

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT  
CIVIL SESSION B

JULIE KESNER and DENNIS O'BRIEN,  
Individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

UMASS MEMORIAL HEALTH CARE,  
INC.,

Defendant.

Case No. 2185 CV 01210

**DECLARATION OF ANDREW W. FERICH IN SUPPORT OF MOTION FOR  
ATTORNEYS' FEES, COSTS, EXPENSES, AND SERVICE AWARDS**

Andrew W. Ferich, on oath, hereby declares as follows:

1. I am an adult, I have personal knowledge of the facts stated herein, and I am competent to so testify. I am co-counsel for Plaintiffs in this action. I am a partner of Ahdoot & Wolfson, PC ("AW"), and a member in good standing of the bars of the state of Pennsylvania, New Jersey, and the District of Columbia.

2. This Declaration is submitted in Support of Plaintiffs' Motion for Attorneys' Fees, Costs, Expenses, and Service Awards filed contemporaneously herewith. I make the following declaration based upon my own personal knowledge and, where indicated as based on information and belief, that the following statements are true. If called upon as a witness, I could and would competently testify as follows:

**AHDOOT & WOLFSON, PC HAS COMMITTED SIGNIFICANT RESOURCES  
TO THIS LITIGATION FOR THE BENEFIT OF CLASS MEMBERS**

3. AW has been diligent in and committed to investigating claims on behalf of the Class. Prior to commencing this litigation, AW diligently investigated potential legal claims (and potential defenses thereto) arising from UMMHC's failure to implement adequate and reasonable data security procedures and protocols necessary to protect PII/PHI.

4. AW has performed the following work on behalf of Plaintiffs and Class Members, among other things:

- Investigated the circumstances surrounding the Data Breach;
- Stayed abreast of and analyzed reports, articles, and other public materials discussing the Data Breach and describing UMMHC's challenged conduct;
- Reviewed public statements from UMMHC concerning the Data Breach, including the contents of the breach notification letter sent to impacted Class members;
- Researched UMMHC's corporate structure and potential co-defendants;
- Fielded numerous contacts from class members inquiring about this matter;
- Investigated the nature of the challenged conduct at issue here by interviewing multiple potential clients who contacted proposed Class Counsel's firms;
- Investigated the adequacy of the Plaintiffs to represent the putative class;
- Drafted and filed an initial complaint against UMMHC, and served that complaint on UMMHC;
- Drafted and filed an opposition to the Motion to Dismiss;
- Communicated internally amongst Plaintiffs' counsel regarding the most efficient manner to organize this litigation, successfully engaging in private ordering and self-organizing leadership in this litigation;
- Served robust discovery on UMMHC, including 15 interrogatories and 48 document requests;
- Analyzed information provided by UMMHC in pre-mediation discovery;

and

- Engaged in a full-day mediation before the Hon. Bonnie H. McLeod (Ret.) of JAMS and continued to engage in arm's-length negotiations through numerous telephone conferences and e-mails, exchanging draft term sheets until the Parties—represented by experienced counsel who had a comprehensive understanding of the strengths and weaknesses of each party's claims and defenses—were able to reach an agreement in principle for a settlement.

5. AW has committed appropriate, yet substantial, time and resources to organizing and working collaboratively toward the advancement of the litigation, and will continue to do so. As a result of these efforts, AW and its co-counsel developed a clear understanding of the strengths and weaknesses of the claims and defenses in this case and they were thus well-prepared to evaluate the fairness, reasonableness, and adequacy of the Settlement.

6. AW will continue to work cooperatively, coordinate, and meet and confer with Defendant's counsel in this litigation through final settlement approval.

7. AW's representation of the Class in this matter is on a wholly contingent basis. Attorneys' fees were not guaranteed—the retainer agreements my firm has with the two Plaintiffs do not provide for fees apart from those earned on a contingent basis, and, in the case of class settlement, approved by the Court. My firm has devoted substantial resources to this matter, and we have received no payment for any of the hours of services performed or the out-of-pocket costs and expenses that AW committed to the litigation of this case. As such, AW assumed a significant risk of nonpayment or underpayment. We did this, with no guarantee of repayment, to represent our clients and because of the public interest and social importance of this case. Moreover, AW was required to forego other financial opportunities to litigate this case.

AW thus took this case with the expectation that the firm would receive a risk enhancement in the event we prevailed.

8. This matter has required me, and other timekeepers at AW, to spend time on the investigation and litigation of this matter that could have been spent on other matters. At various times during the litigation of this class action, this lawsuit has consumed significant amounts of my time and AW's time. Such time could otherwise have been spent on other fee-generating work. Because our firm undertook representation of this matter on a contingency-fee basis, we shouldered the risk of expending substantial costs and time in litigating the action without any monetary gain in the event of an adverse judgment. If not devoted to litigating this action, from which any remuneration is wholly contingent on a successful outcome, the time my firm spent working on this case could and would have been spent pursuing other fee generating matters.

9. Litigation is inherently unpredictable and therefore risky. Here, that risk was very real and high, due to the rapidly evolving nature of case law pertaining to data breach litigation, and the state of data privacy law. Therefore, despite AW's devotion to the case and our confidence in the claims alleged against UMMHC, there have been many factors beyond our control that posed significant risks. Had UMMHC prevailed on the merits, on class certification, or on appeal, I and my firm might have recovered nothing for the time and expense AW invested in representing the Settlement Class.

10. AW has made every effort to litigate this matter efficiently by coordinating the work of AW's attorneys and paralegals, as well as co-Class Counsel, minimizing duplication, and assigning tasks in a time and cost-efficient manner, based on the timekeepers' experience levels and talents.

11. I believe that the time and resources spent by my firm are reasonable and I have sought to manage this matter efficiently at every turn.

12. AW will continue to expend significant attorney time and resources given the future work still needed for completion of the Settlement, including: drafting and filing a motion for final approval, preparing for and attending the final approval hearing, responding to Class Member inquiries or challenges, responding to any requests for exclusion or objections, addressing any appeals, and working with Defendant and the Settlement Administrator on the distribution of benefits to the Settlement Class.

**AHDOOT & WOLFSON, PC HAS INCURRED NECESSARY AND REASONABLE  
ATTORNEY TIME AND LITIGATION EXPENSES**

13. Class Counsel are applying for attorneys' fees in the amount of \$400,000, plus reasonable litigation expenses.

14. AW has expended 171.3 hours in this litigation through February 28, 2023 for a lodestar of \$120,610.00.

15. All attorneys and legal staff who worked on this case maintained contemporaneous time records reflecting the time spent on all billable matters. In all instances, the timekeeper indicated the date and amount of time spent on a task to one-tenth of an hour, described the work that was performed during the indicated time period, and identified the case to which the time should be charged. AW's contemporaneous time records shall be made available to the Court for *in camera* review upon request.

16. I certify to the Court that AW's fee records accurately reflect work actually, reasonably, and necessarily performed in connection with the litigation of this matter. I believe that the hours spent reflect time spent reasonably litigating this case, which I have sought to manage and staff efficiently as described above.

17. A summary of rates and hours expended by AW's professionals, as of February 28, 2023, is set forth as follows:

Professional	Title	Billable Rate	Billable Hours	Billable Fees
Robert Ahdoot	Senior Partner	\$1,050 <sup>1</sup>	12.2	\$12,810.00
Andrew Ferich	Partner	\$850	94.4	\$80,240.00
Bradley King	Partner	\$850	4.8	\$4,080.00
Sarper Unal	Associate	\$500	36.3	\$18,150.00
Heidi Liivamagi	Paralegal	\$250	14.3	\$3,575.00
Kathryn Cabrera	Paralegal	\$250	3.6	\$900.00
Catherine Santos	Legal Assistant	\$150	5.7	\$855.00
<b>TOTALS:</b>			<b>171.3</b>	<b>\$120,610.00</b>

18. In general, the work performed by my firm can be broken down as follows: (i) investigations and factual research—comprised of pre-filing investigations, review of news and developments, and the interviewing of potential class members with respect to the data breach and their relationship with the Defendant; (ii) pleadings—comprised of drafting the complaint; (iii) discovery—involving review and analysis of the information provided by UMMHC prior to the mediation and Class Counsel confirmatory discovery efforts; (iv) pretrial motions—comprised of the motion to dismiss briefing, related research, and meet and confer efforts, and the proportional share of this matter in the work performed by AW; and (v) settlement and settlement motions—comprised of all work performed in relation to the pre-mediation negotiations, the mediation, subsequent negotiations, drafting of the Settlement and its exhibits, obtaining administration bids, drafting the motion for preliminary approval, preparing for the preliminary approval hearing, post preliminary approval work on effectuating the Settlement, responding to inquiries regarding the Settlement, and the drafting of the final approval motion related pleadings.

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<sup>1</sup> Mr. Ahdoot's ordinary billable rate is \$1,200 per hour, but this rate has been adjusted for purposes of this Settlement.

19. Since November 2022, when the preliminary approval order was entered, Class Counsel have devoted significant additional hours of time to working toward the Final Approval Hearing deadline, coordinating with the Settlement Administrator about the Notice Plan and implementing the Settlement, and responding to Class Member inquiries. My firm and my co-counsel will continue to incur additional time as we continue preparing the motion for final approval and respond to any Settlement objections that may arise.

20. I expect AW to maintain a high level of oversight and involvement in this case, and will continue to expend significant attorney time given the future work still needed for completion of the Settlement, including: preparing for and attending the final approval hearing, responding to Class Member inquiries or challenges, responding to any requests for exclusion or objections, addressing any appeals, and working with Defendant and the Settlement Administrator on the distribution of benefits to the Settlement Class.

21. Therefore, I anticipate incurring significant additional lodestar in the future.

22. To date, AW has incurred \$1,190.49 of litigation expenses, as follows:

Description	Amount
Court Admission Fees	\$1,105.56
Electronic Research	\$27.90
Mediation and Expert Fees	\$57.03
<b>Total</b>	<b>\$1,190.49</b>

23. These costs include court fees, mediation fees, attorney service fees, electronic document storage fees, expert fees relating to the provision of credit monitoring services under the Settlement, postage, and other related costs. Each of these costs and expenses are fully documented, and in my opinion, were necessary and reasonable. This amount does not include internal and other additional costs that Class Counsel incurred in this litigation but, in an exercise

of discretion, do not seek to recover. The charges for electronic research above are independent charges, and do not include the firm's monthly Westlaw subscription charges, which though used for this matter, were not charged as an expense.

#### **AHDOOT & WOLFSON, PC FIRM EXPERIENCE**

24. At all times, AW had the experience, expertise, and resources to effectively litigate any all issues related to this litigation.

25. AW has been appointed lead counsel in numerous complex consumer class actions. The following are some examples of recent class actions that AW has litigated to conclusion or are currently litigating on behalf of clients – either as Class Counsel, proposed Class Counsel or members of a Court appointed Plaintiff Steering Committee:

26. As co-lead counsel in *In re Zoom Video Communications, Inc. Privacy Litigation*, No. 5:20-cv-02155-LHK (N.D. Cal.) (Hon. Lucy H. Koh), AW achieved an \$85 million settlement that provides monetary relief to Zoom users who submit a claim for payment and comprehensive injunctive relief which addresses the privacy issues on which Plaintiffs' claims were based. This settlement was recently finally approved by the Northern District.

27. In *Rivera v. Google LLC*, No. 2019-CH-00990 (Ill. Cir. Ct.) (Hon. Anna M. Loftus), a class action arising from Google's alleged illegal collection, storage, and use of the biometrics of individuals who appear in photographs uploaded to Google Photos in violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.*, AW achieved a \$100 million non-reversionary cash settlement, with meaningful prospective relief, which was granted final approval by Judge Loftus on September 28, 2022.

28. As co-lead counsel in the *Experian Data Breach Litigation*, No. 8:15-cv-01592-AG-DFM (C.D. Cal.) (Hon. Andrew J. Guilford), which affected nearly 15 million class members,



AW achieved a settlement conservatively valued at over \$150 million. Under that settlement, each class member was entitled to two years of additional premium credit monitoring and ID theft insurance (to begin whenever their current credit monitoring product, if any, expires) plus monetary relief (in the form of either documented losses or a default payment for non-documented claims). Experian also provided robust injunctive relief. Judge Guilford praised counsel's efforts and efficiency in achieving the settlement, commenting "You folks have truly done a great job, both sides. I commend you."

29. As a member of a five-firm Plaintiffs' Steering Committee ("PSC") in the *Premiera Blue Cross Customer Data Sec. Breach Litigation*, No. 3:15-md-2633-SI (D. Or.) (Hon. Michael H. Simon), arising from a data breach disclosing the sensitive personal and medical information of 11 million Premiera Blue Cross members, AW was instrumental in litigating the case through class certification and achieving a nationwide class settlement valued at \$74 million.

30. In *Adlouni v. UCLA Health Sys. Auxiliary*, No. BC589243 (Cal. Super. Ct. Los Angeles Cnty.) (Hon. Daniel J. Buckley), AW, as a member of the PSC for patients impacted by a university medical data breach, achieved a settlement providing two years of credit monitoring, a \$5,275,000 fund, and robust injunctive relief.

31. AW's efforts have also shaped privacy law precedent. As lead counsel in *Remijas v. Neiman Marcus Group, LLC*, No. 14-cv-1735 (N.D. Ill.) (Hon. Sharon Johnson Coleman), AW successfully appealed the trial court's order granting a motion to dismiss based on lack of Article III standing. The Seventh Circuit's groundbreaking opinion, now cited routinely in briefing on Article III and data breach standing, was the first appellate decision to consider the issue of Article III standing in data breach cases in light of the Supreme Court's decision in *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013). The Seventh Circuit concluded that data breach victims

have standing to pursue claims based on the increased risk of identity theft and fraud, even before that theft or fraud materializes in out-of-pocket damages. *Remijas v. Neiman Marcus Group, LLC*, 794 F.3d 688 (7th Cir. 2015) (reversed and remanded).

32. AW's other ongoing privacy class actions include *In re Ring LLC Privacy Litigation*, No. 2:19-cv-10899-MWF-RAO (C.D. Cal.) (Hon. Michael W. Fitzgerald) (serving as co-lead counsel), *In re Google Location History Litigation*, No. 5:18-cv-5062-EJD (N.D. Cal.) (Hon. Edward J. Davila) (same), *In re Ambry Genetics Data Breach Litigation*, No. 8:20-cv-791-CJC-KES (C.D. Cal.) (Hon. Cormac J. Carney) (same), and *Acaley v. Vimeo, Inc.*, No. 1:19-cv-7164 (N.D. Ill.) (Hon. Matthew F. Kennelly).

33. In addition, AW has served or is serving as plaintiffs' counsel in class actions enforcing consumer rights under the Telephone Consumer Protection Act of 1991 ("TCPA"), such as *Chimeno-Buzzi v. Hollister Co.*, No. 1:14-cv-23120-MGC (S.D. Fla.) (Hon. Marcia G. Cooke) (class counsel in \$10 million nationwide settlement) and *Melito v. American Eagle Outfitters, Inc.*, No. 1:14-cv-02440-VEC (S.D.N.Y.) (Hon. Valerie E. Caproni) (\$14.5 million nationwide settlement).

34. I joined AW as a partner at the age of only 33, and already have extensive experience serving in leadership and support roles in data privacy class action cases and other complex actions. For example, I have been at the forefront of the highly publicized Accellion FTA data breach litigation announced in late 2020, and have zealously prosecuted cases against Accellion and three of its customers that were impacted by this massive breach. Due to my firm's efforts, settlements were reached in each of these litigations. In one of these settlements, final approval of the settlement was recently granted, and I was appointed as class counsel. *See Cochran, et al. v. The Kroger Co., et al.*, No. 5:21-cv-01887-EJD (N.D. Cal.), ECF No. 115

(granting final approval of nationwide settlement that provides \$5 million non-reversionary fund, and appointing me and AW as co-lead class counsel).

35. I was appointed recently as Interim Co-Lead Counsel in *Smeltz, et al. v. Logan Health, et al.*, No. A-DV-22-0124 (8th Judicial District Court, Cascade County Mar. 31, 2022) (Grubich, J.), a data breach class action arising from the exposure of highly sensitive information of 213,545 individuals, including medical records.

36. I was recently appointed to the plaintiffs' executive steering committee in a ransomware class action lawsuit involving disclosure of sensitive medical information and other PII/PHI. *See In re: Eskenazi Health Data Incident Litig.*, No. 49D01-2111-PL-038870 (Ind. Comm. Ct. Jan. 24, 2022).

37. I was previously appointed as class counsel in *Perdue et al. v. Hy-Vee, Inc.*, No. 1:19-cv-01330 (C.D. Ill.), a payment card data breach that exposed the sensitive payment card information of millions of class members. *Id.*, ECF No. 62, at 3. My efforts on behalf of the class resulted in the creation of an uncapped claims settlement providing cash payments to class members, and Hy-Vee committing at least \$20 million to data security improvements. *Id.*, ECF No. 58, at 4; *see also Gordon, et al. v. Chipotle Mexican Grill, Inc.*, No. 1:17-cv-01415-CMA (D. Colo.) (data breach case where millions of consumers' payment card data was exposed to hackers); *Bray, et al. v. GameStop Corp.*, No. 1:17-cv-01365 (D. Del.) (data breach settlement involving exposure of payment card information through defendant's website).

38. I have also been appointed to leadership positions in other consumer class actions. For example, I was appointed as class counsel in *Udeen, et al. v. Subaru of America, Inc.*, No. 1:18-cv-17334-RBK-JS (D.N.J.), where I helped obtain a settlement valued at more than \$6.25 million on behalf of owners and lessees of Subaru vehicles with allegedly defective infotainment

systems. *See also* *McFadden v. Microsoft Corp.*, No. C20-0640-RSM-MAT, 2020 WL 5642822, at \*3 (W.D. Wash. Sept. 22, 2020) (appointed as co-lead counsel).

39. In sum, I and my firm have led and continue to lead many high-profile privacy cases, including those involving data privacy (e.g., *Zoom*, *Ring*), data breaches (e.g., *Experian*, *Premiera*, *Home Depot*, *OPM*, *Chipotle*, *The Kroger Co.*, *Logan Health*), geo-location tracking (e.g., *Google Location History Litigation*), collection and storing of biometric information (e.g., *Google*, *Shutterfly*, *Vimeo*), and TCPA violations (e.g., *Hollister*, *American Eagle*), as well as many other types of consumer class actions (e.g., *Eck* - \$295 million class settlement against City of Los Angeles for unlawful utility taxes), as well as other complex class action litigation.

40. AW has decades of experience in the prosecution of class actions, including data breach and privacy lawsuits such as this action. AW has a proven track record of experience and results, and specific expertise in data privacy class action litigation. A copy of the AW resume was submitted with Plaintiffs' Motion for Preliminary Approval and is incorporated by reference herein.

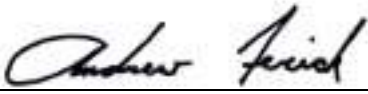
41. The Settlement achieved in this litigation is the product of the initiative, investigations, and hard work of skilled counsel.

42. The named Plaintiffs have been actively engaged in this litigation, and were essential to the success achieved. Among other things, they provided information to Class Counsel, gathered documents, reviewed pleadings, stayed updated about the litigation, and reviewed and approved the Settlement. The Settlement would not have been possible without the effort and commitment of the Plaintiffs, who sacrificed their time and put their name on the line for the sake of the Class. Their commitment is notable given the modest size of their personal financial stakes in the matter.

43. As of the date of filing, I am aware of zero objections to either the Settlement Agreement in general or to the proposed attorneys' fees, costs (the amount of which was made known to the Settlement Class via the Court-approved Notice) in particular.

44. Class Counsel's fee request of \$400,000 equates to 33.33% of the gross Settlement Fund. As set forth in the concurrently filed fee motion, this request is reasonable and in-line with precedent under Massachusetts law relating to attorneys' fees. Based on my experience and my knowledge regarding the factual and legal issues in this matter, and given the substantial benefits provided by the Settlement, it is my opinion that the proposed Fee Award and Costs and Service Awards are reasonable, and that the Settlement in this matter is fair, reasonable, and adequate, and is in the best interests of the Settlement Class Members.

I hereby certify that the foregoing is true and correct. Executed at Radnor, Pennsylvania on March 1, 2023.

A handwritten signature in black ink, appearing to read "Andrew Ferich", is written over a horizontal line.

Andrew W. Ferich

## CERTIFICATE OF SERVICE

I hereby certify, under penalty of perjury, that on March 1, 2023, I caused copies of the Declaration of Andrew W. Ferich In Support of Motion for Attorneys' Fees, Costs, Expenses and Service Awards to be served via email upon counsel for Defendant as follows:

**James H. Rollinson**

**[jrollinson@bakerlaw.com](mailto:jrollinson@bakerlaw.com)**

**David A. Carney**

**[dcarney@bakerlaw.com](mailto:dcarney@bakerlaw.com)**

**Melissa M. Bilancini**

**[mbilancini@bakerlaw.com](mailto:mbilancini@bakerlaw.com)**

**BAKER & HOSTETLER LLP**

**127 Public Square, Suite 2000**

**Cleveland, Ohio 44114-1214**

/s/ David Pastor

David Pastor