of being the victim of identity theft. I had never before experienced personal fraud such as I encountered after the Data Disclosure by Timco.

8. As a result of Timco disclosing my personal data, I was forced to spend numerous hours making telephone calls and completing paperwork necessary to address this fraud. Also, the processing of my 2015 tax return was delayed while the IRS conducted their investigation and verified my identity.

9. Because of the steps I have been required to take to protect myself from future fraud, I am not afforded the convenience of electronically filing my taxes.

10. After experiencing this fraud, I contacted the Law Office of Jean Sutton Martin PLLC to see if I had a legal claim against Timco. Afterwards, I had multiple conversations with attorney Jean Martin and decided to pursue a class action against Timco. Before this case was filed, I was fully informed of my responsibilities and obligations as a potential class representative.

11. I have actively participated in this litigation, including by discussing with my attorneys the process of the litigation and the ultimate settlement of the lawsuit. I provided information for the complaint filed in this case and reviewed the complaint and other filings in this matter.

12. I have had regular updates on the progress of the case and Ms. Martin has responded to any questions that I had.

13. I have spoken with Ms. Martin about the Settlement and have given my approval for the Settlement.

14. I have done my best to pursue this litigation and act in the best interests of the Settlement Class, which I agreed to represent. I have cooperated with the attorneys during this litigation and have actively worked to keep up-to-date with the progress.

15. I have not been promised any compensation for performing my duties as a class representative.

16. I understand that a request is being made for the Court to award me up to \$500 for my time and efforts on behalf of the Settlement Class. I also understand that the Court has full discretion to order any such award and the amount of any award.

17. I will be grateful if the Court determines that my efforts in assisting with the prosecution of this action on behalf of the Settlement Class justifies an award in any amount.

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

4/16/2018

Executed this _____ day of April, 2018 in Forsyth County, North Carolina.



Kim Wolfington

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

DAVID LINNINS, KIM WOLFINGTON, and
CAROL BLACKSTOCK, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

TIMCO AVIATION SERVICES, INC.,

Defendant.

Civil Action No. 16cv486

**DECLARATION OF DAVID LINNINS IN
SUPPORT OF PLAINTIFFS'
APPLICATION FOR SERVICE
AWARDS FOR NAMED PLAINTIFFS**

I, David Linnins, declare as follows:

1. I am one of the Named Plaintiffs seeking to represent the Settlement Class in this case.
2. I submit this declaration in support of Plaintiffs' Application for Service Awards for Named Plaintiffs. I have personal knowledge of the facts stated herein. If called to testify to the contents of this declaration, I could and would competently do so.
3. I am an employee of Timco Aviation at the Wallburg, North Carolina facility.
4. I was one of the employees who had their personal data disclosed by Timco.
5. In April 2016, while trying to electronically submitted my completed tax return to the IRS, I received notice that the return had been rejected and was instructed to contact the IRS. Upon doing so, I was advised that a 2015 tax return using my Social Security number had already been filed. Since I had not previously filed my tax return, I realized that I had been the victim of identity theft. The IRS gave me instructions to complete a Form 1039 Identity Theft Affidavit, which I did.

6. I also notified the local police that I had been the victim of identity theft and tax fraud. I spent several hours with a detective completing a police report and working with the assistance of the detective to complete additional paperwork from the IRS, including an authorization for the IRS to release information regarding the incident to the local police department.

7. I also notified the North Carolina Department of Revenue that I had been a victim of identity theft and tax fraud.

8. Additionally, I pulled and reviewed his credit reports from each of the three nationwide credit reporting companies to make certain there was no other fraud that had occurred in my name.

9. To protect me and my family from future fraud and identity theft, I purchased identity theft and credit protection services through Lifelock at an annual cost of \$109.00.

10. As a result of the Data Disclosure, I have spent numerous hours making telephone calls and completing paperwork necessary to address this fraud. I had to take time off from work for these efforts, as these telephone calls and meetings had to take place during the normal business day hours.

11. Prior to the disclosure of my personal data by Timco, I had no knowledge of being the victim of identity theft.

12. After experiencing this fraud, I contacted the Law Office of Jean Sutton Martin to see if I had a legal claim against Timco. Afterwards, I had multiple conversations with attorney Jean Martin and decided to pursue a class action against Timco. Before this case was filed, I was fully informed of my responsibilities and obligations as a potential class representative.

13. I have actively participated in this litigation, including by discussing with my attorneys the process of the litigation and the ultimate settlement of the lawsuit. I provided information for the complaint filed in this case and reviewed the complaint and other filings in this matter.

14. I have keep in regular contact with Ms. Martin, who has responded to any questions that I had.

15. I have spoken with Ms. Martin about the Settlement and have given my approval for the Settlement.

16. I have done my best to pursue this litigation and act in the best interests of the Settlement Class, which I agreed to represent. I have cooperated with the attorneys during this litigation and have actively worked to keep up-to-date with the progress.

17. I have not been promised any compensation for performing my duties as a class representative. I understand that the parties may request that the Court award me up to \$500 for my time and efforts on behalf of the Settlement Class, but that the Court has full discretion to order any award and the amount of such award. I will be grateful if the Court determines that my efforts in assisting with the prosecution of this action on behalf of the Settlement Class justifies an award in any amount.

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

Executed this ^{4/17/2018} _____ day of April, 2018 in Randolph County, North Carolina.



David Linnins