

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 DAVID PASTOR IN SUPPORT OF MOTION FOR  
ATTORNEYS' FEES, COSTS, EXPENSES, AND SERVICE AWARDS**

I, David Pastor, declare as follows:

1. I am licensed to practice in the Commonwealth of Massachusetts, and I am counsel for Plaintiffs in the above-captioned matter.
2. I have personal knowledge of the facts stated herein. If called upon to do so, I could and would competently testify thereto.
3. I submit this Declaration in support of Plaintiffs' Motion for Attorneys' Fees, Costs, Expenses, and Service Awards.
4. The Settlement in this case includes a Class defined as follows:  
  
"all persons whose personal information was potentially compromised in the Data Breach, as defined in Paragraph 10(h) of the Settlement Agreement."
5. Under the Settlement, the following benefits will be provided:
  - A non-reversionary Settlement Fund of \$1,200,000;

- Compensation for ordinary losses of up to \$150 per Class member, consisting of out-of-pocket expenses related to the Data Breach;
- compensation for lost time spent responding to the Data Breach;
- compensation for extraordinary losses of up to \$5,000 for proven monetary losses caused by the Data Breach;
- two years of credit monitoring services, with \$1,000,000 in identity theft insurance coverage;
- a cash option, in lieu of out-of-pocket expenses and credit monitoring, for those Class members who choose this alternative; and
- payment of all settlement administration costs from the Settlement Fund.

6. The Settlement provides that Class Counsel may apply to the Court for an award of attorneys' fees of up to \$400,000.00, to be paid from the Settlement Fund. The amount of attorneys' fees requested by Class Counsel represents only approximately 95.7% of Class Counsel's collective lodestar in this case to date. The Settlement also provides that Plaintiffs may apply to the Court for class representative service awards to the two named Plaintiffs in the sum of \$3,000.00 each to be paid out of the Settlement Fund. The payment of attorneys' fees, costs, expenses, and service awards is separate from and in addition to any compensation to Class members.

7. During the pendency of Defendant's motion to dismiss, the Parties engaged in a dialogue and discussed the prospect of early resolution. As a result of these efforts, the Parties agreed to attend a mediation

8. In advance of the mediation, the Parties submitted detailed mediation statements to the mediator. Plaintiffs requested informal discovery and UMMHC produced documentation and information to Plaintiffs to allow for a meaningful evaluation of the claims and to better inform the parties in preparation of mediation.

9. On August 2, 2022, the Parties engaged in a full day mediation before Hon. Bonnie H. MacLeod (Ret.) of JAMS. Despite hard-fought efforts by each side, the mediation did not result in a settlement. Accordingly, the Parties continued to engage in arm's-length negotiations during the following week, exchanging draft term sheets until they were able to reach an agreement in principle.

10. Thereafter, the Parties negotiated and finalized the details of the Settlement, exchanging drafts of the Settlement Agreement and its exhibits.

11. Plaintiffs also obtained competitive bids from various experienced Settlement Administrators and thereafter chose Angeion Group to act as the Settlement Administrator, subject to Court approval.

12. The Settlement Agreement was finalized and executed on October 14, 2022.

13. In the settlement discussions with Defendant's counsel, Class Counsel did not commence any negotiations concerning attorneys' fees or the Plaintiffs' Service Awards until after an agreement was reached on the settlement consideration to the Class.

14. Class Counsel have significant experience in class action litigation on behalf of consumers, including litigation relating to data breaches and other privacy issues. *See* Declaration of Ben Barnow ("Barnow Decl.") and Declaration of Andrew W. Ferich ("Ferich Decl."), submitted contemporaneously herewith.

15. Class Counsel are highly qualified and have extensive experience in complex civil litigation. They understand the duties imposed upon class counsel in consumer class actions and have proven adept at all phases of such litigation. *See* Barnow Decl. and Ferich Decl.

16. I have been appointed as class counsel in numerous class actions, both in this Court and other state and federal courts, including *Kinsella v. Seaport Apartments LLC*, No. 12-

2408-BLS1 (Suffolk Superior Court Dec. 18, 2013); *Miller v. J. Crew Group, Inc.*, No. 13-11487-RGS (D. Mass. Oct. 15, 2014); *Perry v. Equity Residential Mgmt., L.L.C.*, 2014 WL 4198850 (D. Mass. Aug. 26, 2014); *Goodman v. Hangtime, Inc.*, No. 1:14-cv-01022 (N.D. Ill. Oct. 7, 2015); *Miller v. Urban Outfitters, Inc.*, 13-12276 -ADB (D. Mass. Nov. 12, 2015); *In re OSB Antitrust Litigation*, Master File No. 06-826 (PSD) (E.D. Pa.); *Phillips v. Equity Residential Mgmt., L.L.C.*, No. 13-12092-RWZ (D. Mass. May 3, 2018); *Baker v. Equity Residential Mgmt., L.L.C.*, No. 13-3630 (Middlesex Superior Court June 27, 2017) and 18-11175-PBS (D. Mass. Nov. 4, 2019);<sup>1</sup> *Pierre Louis v. Bayada Home Health Care, Inc.*, No. 1981CV01957 (Middlesex Superior Court June 22, 2022).

17. I have regularly litigated cases in state and federal trial and appellate courts in various jurisdictions. I have been a member of the bar of the Commonwealth of Massachusetts and the U. S. District Court for the District of Massachusetts since 1979, and I am admitted to practice before the First, Third, and Eighth Circuit Courts of Appeal.

18. I have more than 40 years of experience as a practicing attorney, approximately half of which has been spent primarily on class action litigation.

19. A true and correct copy of the Pastor Law Office, PC Firm Resume was submitted with Plaintiffs' Motion for Preliminary Approval and is incorporated by reference herein.

20. The work done by my firm in this case has included, among other things, preparing motions and other court papers, working on the opposition to Defendant's motion to dismiss, attending Court hearings, reviewing and editing all pleadings, motions and discovery requests, revising, and editing the settlement agreement and exhibits to the agreement, and

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<sup>1</sup> Classes were certified initially in Superior Court and again in U.S. District Court in ruling on motion to decertify after removal.

preparing the motion for attorneys' fee, costs and expenses, and service awards and supporting papers.

21. From approximately November, 2021 through the present date, Pastor Law Office, PC has expended the following number of hours at the following hourly rates, in performing legal services on behalf of Plaintiff and the Class in the above-captioned matter:<sup>2</sup>

<b>Professional<sup>3</sup></b>	<b>Hours</b>	<b>Rate</b>	<b>Amount</b>
David Pastor (P)	158.7	\$725	\$115,057.50
Shirley Durgin (PL)	1.2	\$250	\$300.00
<b>TOTALS</b>	<b>159.9</b>		<b>\$115,357.50</b>

22. The rates for the professionals whose work was part of Plaintiffs' collective lodestar in this case are as follows:

<b>Professional</b>	<b>Firm</b>	<b>Rate</b>
Robert Ahdoot(P)	Ahdoot & Wolfson, PC	\$1,050
Ben Barnow (P)	Barnow and Associates, P.C.	\$1,050
Andrew Ferich (P)	Ahdoot & Wolfson, PC	\$850
Bradley King (P)	Ahdoot & Wolfson, PC	\$850
David Pastor (P)	Pastor Law Office, PC	\$725
Anthony L. Parkhill (A)	Barnow and Associates, P.C.	\$725
Sarper Unal (A)	Ahdoot & Wolfson, PC	\$500
Riley W. Prince (A)	Barnow and Associates, P.C.	\$475/\$250
Nicholas W. Blue (A)	Barnow and Associates, P.C.	\$425/\$300
Shirley Durgin (PL)	Pastor Law Office, PC	\$250
Heidi Liivimagi (PL)	Ahdoot & Wolfson, PC	\$250
Kathryn Cabrera (PL)	Ahdoot & Wolfson, PC	\$250
Catherine Santos (LA)	Ahdoot & Wolfson, PC	\$150

<sup>2</sup> The hours and lodestar of each of the other Class Counsel firms are summarized in ¶ 27 below and in each firm's separate declaration. *See* Barnow Decl. and Ferich Decl.

<sup>3</sup> P = Partner or Principal; A = Associate; PL = Paralegal; LA = Legal Assistant.

23. Based on my knowledge and experience, the rates charged by my firm and by the Class Counsel firms collectively are within the range of rates normally and customarily charged by attorneys of similar qualifications and experience for similar services in the Boston area.

24. My rates have been approved by courts in connection with fee applications in many cases. *See, e.g., Kinsella v. Seaport Apartments LLC*, No. 12-2408-BLS1 (Suffolk Superior Court Dec. 18, 2013); *Miller v. J. Crew Group, Inc.*, No. 13-11487-RGS (D. Mass. Oct. 15, 2014); *Goodman v. Hangtime, Inc.*, No. 1:14-cv-01022 (N.D. Ill. Oct. 7, 2015); *Miller v. Urban Outfitters, Inc.*, 13-12276 -ADB (D. Mass. Nov. 12, 2015); *In re OSB Antitrust Litigation*, Master File No. 06-826 (PSD) (E.D. Pa.); *Phillips v. Equity Residential Mgmt., L.L.C.*, No. 13-12092-RWZ (D. Mass. May 3, 2018); *Baker v. Equity Residential Mgmt., L.L.C.*, No. 18-11175-PBS (D. Mass. Nov. 4, 2019); *Pierre Louis v. Bayada Home Health Care, Inc.*, No. 1981CV01957 (Middlesex Superior Court June 22, 2022).

25. The work done by Class Counsel in this litigation on behalf of Plaintiffs and the Class included, among other things, the following: conferring with Plaintiffs and performing an initial investigation; preparing the class action complaints; briefing and arguing the motion to dismiss; preparing interrogatories and document requests to Defendant; extensive discussions with Defendant's counsel concerning their investigation of the matter and possible settlement and settlement negotiations; preparing pre-mediation discovery requests and review of documents and information produced by Defendant in response to those requests; preparation for and participation in a full day mediation session; additional post-mediation settlement discussions, culminating in an agreement to settle the case on a class-wide basis; preparing and negotiating the terms and language of the class action settlement agreement and the related

settlement documents, such as the class notice and the proposed orders for settlement approval; and other actions in connection with seeking settlement approval (including preparation of papers in support of preliminary settlement approval and appearance at the preliminary approval hearing).

26. There is substantial additional work yet to be done in connection with the settlement and settlement approval, including preparation of papers in support of final settlement approval, appearance at the final settlement approval hearing, and communications with the settlement administrator and class members regarding questions and issues relating to claims and the claims process.

27. Collectively, Class Counsel have spent approximately 597.4 hours on this litigation from inception to date and have a collective lodestar of approximately \$417,772.50.

The chart below summarizes the hours and lodestar for each firm and the collective totals:

<b>Firm</b>	<b>Hours</b>	<b>Amount</b>
Barnow and Associates, P.C.	266.2	\$182,105.00
Pastor Law Office, PC	159.9	\$115,057.50
Ahdoot & Wolfson, PC	171.3	\$120,610.00
<b>TOTALS</b>	<b>597.4</b>	<b>\$417,772.50</b>

28. In my judgment and based upon my years of experience in class action litigation and other litigation, and based on, among other things, the risks and challenges of this action, the number of hours expended and the services performed by my firm and by Class Counsel collectively, were reasonable and necessary and were expended for the benefit of the Plaintiffs and the Class in this litigation.

29. Class Counsel took all steps necessary to avoid duplication of effort in litigating this case. Class Counsel allocated and/or assigned tasks among themselves in such a way as to accomplish that goal while effectively and efficiently prosecuting this action on behalf of

Plaintiffs and the Class.

30. My firm has incurred the following out-of-pocket expenses in the course of performing legal work on behalf of Plaintiffs and the Class in this matter:

<b>Expense</b>	<b>Amount</b>
Court Filing Fees	\$ 515.00
Service of Process	\$ 68.84
Travel (Parking and Mileage)	\$ 70.86
<b>TOTAL</b>	<b>\$654.70</b>

31. Collectively, Class Counsel incurred a total of \$9,025.85 in out-of-pocket expenses in the course of performing legal work on behalf of Plaintiffs and the Class in this matter, as set forth in the following chart:


<b>Firm</b>	<b>Expenses</b>
Pastor Law Office, PC	\$654.70
Barnow and Associates, P.C.	\$7,180.66
Ahdoot & Wolfson, PC	\$1,190.49
<b>TOTAL</b>	<b>\$9,025.85</b>

32. Plaintiffs assisted in the prosecution of this action by conferring with counsel concerning the Data Breach, providing relevant documents and information to counsel, reviewing pleadings and other documents in the case, and generally fulfilling the duties and obligations of class representatives.



I hereby certify under penalty of perjury that the foregoing is true and correct.

Executed at Boston, Massachusetts on March 1, 2023.

  
\_\_\_\_\_  
David Pastor

**CERTIFICATE OF SERVICE**

I hereby certify, under penalty of perjury, that on March 1, 2023, I caused copies of the foregoing Declaration of David Pastor 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  
David A. Carney  
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Melissa M. Bilancini  
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\_\_\_\_\_  
David Pastor