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	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS FOR THE SETTLEMENT CLASS REPRESENTATIVES

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INTRODUCTION

This MDL arises from a nationwide data breach in which cybercriminals exploited an alleged vulnerability in Progress Software Corporation's ("Progress") managed file transfer application, MOVEit Transfer, which is used by companies across the country. Centralized before this Court are claims brought by consumers who were impacted by the data breach and who assert claims against Progress (the developer and licensor of MOVEit Transfer), and other downstream entities who used MOVEit Transfer, including Defendant Arietis Health, LLC ("Arietis"). At an early procedural stage of this MDL, Co-Lead Counsel and the Settlement Committee successfully negotiated a $2.8 million class action settlement to resolve the claims asserted against one of the defendants, Arietis, without jeopardizing the Settlement Class's[1] remaining claims against Progress, and related defendants Anesthesia Consulting & Management, LP, and certain NorthStar Anesthesia companies. Despite resolving liability against only one of several relevant defendants, the Settlement will provide Settlement Class Members with impactful benefits intended to address the principal harms resulting from the data breach—the risks that cybercriminals will misuse their data, the time and effort spent mitigating that risk, and any document losses caused by the data breach.

Pursuant to Rule 23(h), Class Counsel now respectfully seek an award of attorneys' fees and reimbursement of litigation expenses in a combined amount of $700,000.00 (one-fourth of the Settlement Fund). Given the degree of risk Class Counsel undertook and the beneficial result achieved for the Settlement Class, Class Counsel's request is well within the range of recoveries frequently awarded in common fund cases in this Circuit and reflects a reasonable combined attorneys' fee and expense award. For their help in prosecuting the claims against Arietis, Class

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[1] Unless otherwise defined, capitalized terms are the same as those used in the Amended Class Action Settlement Agreement and Release, ECF No. 1294-1.

Counsel further request that the Court award each of the Settlement Class Representatives a service award of $2,500.00.

BACKGROUND

I. Factual Background.

Plaintiffs' actions against Arietis arose out of a data breach stemming, in part, from an alleged vulnerability in the MOVEit Transfer application. *See Schafer v. Arietis, et al.*, No. 21:23-cv-13014, ECF No. 1 (D. Mass.)[2] (the "*Schafer* Compl."). MOVEit Transfer is a subscription-based managed file transfer software licensed by Progress and used by numerous commercial entities and federal and state agencies, including Arietis, to transfer large data files in a computer system. *Id.* ¶ 30. Between May 27, 2023, and May 31, 2023, CL0P Ransomware Gang identified and exploited a vulnerability in MOVEit Transfer that allowed them to access the data contained therein (the "MOVEit Security Incident"). *See id.* Specifically, CL0P used the MOVEit Transfer vulnerability to escalate user privileges, gain unauthorized access to customer environments, and access, copy, and exfiltrate the sensitive information stored there. *See id.* (noting the cybercriminals had "acquired certain files contain[ing] [patient] data"). Shortly after exploiting the MOVEit Transfer vulnerability, CL0P began leaking links to the stolen information on its dark web leak site.

Arietis provides revenue-cycle management services to healthcare organizations, including medical billing software and financial analyses to track patient care, ensure proper coding, and manage patient billing. *Id.* ¶ 18. Arietis describes itself as a "patient-centric and tech-powered" organization whose goal is to "optimize revenue, improve security, ensure compliance, and

[2] This action, initially filed in the Middle District of Florida, has been consolidated in this Court as part of the MOVEit MDL.

enhance business excellence" for its customers.[3] In providing its services, Arietis obtains and manages highly sensitive information, including patient information. Plaintiffs and the Settlement Class are patients of NorthStar, a healthcare provider that retained Arietis for its services. *See, e.g.*, *Schafer* Compl. ¶ 2. As a result, Arietis gained access to Plaintiffs' and the Class's data from NorthStar, including their personal information and private health information. *Id.* ¶¶ 3–4, 20–21, 36–37.

Plaintiffs alleged Arietis failed to timely implement the remedial measures to resolve the MOVEit vulnerability and failed to implement other reasonable data security measures to prevent a breach of the data it managed. *Id.* ¶¶ 33, 83–84, 104–05. As a result, on July 14, 2023, CL0P—the cybercriminal organization that identified and exploited the MOVEit vulnerability—listed Arietis as one of the organizations that it had successfully breached. *Id.* ¶ 30. Arietis investigated CL0P's claim, and determined that over 1,975,000 of NorthStar's patients had their data taken through an exploit of the MOVEit vulnerability. On or around September 2023, Arietis began sending individuals notices of the incident. *Id.* ¶ 30. Following Arietis's issuance of data breach letters on or about September 2023, Plaintiffs sued Arietis, NorthStar, PSC, or some combination of the three for harm caused by the theft of their highly personal and private information.

II. Summary of Class Counsel's Work.

This Court appointed Plaintiffs' Co-Lead Counsel, Liaison and Coordinating Counsel, and Committee Chairs on January 19, 2024. MDL Order No. 8 (ECF No. 649). 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 (ECF No. 834). Pursuant to MDL Order No. 10, this Court vested Co-Lead Counsel

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[3] *About Arietis Health*, ArietisHealth.com (last visited Feb. 11, 2025), https://www.arietishealth.com/company/about/.

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. Since their appointment, Co-Lead Counsel, Liaison and Coordinating Counsel, and the Committee Chairs have dedicated tremendous resources to prosecuting this MDL, including resolving the claims asserted against Arietis. *See* Declaration of Gary F. Lynch ("Lynch Decl.") ¶¶ 6-19.[4]

Following their appointment, Co-Lead Counsel and Liaison and Coordinating Counsel 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 (ECF No. 874); *see also* Lynch Decl. ¶ 10. In conjunction with MDL No. 13, MDL plaintiffs filed an Omnibus Set of Additional Pleading Facts on behalf of all MDL plaintiffs. ECF No. 908. 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 and the MDL plaintiffs filing a bellwether complaint against Progress and certain other defendants. MDL Order No. 17 (ECF No. 1123), ECF No. 1332.

III. Mediation and Subsequent Negotiations.

During the early procedural phase of this MDL, Co-Lead Counsel and the Settlement Committee, and counsel for Arietis agreed to an early mediation of the actions against Arietis to attempt to resolve Arietis's liability for the MOVEit Security Incident. Lynch Decl., ¶ 11. Specifically, the parties agreed to mediate with Hon. Diane M. Welsh (Ret.), who mediated several other cases in the *MOVEit* MDL. *Id.* ¶ 12. Prior to mediation, Arietis provided the Settlement

[4] We provide Co-Lead Counsel's lodestar information which is sufficient to support the request; Liaison Counsel, Committee Chairs, and others have also contributed to the ongoing litigation efforts.

Committee with extensive information about the MOVEit Security Incident, including information on the cause and scope of the breach, the number of individuals impacted, and the types of information taken. *Id.* ¶ 13. Both before and during mediation, Arietis also provided information on its financial condition to support its contention that it lacked the ability to fund a settlement of the claims asserted, beyond the amount remaining on its insurance coverage. *Id.* ¶ 15. Plaintiffs' Settlement Committee was therefore well informed regarding the facts of the case, and the strengths and weakness of Plaintiffs' claims and Arietis's defenses, including Arietis's financial condition leading into the mediation. *See id*. ¶¶ 13, 15.

On April 30, 2024, the parties engaged in a half-day mediation with Judge Welsh. *Id.* ¶ 14. These good-faith, hard-fought negotiations did not initially result in an agreement. *Id.* At the proposal of Judge Welsh, the parties continued to negotiate in an attempt to reach an agreement. Arietis provided further information on its financial condition, which the Settlement Committee concluded confirmed Arietis's representations. *Id.* ¶ 15.

The Settlement Committee issued a new settlement demand, contingent upon further evidence of Arietis's limited financial resources. *Id.* ¶ 16. The parties continued their extensive discussions and exchange of information and, thereafter, agreed to the basic terms of the Settlement. *Id.* ¶¶ 17-18. Over the course of several months, the parties continued to negotiate the Settlement details, and, on August 12, 2024, the parties fully executed the Class Action Settlement Agreement, which was 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. The Amended Settlement Agreement was preliminarily approved by this Court on December 9, 2024. ECF No. 1300.

ARGUMENT

I. Approving an Award of 25% of the Settlement Fund Is Reasonable and Appropriate.

It is well settled that attorneys who represent a class and whose efforts achieve a benefit for class members are entitled to "attorneys' fees and reimbursement of expenses prior to the distribution of the balance to the class." *In re Ranbaxy Generic Drug Application Antitrust Litig.*, 630 F. Supp. 3d 241, 245 (D. Mass. 2022) (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)). Rule 23 also permits a court to award "reasonable attorney's fees and nontaxable costs . . . that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). As courts recognize, the goal of an award of attorneys' fees is "to compensate plaintiffs' counsel fairly for the labor provided, taking into account the risks they faced during the representation." *Ranbaxy*, 630 F. Supp. 3d at 245.

In the First Circuit, district courts have broad discretion in awarding fees. *In re Thirteen Appeals Arising Out of San Juan*, 56 F.3d 295, 307 (1st Cir. 1995) ("[W]e hold that in a common fund case the district court, in the exercise of its informed discretion, may calculate counsel fees either on a percentage of the fund basis or by fashioning a lodestar."). Courts commonly find that a percentage of the fund calculation is the appropriate method for determining common fund fee awards. *In re Cabletron Sys., Inc. Sec. Litig.*, 239 F.R.D. 30, 37 (D.N.H. 2006) ("The POF method has emerged in the last decade-plus as the preferred method of awarding fees in common fund cases. As the First Circuit has noted, the POF method has distinct advantages over the lodestar approach."); *In re Solodyn Antitrust Litig.*, No. 14-md-2503, 2018 WL 7075881, at *2 (D. Mass. July 18, 2018) (using the percentage of the fund method); *In re Asacol Antitrust Litig.*, No. 15-cv-12730, 2017 WL 11475275, at *4 (D. Mass Dec. 7, 2017) (same). "The First Circuit has acknowledged the 'distinct advantages' of the POF method, explaining that it is less burdensome, enhances efficiency and better approximates the marketplace dynamics." *Ranbaxy*, 630 F. Supp.

3d at 245 (quoting *In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d at 307). "The POF method is preferred in common fund cases because 'it allows courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.'" *In re Cabletron Sys.*, 239 F.R.D. at 37 (citation omitted).

Here, Class Counsel specifically seek an award of one-fourth of the Settlement Fund.[5] The combined fee and expense request of one-fourth of the Settlement Fund is reasonable under the percentage of the fund methodology. While no general rule exists, courts in this Circuit award percentages ranging from 20% at the low end (often for settlements exceeding $100 million), to 33% on the high end. *See Ranbaxy*, 630 F. Supp. 3d at 245 (collecting cases); *Kondash v. Citizens Bank, Nat'l Ass'n,* No. 18-CV-00288-WES-LDA, 2020 WL 7641785, at *6 (D.R.I. Dec. 23, 2020), *report and recommendation adopted*, No. CV 18-288 WES, 2021 WL 63409 (D.R.I. Jan. 7, 2021) (awarding 1/3 of a $1.8 million settlement fund in attorneys' fees); *Gordan v. Massachusetts Mut. Life Ins. Co.*, No. 13-CV-30184-MAP, 2016 WL 11272044, at *3 (D. Mass. Nov. 3, 2016) (awarding 1/3 of a $30.9 million settlement fund in attorneys' fees).

Class Counsel's combined fee and expense request of 25% of the Settlement Fund also falls squarely within the range of, if not below, awards that courts have granted in other data breach cases. *See Barletti v. Connexin Software, Inc.*, No. 2:22-CV-04676-JDW, 2024 WL 3564556 (E.D. Pa. July 24, 2024) (awarding 1/3 of settlement fund as attorneys' fees and separately awarding $50,000 in expenses in data breach settlement); *In re Novant Health, Inc.*, No. 1:22-CV-697, 2024 WL 3028443, at *12 (M.D.N.C. June 17, 2024) (awarding 1/3 of the settlement fund in a data privacy settlement); *In re Forefront Data Breach Litig.*, No. 21-CV-887, 2023 WL 6215366, at *7 (E.D. Wis. Mar. 22, 2023) (awarding 1/3 of settlement fund as attorneys' fees in a data breach

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[5] Counsel may seek a different percentage of the recovery from future settlements.

settlement); *In re Cap. One Consumer Data Sec. Breach Litig.*, No. 119MD2915AJTJFA, 2022 WL 17176495, at *6 (E.D. Va. Nov. 17, 2022) (awarding attorneys' fees equal to 28% of the common fund); *In re Home Depot, Inc., Customer Data Sec. Breach Litig.*, No. 1:14-MD-02583-TWT, 2016 WL 11299474, at *2 (N.D. Ga. Aug. 23, 2016) (awarding attorneys' fees equal to roughly 28% of the monetary benefit conferred to class in a data breach settlement).

Accordingly, and as further demonstrated below, Class Counsel's fee and expense request of one-fourth of the Settlement Fund is reasonable under the percentage of the fund method.

II. Class Counsel's Undertaking, Effort, Expertise, Investment, and Result Merit a 25% Award Here.

The First Circuit has not prescribed a particular set of factors for assessing an application for attorneys' fees, and has instead allowed district courts to exercise their discretion in applying appropriate factors. Factors district courts within this Circuit apply when analyzing a common fund request include: "(1) the size of the fund and the number of persons benefitted; (2) the skill, experience, and efficiency of the attorneys involved; (3) the complexity and duration of the litigation; (4) the risks of the litigation; (5) the amount of time devoted to the case by counsel; (6) awards in similar cases; and (7) public policy considerations." *In re Neurontin Mktg. & Sales Pracs. Litig.*, 58 F. Supp. 3d 167, 170 (D. Mass. 2014) (citation omitted); *see also In re Lupron Mktg. & Sales Practices Litig.*, No. MDL 1430, 01–CV–10861–RGS, 2005 WL 2006833, at *3 (D. Mass. Aug. 17, 2005) (citing *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000)). A review of these factors demonstrates that Co-Lead Counsel's combined fee and expense request is reasonable.

A. The Size and Nature of the Fund Created and the Number of Persons Benefitted.

The Settlement provides relief for the various forms of data breach injuries Settlement Class Members suffered by providing benefits including: (1) actual out-of-pocket expenses due to

the misuse of data or efforts to prevent the misuse of data (up to $5,000); (2) reimbursement for lost time spent responding to the breach (up to four hours at $25 per hour); and (3) medical data monitoring, credit monitoring, and identity theft service protection that helps mitigate the risk of future harm. That is, any Settlement Class Member who suffered out-of-pocket losses or expended time to prevent loss of misuse of data may submit a claim for reimbursement. Settlement Class Members may also submit a claim for medical, credit, and identity theft monitoring to prevent the risk of harm from the misuse of their data, which is now in the hands of cybercriminals.

The Settlement's benefits are therefore comparable to, and in some cases more valuable than, those provided by other data breach settlements. *See, e.g., Barletti v. Connexin Software, Inc.*, No. 2:22-CV-04676-JDW, 2024 WL 1096531, at *6 (E.D. Pa. Mar. 13, 2024) (granting preliminary approval to data breach settlement that provided class members the ability to file a claim for credit monitoring services, out-of-pocket losses; or an alternative cash payment); *In re Cap. One Consumer Data Sec. Breach Litig.*, No. 119MD2915AJTJFA, 2022 WL 18107626, at *12 (E.D. Va. Sept. 13, 2022) (approving proposed allocation plan that allowed class members to submit claims for out-of-pocket losses, lost time, and credit monitoring services); *In re Wawa, Inc. Data Sec. Litig.*, No. 19-cv-06019-GEKP, ECF No. 181 (E.D. Pa. Feb. 19, 2021) ($5 gift card or $15 gift cards with proof of actual or attempted fraud).

Further, in addition to monetary compensation and identity theft monitoring, the Settlement provides vital injunctive relief, requiring Arietis to adopt and maintain adequate security measures, including, conducting due diligence of third parties that provide file transfer services to Arietis. This agreed-upon injunctive relief is specifically tailored to improve Arietis's ability to prevent and detect similar security breaches in the future. *See* SA § 5.1; *see also In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 17-md-2800-TWT, 2020 WL 256132, at *3 (N.D. Ga. Mar.

17, 2020) (finding commitment to invest in "data security and related technology substantially benefits the class because it ensures adequate funding for securing plaintiffs' information long after the case is resolved."), *rev'd in part on other grounds*, *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247 (11th Cir. June 3, 2021). These business practices changes will provide long-term relief to Plaintiffs and Settlement Class Members.

Co-Lead Counsel's success in securing these benefits that address the current and potential future harm resulting from the MOVEit Security Incident weighs heavily in favor of awarding the requested attorneys' fee.

B. The Risks of Litigation Support the Requested Fee.

Courts recognize the risk assumed by an attorney as a key factor in determining an appropriate fee. *See In re Lupron*, 2005 WL 2006833, at *4 ("Many cases recognize that the risk assumed by an attorney is perhaps the foremost' factor in determining an appropriate fee award."). In data breach cases, recovery is hardly a foregone conclusion, as Plaintiffs would likely have faced hotly contested issues of causation and damages had litigation continued. *In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2807, 2019 WL 3773737, at *6 (N.D. Ohio Aug. 12, 2019) ("The realm of data breach litigation is complex and largely undeveloped. It would present the parties and the Court with novel questions of law."). Further, Counsel undertook this action on an entirely contingent fee basis, shouldering the risk that this litigation would yield no recovery and leave them wholly uncompensated for their time, as well as for their out-of-pocket expenses. Lynch Decl., ¶ 29. To date, neither Co-Lead Counsel nor any class counsel have been paid anything for their efforts. As such, a dispositive ruling at any stage of this ligation could have meant a zero recovery for members of the Settlement Class, as well as non-payment for Co-Lead Counsel. In addition to these risks, Arietis also indicated a strained financial condition that was taken into consideration when negotiating the Settlement. Lynch Decl., ¶¶ 15-16. Class Counsel's

success in achieving a modest but certain recovery under these circumstances demonstrates the reasonableness of the request fee and expense award.

C. The Complexity of this Litigation Supports the Requested Fee.

The complexity of this MDL and its underlying cases weighs heavily in favor of the requested fee award. The Arietis Settlement resolves just one piece of the complex puzzle of related litigation arising out of the MOVEit data breach. Here, Arietis's liability is complicated because had litigation proceeded, Arietis would likely have argued (as other defendants have now argued) that it owed no duty to Plaintiffs and the Settlement Class because it lacked a direct relationship with them. Arietis operated as a service provider for NorthStar, the medical provider from which Plaintiffs and the Settlement Class received medical services and to whom they provided their personal and health information. *Schafer* Compl. ¶¶ 2–3. Had litigation proceeded, Arietis would have also likely argued that the lack of a direct relationship impacts Arietis's duty to the Settlement Class or the apportionment of duty between PSC, NorthStar, and Arietis, which, if successful, could have impacted Plaintiffs' and the Settlement Class's ability to recover from Arietis. While Class Counsel believe they would have prevailed, risk is inherent in all litigation.

Further, Plaintiffs face risks inherent in all data breach actions. Plaintiffs would need to prevail on both issues (liability and class certification) to ensure their claims went forth on a classwide basis and to afford an opportunity for the Settlement Class to obtain any relief. *Fox v. Iowa Health Sys.*, No. 3:18-cv-00327, 2021 WL 826741, at *5 (W.D. Wis. Mar. 4, 2021) ("Data breach litigation is evolving; there is no guarantee of the ultimate result."). Both parties would likely face significant risk and costs from a likely expert battle concerning whether Arietis's data security was unreasonable and negligent and competing expert testimony the viability of any classwide damages models. *See e.g.*, *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752- LHK, 2020 WL 4212811, at *9 (N.D. Cal. July 22, 2020) (listing "more discovery"

as one of the significant expenses for continuing a data breach litigation); *In re Compact Disc Minimum Advertised Price Antitrust Litig.*, 216 F.R.D. 197, 212 (D. Me. 2003) (noting that, absent settlement, plaintiffs' challenges would include "significant and expensive additional discovery" and "hiring more experts and opposing the defendants' experts").

And even if Plaintiffs prevailed on issues of liability and class certification, they faced the very real risk that they would not have recovered any more than they have though the Settlement given Arietis's limited financial condition.

In short, this was not a simple case with a clear path to liability and judgment, and this litigation could have proceeded for several years, including through appeals, had it not settled. Nonetheless, Counsel worked diligently to achieve a significant result for the Settlement Class in the face of very real litigation risks. Accordingly, this factor supports the reasonableness of the requested fee award.

D. The Experience, Skill, and Efficiency of the Attorneys Involved Supports the Request.

Here, Counsel appointed by the Court are experienced class action litigators with significant experience litigating data breach actions specifically. ECF No. 1294, ¶¶ 3–5, 43. Courts have recognized Co-Lead Counsel experience in this area of law and have repeatedly adjudged Co-Lead Counsel adequate under Rules 23(a)(4) and 23(g). *Id.* Co-Lead Counsel have demonstrated through this litigation that they are well-versed in data breach and privacy law, have prosecuted this case and others in the MDL with vigor and commitment. Utilizing their combined skill and experience, Co-Lead Counsel were able to negotiate a settlement with Arietis, securing guaranteed compensation for the Settlement Class, while also allowing for continued litigation against NorthStar and Progress. As such, this factor supports the reasonableness of the requested fee and expense request.

E. The Request Is Reasonable When Compared to Awards in Similar Cases.

As demonstrated above in Argument, *supra* § I, the request of one-fourth of the Settlement Fund to cover the time and out-of-pocket expenses of Co-Lead Counsel is well within the range of reasonable fees awarded in this Circuit and in other data breach cases. Accordingly, this factor supports the reasonableness of the requested fee.

F. Public Policy Considerations Support the Requested Fee.

The requested fee supports public policy goals. Class actions like this one are necessary and vital to deter companies from adopting laissez-faire security measures that continue to put consumers at risk. In 2023, 725 data breaches were reported to the Department of Health and Human Services' Office for Civil Rights. Those breaches collectively exposed more than 133 million records.[6] Also in 2023, the Federal Trade Commission received more than 1 million complaints of identity theft and 2.6 million complaints of related fraud, resulting in total financial losses that exceed $10 billion.[7]

Given the approximately 1.9 million Class Members impacted by Arietis's MOVEit Security Incident, and the relatively small or difficult-to-quantify amounts of individual damages, pursuing claims on an individual basis would have been economically and judicially inefficient. Absent the class action vehicle, these consumers most likely would have no recovery. *See In re Puerto Rican Cabotage Antitrust Litig.*, 815 F. Supp. 2d 448, 463 (D.P.R. 2011), ("Class action plaintiffs' attorneys provide an invaluable service by aggregating the seemingly insignificant

[6] Steve Alder, *Healthcare Data Breach Statistics*, HIPAA Journal (Jan. 20, 2025), https://www.hipaajournal.com/healthcare-data-breach-statistics/#:~:text=Trends%20In%20Healthcare%20Data%20Breach%20Statistics&text=In%202023%2C%20725%20data%20breaches,were%20exposed%20or%20impermissibly%20disclosed.

[7] Jim Akin, U.*S. Fraud and Identity Theft Losses Topped $10 Billion in 2023*, Experian (July 25, 2024), https://www.experian.com/blogs/ask-experian/identity-theft-statistics/#:~:text=The%20U.S.%20Federal%20Trade%20Commission,%25%2C%20to%201%2C036%2C961%20from%201%2C107%2C053.

harms endured by a large multitude into a distinct sum where the collective injury can then become apparent.”); *Mazola v. May Dep’t Stores Co.*, No. 97-cv-10872-NG, 1999 WL 1261312, at *4 (D. Mass. Jan. 27, 1999) (class actions “give[] voice to relatively small claimants who may not be aware of statutory violations or have an avenue to relief . . . the only way in which to make such actions economically feasible is to award [attorneys’ fees.]”). This litigation is important and critical to ensure that consumers are compensated for their harm and hold companies accountable for their failure to protect individuals’ sensitive personal information.

III. The Lodestar Cross-Check Confirms the Requested Fee’s Reasonableness.

Although not required, courts in the First Circuit have endorsed the “lodestar calculation as a pragmatic cross-check” of a percentage based-fee award. *New England Carpenters Health Benefits Fund v. First DataBank, Inc.*, No. CIV.A 05-11148-PBS, 2009 WL 3418628, at *1 (D. Mass. Oct. 20, 2009) (internal citation omitted); *see also In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d at 307. When used as a cross-check, “the lodestar analysis is not undertaken to calculate a specific fee, but only to provide a broad cross check on the reasonableness of the fee arrived at by the percentage method.” *In re Vioxx Prods. Liab. Litig.*, 760 F. Supp. 2d 640, 652 (E.D. La. 2010). “The lodestar cross-check is used to assess the reasonableness of the percentage method, and district courts need not review actual billing records and are free to rely on time summaries submitted by attorneys.” *In re Cook Med., Inc., Pelvic Repair Sys. Prods. Liab. Litig.*, 365 F. Supp. 3d 685, 701 (S.D.W. Va. 2019).

To conduct the lodestar cross check, the court multiplies the number of hours reasonably spent by a reasonable hourly rate. *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 77 (D. Mass. 2005). “Reasonable fees are to be calculated according to the prevailing market rates in the relevant community.” *Arkansas Tchr. Ret. Sys. v. State St. Bank & Tr. Co.*, 512 F. Supp. 3d 196, 209 (D. Mass. 2020). As recognized by other MDL courts, “MDLs encompass law firms from across the

country and are national in scope. When selecting an hourly rate for determining legal fees the court cannot consider just one market because the relevant legal community is one national in nature ... [and the court will] consider those rates selected in similar MDLs." *In re Cook Med.*, 365 F. Supp. 3d at 701 (citing *In re Actos (Pioglitazone) Prods. Liab. Litig.*, 274 F. Supp. 3d 485, 521 (W.D. La. 2017)).

While some MDL litigation may involve more localized parties, justifying giving weight to the "local market," the *MOVEit* MDL reaches a national scope as it is comprised of plaintiffs and defendants across the country, giving rise to a relevant national market. *See In re Actos*, 274 F. Supp. 3d at 520 (where "plaintiffs and plaintiffs' counsel span the entire United States of America; the venue proper as to each individual claim spans the entire United States, and the PSC, PEC, and Participating Counsel comprise attorneys whose practices span the entire United States," the "relevant legal community […] is national in nature.").

In this case, a lodestar crosscheck confirms the reasonableness of the combined fee and expense request. As set forth in the Lynch Declaration, Co-Lead Counsel have submitted their collective total time worked by the firms' professionals on this MDL, prepared from contemporaneously made, daily time records. Each Co-Lead firm has calculated its lodestar based on the usual and customary hourly rates charged for its services on a contingent basis in similar cases that have been approved by courts in other data breach cases. Lynch Decl. ¶ 27. The reported total lodestar accumulated by Co-Lead Counsel since their appointment through December 31, 2024 on Fact Investigation and Settlements alone, is $1,869,848.50.[8] Lynch Decl. ¶ 28.

[8] The complex nature of this MDL makes it infeasible for Plaintiffs' counsel to segregate tasks and hours on a defendant-by-defendant basis. Lynch Decl. ¶ 24. 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), the hours provided for purposes of this cross check reflect Class Counsel's middle ground

The requested fee and expense award of $700,000.00, representing twenty-five percent of the Settlement Fund results in a negative multiplier of approximately 0.37. Lynch Decl. ¶ 30. This multiplier of less than one confirms that the free request is "more than reasonable." *In re Solodyn*, 2018 WL 7075881, at *2 (holding that a negative multiplier of 0.82 was "a more than reasonable number given the difficult circumstances of this case, the time and resources invested, the experience and skill of Class Counsel, and the result achieved for the Class.").

The reasonableness of the lodestar crosscheck is further supported by the nature of core common facts that led to the MOVEit data breach—the vulnerability in MOVEit Transfer. Given the hub-and-spoke nature of this MDL, with Progress as the developer and licensor of MOVEit Transfer sitting at the center and each other defendant sitting down the distribution chain, the work Lead Counsel and others have conducted in the prosecution of this MDL has inured to the benefit of all plaintiffs and is difficult if not impossible to disaggregate.

IV. Settlement Class Counsel's Request for Reimbursement of Expenses Is Reasonable.

"Lawyers who recover a common fund for a class are entitled to reimbursement of litigation expenses that were reasonably and necessarily incurred in connection with the litigation." *Hill v. State St. Corp.*, No. CIV.A. 09-12146-GAO, 2015 WL 127728, at *20 (D. Mass. Jan. 8, 2015) (citation omitted). In combination with their fee request, Class Counsel seeks reimbursement for the reasonable expenses incurred to advance this litigation. Lynch Decl. ¶¶ 30-31. Co-Lead Counsel have documented their expenses by category, in the accompanying declaration. *Id.* The

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approach. These hours include only Lead Counsel's post-appointment work on the following tasks: Settlements and Factual Investigation. Lynch Decl. ¶ 25-26. Co-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. Lynch Decl. ¶ 26.

schedule of expenses shows that Co-Lead Counsel litigated the case efficiently, with no unreasonable or unjustified expenditures. *Id.* ¶ 32. Moreover, the expenditures were of the type of typically charged to hourly paying clients. *Id.*

As explained in the Lynch Declaration, a significant percentage of the expenses incurred were the result of mediation and associated travel costs. *Id.* ¶ 31. Such categories of expenses are commonly reimbursed in common fund cases. *See Carlson v. Target Enter., Inc.*, 447 F. Supp. 3d 1, 5 (D. Mass. 2020) (approving expenses related to mediation, travel, filing fees, and postage); *In re Wilmington Tr. Sec. Litig.*, No. 10-cv-0990-ER, 2018 WL 6046452, at *10 (D. Del. Nov. 19, 2018) (approving expenses related to management of documents, expert fees, computerized research, photocopying, transcripts, postage, travel, and discovery expenses). In sum, all of Class Counsel's expenses, in an aggregate amount of $17,924.12, are typical in litigation, were necessary to the successful prosecution and resolution of the claims against Arietis, and Plaintiffs' request for Co-Lead Counsel's reasonable litigation expenses should be approved.

V. The Service Awards Requested Are Reasonable.

Class Counsel request that this Court approve the payment of modest service awards of $2,500.00 to each of the Settlement Class Representatives. Service Awards for bringing and litigating this case on behalf of the Settlement Class is permissible and promotes a public policy of encouraging individuals to undertake the responsibility of representative lawsuits. *See* Manual for Complex Litigation, § 21.62, at n.971 (4th ed. 2004) (citing *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990)); *In re Lupron*, 2005 WL 2006833, at *7 ("Because a named plaintiff is an essential ingredient of any class action, an incentive award can be appropriate to encourage or induce an individual to participate in the suit.") (citation omitted). Courts routinely approve service awards to compensate named plaintiffs for the services

they provided and the risks they incurred during the course of the class action litigation. *In re Puerto Rican Cabotage Antitrust Litig.*, 815 F. Supp. 2d at 468.

Plaintiffs have been closely involved with the Arietis actions from the beginning. Their efforts were instrumental in providing the necessary background information and documents that make this case possible. Lynch Decl. ¶¶ 33-34. Their desire and willingness to seek relief for others similarly situated helped create the benefits all Settlement Class Members will enjoy here. A service award of $2,500.00 to each of the Settlement Class Representatives is reasonable and falls within the range of awards approved in other class actions. *See Novant Health*, 2024 WL 3028443, at *13 (concluding that a $2,500 service award for each of the 10 named plaintiffs in a data privacy case was fair and reasonable); *Carter v. Vivendi Ticketing US LLC*, No. SACV2201981CJCDFMX, 2023 WL 8153712, at *12 (C.D. Cal. Oct. 30, 2023) (awarding service awards of $2,500 to named plaintiffs in data breach settlement).

CONCLUSION

For the above-mentioned reasons, Plaintiffs respectfully request that the Court grant their motion and approve a combined award of $700,000.00 for attorneys' fees and reimbursement of litigation expenses, and Service Awards in the amount of $2,500.00 to each of the Settlement Class Representatives.

DATED: February 11, 2025

Respectfully submitted,

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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

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