

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: MOVEIT CUSTOMER DATA
SECURITY BREACH LITIGATION

MDL No. 1:23-md-03083-ADB

Judge Allison D. Burroughs

This Document Relates To:

1:23-cv-13014-ADB
1:23-cv-13015-ADB
1:23-cv-13026-ADB
1:23-cv-13019-ADB
1:23-cv-13018-ADB
1:23-cv-13020-ADB
1:23-cv-12524-ADB
1:23-cv-13025-ADB
1:23-cv-12736-ADB
1:24-cv-10031-ADB
1:23-cv-13077-ADB

**DECLARATION OF GARY F. LYNCH IN SUPPORT OF PLAINTIFFS' MOTION FOR
AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND
SERVICE AWARDS FOR THE SETTLEMENT CLASS REPRESENTATIVES**

I, Gary F. Lynch, pursuant to 28 U.S.C. §1746, declare as follows:

1. I am an attorney licensed in Pennsylvania and New York and have been admitted to practice before the Supreme Court of the United States and numerous federal appellate and district courts. I have been appointed by this Court to serve as Co-Lead Counsel for MDL Plaintiffs and have been active in all aspects of this Litigation. I submit this Declaration in support of Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Awards for the Settlement Class Representatives (the "Declaration"). The information set forth in this Declaration is based upon my personal knowledge.

2. I am a founding member of the law firm of Lynch Carpenter, LLP (“Lynch Carpenter” or the “Firm”) and have been engaged in the practice of law for over thirty years, with the majority of my career spent representing plaintiffs in the litigation of complex civil cases and class actions. The primary focus of my practice is data breach and data privacy litigation.

3. I have spent the bulk of my professional time representing individual and institutional plaintiffs in class action and multi-district litigation throughout the country and am currently serving, or have served, as lead/co-lead counsel in numerous federal and state class actions and multidistrict proceedings, including, among others: *In re Wawa, Inc. Data Sec. Litig.*, No. 19-cv-6019 (E.D. Pa.) (appointed co-lead of consolidated data breach on behalf of financial institution plaintiffs and reached a \$37 million settlement for the financial institution class, as mediated by former Magistrate Judge Diane Welsh; final approval pending); *In re Equifax, Inc., Customer Data Sec. Breach Litig.*, No. 1:17-md-02800 (N.D. Ga.) (appointed co-lead MDL counsel on behalf of financial institution plaintiffs and reached a \$7.75 million settlement for the financial institution class); *In re Home Depot Data Breach Litig.*, No. 1:14-md-2583 (N.D. Ga.) (same and 27 million settlement for the financial institution class); *First Choice Fed. Credit Union v. The Wendy’s Co.*, No. 2:16-cv-00506 (W.D. Pa.) (\$50 million settlement for the financial institution class); *Dittman v. UPMC d/b/a The Univ. of Pittsburgh Med. Ctr.*, No. GD14-003285 (Pa. Ct. Com. Pl.) (lead counsel on behalf of plaintiffs after obtaining reversal in the Pennsylvania Supreme Court); *Veridian Credit Union v. Eddie Bauer LLC*, No. 2:17-cv-356 (W.D. Wash.) (\$2.7 million settlement for the financial institution class).

4. In addition to serving as lead counsel in major data breach litigation, I have also served in leadership committee positions in many other data breach/privacy cases, including: *In re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 2522 (D. Minn.) (appointed to the

Executive Committee managing the litigation on behalf of all plaintiffs (consumers, financial institution, and shareholders). The case was ultimately settled for \$10 million (for consumers) and \$39 million (for financial institutions)); *In re Marriott Int’l Customer Data Sec. Breach Litig.*, MDL No. 2879 (D. Md.); *In re: Cmty. Health Sys., Inc., Customer Sec. Data Breach Litig.*, MDL No. 2595, 15-cv-0222 (N.D. Ala.); *In re: Arby’s Rest. Grp., Inc. Data Sec. Litig.*, No. 17-mi-55555 (N.D. Ga.); *Greater Chautauqua Fed. Credit Union, et al. v. Kmart Corp.*, No. 15-cv-02228 (N.D. Ill.); *In re Vizio, Inc. Consumer Privacy Litig.*, MDL No. 2693 (C.D. Cal.) (consumer privacy breach, steering committee; \$17 million settlement).

5. On January 19, 2024, this Court-appointed as Co-Lead Counsel, E. Michelle Drake, Douglas McNamara, Karen Riebel, Charles Schaffer, and myself and appointed as Coordinating and Liaison Counsel, Kristen A. Johnson. MDL Order No. 8. In conjunction with MDL Order No. 8, the Court entered MDL Order No. 10 on March 28, 2024, empowering Co-Lead Counsel with various roles and responsibilities to efficiently manage the MDL. *See* MDL Order No. 10. Pursuant to MDL Order No. 10, this Court vested Co-Lead Counsel with the responsibility “for coordinating, overseeing and managing the litigation, settlement, and trials (if any) on behalf of the plaintiffs.” MDL Order No. 10, ¶ A.

SUMMARY OF CLASS COUNSEL’S WORK

6. Since their appointment, Co-Lead Counsel, Coordinating and Liaison Counsel, and the Committee Chairs have dedicated tremendous resources to prosecuting this MDL, including resolving the claims asserted against Arietis Health, LLC (“Arietis”).

7. Co-Lead Counsel and Coordinating and Liaison Counsel have negotiated with counsel for all defendants regarding the orderly management of this MDL, resulting in MDL Order

No. 13, which set deadlines for the parties to brief certain threshold issues relating to Article III standing, arbitration, and jurisdiction under the Class Action Fairness Act. MDL Order No. 13.

8. After the entry of MDL Order No. 13, the parties continued to negotiate a proposed litigation structure for this MDL, resulting in the Court adopting a modified bellwether structure. MDL Order No. 17.

9. Co-Lead Counsel, Coordinating and Liaison Counsel, the Committee Chairs, and others have conducted an extensive factual investigation and have consulted with a wide range of experts during their investigations. Plaintiffs' Leadership Teams' extensive factual investigation enabled them to draft and file the Omnibus Set of Additional Pleading Facts on behalf of all MDL plaintiffs (ECF No. 908) and the Amended Bellwether Complaint (ECF No. 1332).

10. Co-Lead Counsel and others have also prepared and filed comprehensive memoranda of law successfully in opposition to some MDL defendants' motions to dismiss for lack of jurisdiction under the Class Action Fairness Act and all MDL defendants' omnibus motion to dismiss for lack of Article III standing.

11. During the early procedural phase of this MDL, Co-Lead Counsel and counsel for Arietis agreed to an early mediation of the claims asserted against Arietis to attempt to resolve Arietis's liability for its MOVEit-related breach.

12. The parties agreed to mediate with Hon. Diane M. Welsh (Ret.), who has mediated several other cases in the MOVEit MDL.

13. Prior to mediation, the parties engaged in informal discovery, in which Plaintiffs propounded certain information requests on Arietis, and Arietis provided the Settlement Committee with extensive information about Arietis's data breach, including information on Arietis's use of MOVEit Transfer, on the types of information Arietis exchanged via MOVEit

Transfer, on the cause and scope of the breach, the number of individuals impacted, and the types of information taken. This information was reviewed by the Settlement Committee and myself and provided the information Co-Lead Counsel and the Settlement Committee needed to objectively evaluate the strengths and weaknesses for Plaintiffs' and Settlement Class Members' claims.

14. On April 30, 2024, the parties engaged in a mediation before Judge Welsh. The good-faith, hard-fought negotiations did not initially result in an agreement.

15. At the proposal of Judge Welsh, the parties continued to negotiate in an attempt to reach an agreement. Following the mediation, the parties continued to engage in extensive arm's-length settlement negotiations during which Arietis indicated that it lacked the ability to fund a settlement of the claims asserted against it, beyond the amount remaining on its insurance coverage.

16. The Settlement Committee and I thereafter issued a new settlement demand on Arietis in furtherance of the parties' settlement discussions, in an amount the Plaintiffs understood to represent the remaining amounts of insurance coverage available to Arietis. This amount was contingent on Arietis confirming in court documentation as to its financial condition and inability to pay any other amount.

17. After a series of further arm's-length discussions, the parties agreed to the basic terms of the settlement.

18. Over the course of several months, the parties continued to negotiate the Settlement details. On August 12, 2024, the parties fully executed the Class Action Settlement Agreement, which was thereafter preliminarily approved by this Court on September 9, 2024. *See* ECF No.

1202. Thereafter, the Parties made minor amendments to the Class Action Settlement Agreement, and the Amended Class Action Settlement Agreement was finally executed on November 26, 2024.

19. Since the Court granted preliminary approval, Co-Lead Counsel and the Settlement Committee have worked with the Settlement Administrator to implement the notice program and have been fielding inquiries from Settlement Class Members who are interested in learning more about the Settlement. Co-Lead Counsel and the Settlement Committee anticipate spending a significant amount of time in the coming weeks continuing to respond to Settlement Class Members; drafting and filing the motion for final approval; and preparing for and attending the final approval hearing, as well as post-settlement work and administration.

CO-LEAD COUNSEL'S TIME AND EXPENSE REPORTING

20. This Court appointed a Time, Fee, and Expense Counsel, Alyson Oliver, who is responsible for collecting all plaintiffs' counsels' contemporaneously prepared attorney and paralegal time and expense reports.

21. On March 28, 2024, this Court entered MDL Order No. 11 Regarding the Efficient and Cost-Effective management for Plaintiffs' Staffing Timekeeping, Costs, and Compensation.

22. MDL Order No. 11 requires each firm to contemporaneously record and transmit each month a detailed, task-based spreadsheet with their time entries. The reports contain a chronological listing of time reported for work performed by attorneys and paralegals in specified activity categories, a complete and accurate categorization of work performed, and the Lead Counsel who authorized the time.

23. To control plaintiffs' lodestar, MDL Order No. 11 instructed plaintiffs' counsel not to submit time for work not requested by Co-Lead Counsel, duplicative work, reading and reviewing, preparing time and expense reports, routine clerical tasks, or work related to any client

not retained. Additionally, the MDL Order No. 11 required that each firm submit all litigation-related expenses comply with certain parameters, be adequately documented, and if in excess of \$2,000, be approved in advance by one of Co-Lead Counsel.

LEAD COUNSEL'S LODESTAR AND EXPENSES

24. The complex nature of this MDL makes it infeasible for Plaintiffs' counsel to segregate tasks and hours on a defendant-by-defendant basis.

25. Rather than reporting all hours worked in the entire MDL, or artificially limiting the representation of hours that contributed to this outcome to those spent on exclusively Arietis-directed tasks (such as the settlement negotiations), Co-Lead counsel has chosen a middle ground approach in submitting their Lodestar in conjunction with their fee application.

26. The hours provided for purposes of this cross check reflect Class Counsel's middle ground approach. These hours include only Lead Counsel's post-appointment work on the following tasks: Factual Investigation and Settlements. Lead Counsel believes that using this limited subset of Plaintiffs' Counsel's MDL lodestar allows the Court to perform a reasonable cross-check without requiring the overly burdensome and inevitably arbitrary process of apportioning some percentage of the significant volume of work to each individual defendant.

27. The hourly rates for Co-Lead Counsel's attorneys and professional support staff are consistent with the rates approved by courts across the country for attorneys and paralegals of similar experience in complex actions like this one.

28. Based on contemporaneous time records, Co-Lead Counsel have reported 2,562.6 hours of professional time expended on the prosecution of this MDL on Fact Investigation and Settlements from their appointment through December 31, 2024. This represents a lodestar of

\$1,869,848.50, using Co-Lead Counsel's current hourly rates. All Co-Lead Counsel performed this work on an entirely contingent basis.

29. Awarding a fee of one-fourth of the Settlement Fund or \$700,000.00 would result in a conservative multiplier of 0.37 on such a lodestar.

30. Co-Lead Counsel's lodestar figures do not include charges for expense items. Expense items are billed separately, and such charges are not duplicated in the firms' current billing rates.

31. Attached as Exhibit A to this declaration is a summary of the total expenses for which Co-Lead Counsel seek reimbursement. Co-Lead Counsel incurred \$17,924.12 in expenses that were reasonably necessary to the prosecution of the claims against Arietis.

32. I believe the expenses for which Co-Lead Counsel seek reimbursement are a reasonable amount and were necessary for the effective and efficient prosecution of the claims against Arietis. I also believe that the expenses submitted are of type normally charged to and paid by fee-paying clients.

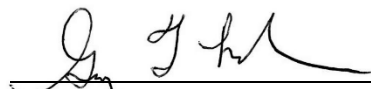
SETTLEMENT CLASS REPRESENTATIVES' CONTRIBUTION TO THE DEVELOPMENT AND PROSECUTION OF THE LITIGATION AGAINST ARIETIS

33. The Settlement Class Representatives' help was instrumental in prosecuting the claims against Arietis.

34. The Settlement Class Representatives performed valuable services for members of the Settlement Class by bringing their claims to Co-Lead Counsel for investigation, agreeing to serve as representative plaintiffs, reviewing the complaints, remaining available to consult with Co-Lead Counsel when necessary regarding the progress of the litigation, and reviewing the progress of the litigation. Additionally, Plaintiffs were prepared to search for and produce documents, respond to written discovery requests, and were prepared to give deposition testimony.

Plaintiffs' cooperation and participation in this litigation were beneficial in helping guide the litigation against Arietis and to develop damage models.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 11, 2025, in Pittsburgh, Pennsylvania.



Gary F. Lynch

CERTIFICATE OF SERVICE

I hereby certify that, on this date, the foregoing document was filed electronically via the Court's CM/ECF system, which will send notice of the filing to all counsel of record.

Dated: February 11, 2025

/s/ Kristen A. Johnson
Kristen A. Johnson (BBO# 667261)