

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT DEPARTMENT

ELAINE LAFRATTA, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

MEDICAL HEALTHCARE SOLUTIONS,  
INC.,

Defendant.

Case No. 2277CV00106  
(Lead Case)

**Consolidated With:**

CHRISTIAN DONNER, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

MEDICAL HEALTHCARE SOLUTIONS,  
INC.,

Defendant.

Case No. 2277CV00108

**-and-**

EVAN WEISENFELD, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

MEDICAL HEALTHCARE SOLUTIONS,  
INC.,

Defendant.

Case No. 2277CV00110

**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 Plaintiff Elaine LaFratta 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 Plaintiff's Motion for Attorneys' Fees, Costs, Expenses, and Service Awards.
4. The Settlement in this case includes a Class defined as follows:  
  
[A]ll persons whose personal information and personal health information was accessed by and disclosed to unauthorized persons in the Data Breach, including all who were sent notice of the Data Breach.
5. Under the Settlement, the following benefits will be provided:
  - A non-reversionary Settlement Fund of \$727,266;
  - 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 three-bureau credit and identity theft monitoring services, with \$1,000,000 in no-deductible identity theft insurance coverage;
  - a cash option, estimated at approximately \$50, 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 \$242,422, to be paid from the Settlement Fund plus reimbursement of expenses in the amount of \$6,567.16. The amount of attorneys' fees requested by Class Counsel represents a 1.06 multiplier of Class Counsel's lodestar in this case to date. The Settlement also

provides that Plaintiff may apply to the Court for a class representative service award to the Plaintiff in the sum of \$2,000.00 to be paid out of the Settlement Fund. The payment of attorneys' fees, costs and expenses, and the service award is separate from and in addition to any compensation to Class members.

7. The complaint in this action was filed on February 3, 2022.

8. On September 26, 2022, the Court appointed Ben Barnow and David Pastor as Co-Lead Counsel.

9. Thereafter, the Parties engaged in a dialogue and discussed the prospect of early resolution, including with McCormack Consultants, Inc. ("MCI"), upon whom MHS had made a demand for contribution. As a result of these efforts, the Parties<sup>1</sup> agreed to attend a mediation. In advance of the mediation, the Parties submitted detailed mediation statements to the mediator. Plaintiff requested informal discovery from MHS and MCI, and both parties responded, with MHS producing many pages of documentation to Plaintiff to allow for a meaningful evaluation of the claims and to better inform the parties in preparation for the mediation.

10. On January 17, 2023, the Parties engaged in a full day mediation before Brad Honoroff of the Mediation Group. Despite diligent efforts by the Parties, the mediation did not result in a settlement. The Parties continued to engage in arm's-length negotiations during the following three months until they were able to reach an agreement in principle.

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

12. Plaintiff also obtained competitive bids from various experienced Settlement Administrators and chose Epiq Class Action and Claim Solutions, Inc. to act as the Settlement

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<sup>1</sup> The term "the Parties," as used herein, is meant, unless otherwise indicated, to refer collectively to Plaintiff, MHS, and MCI.

Administrator, subject to Court approval.

13. The Settlement Agreement was finalized and executed on July 9, 2023.

14. Plaintiff moved for preliminary approval of the Settlement and for certification of the Settlement Class, and the Court held a hearing on preliminary approval on October 5, 2023. On the same date, the Court entered the Order Allowing Preliminary Approval of Class Action Settlement and Directing Notice of Proposed Settlement (“Preliminary Approval Order”).

15. Notice of the settlement, including the amounts sought for attorneys’ fees, costs, and expenses, and Class Representative Service Awards, was sent to Settlement Class Members on November 6, 2023, as provided in the Preliminary Approval Order.

16. In the settlement discussions with counsel for MHS and MCI, Class Counsel did not commence any negotiations concerning attorneys’ fees or the Plaintiff’s Service Awards until after an agreement was reached on the settlement consideration to the Class.

17. Class Counsel have significant experience in class action litigation on behalf of consumers, including litigation relating to data breaches and other privacy issues. *See* ¶¶ 19-21 and 26 below and Declaration of Ben Barnow (“Barnow Decl.”), submitted contemporaneously herewith (¶¶ 5-8).

18. Class Counsel understand the duties imposed upon class counsel in consumer class actions and have proven adept at all phases of such litigation. *See* generally Barnow Decl.

19. 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); *Phillips v. Equity Residential Mgmt., L.L.C.*, No. 13-12092-RWZ (D. Mass. May 3, 2018); *Vuckovic v. KT Health Holdings, LLC*, No. 1:125-cv-13696-GAO (D. Mass. Jun. 6, 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>2</sup> *Pierre Louis v. Bayada Home Health Care, Inc.*, No. 1981CV01957 (Middlesex Superior Court June 22, 2022). *Shedd v. Sturdy Mem. Hosp., Inc.*, No. 2173CV00498 (Bristol Super. Ct. Feb. 27, 2023); *Kesner, et al. v. UMass Mem. Health Care, Inc.*, No. 2185CV01210 (Worcester Super. Ct. May 23, 2023).

20. 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.

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

22. The work done by my firm in this case has included, among other things, preparing motions and other court papers, preparing for and attending the mediation and participation in post-mediation settlement discussions, attending Court hearings, preparing, reviewing and editing pleadings, motions and discovery requests, revising, and editing the settlement agreement and exhibits to the agreement, and preparing this motion for attorneys' fees, costs and expenses, and service awards and supporting papers.

23. From approximately February 2022 through the present date, Pastor Law Office, PC has expended the following number of hours at the following hourly rates, in performing

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<sup>2</sup> Classes were certified initially in Superior Court and again in U.S. District Court in ruling on motion to decertify after removal.

legal services on behalf of Plaintiff and the Class in the above-captioned matter:<sup>3</sup>

<b>Professional<sup>4</sup></b>	<b>Hours</b>	<b>Rate</b>	<b>Amount</b>
David Pastor (P)	137.2	\$725	\$99,517.50
<b>TOTALS</b>	<b>137.2</b>		<b>\$99,517.50</b>

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

<b>Professional</b>	<b>Firm</b>	<b>Rate</b>
Ben Barnow (P)	Barnow and Associates, P.C.	\$1,050
David Pastor (P)	Pastor Law Office, PC	\$725
Anthony L. Parkhill (A)	Barnow and Associates, P.C.	\$725
Riley W. Prince (A)	Barnow and Associates, P.C.	\$475
Nicholas W. Blue (A)	Barnow and Associates, P.C.	\$300/\$425

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

26. 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 Super. 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); *Vuckovic v. KT Health Holdings, LLC*, No. 1:125-cv-

<sup>3</sup> The hours and lodestar of Barnow and Associates are summarized in ¶ 29 below and in that firm's separate declaration. *See* Barnow Decl., ¶ 16.

<sup>4</sup> P = Partner or President; A = Associate.

13696-GAO (D. Mass. Jun. 6, 2018); *Baker v. Equity Residential Mgmt., L.L.C.*, No. 18-11175-PBS (D. Mass. Nov. 4, 2019); *Shedd v. Sturdy Mem. Hosp., Inc.*, No. 2173CV00498 (Bristol Super. Ct. Feb. 27, 2023); *Kesner, et al. v. UMass Mem. Health Care, Inc.*, No. 2185CV01210 (Worcester Super. Ct. May 23, 2023).

27. The time spent by Class Counsel included, among other things: conferring with Plaintiff and performing an initial investigation; preparing interrogatories and document requests to MHS; extensive discussions with counsel for MHS and MCI 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 MHS 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 notices and the proposed orders for settlement approval; 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); and communications with class members and the Settlement Administrator regarding class member questions about the settlement and the claim process.

28. 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 additional communications with the settlement administrator and class members regarding questions and issues relating to claims and the claims process.

29. Collectively, Class Counsel have spent approximately 334.3 hours on this litigation from inception to date and have a collective lodestar of approximately \$228,070. 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.	197.1	\$128,552.50
Pastor Law Office, PC	137.2	\$99,517.50
<b>TOTALS</b>	<b>334.3</b>	<b>\$228,070.00</b>

30. 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 Class Counsel were reasonable and necessary and were expended for the benefit of the Plaintiff and the Class in this litigation.

31. 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 Plaintiff and the Class.

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

<b>Expense</b>	<b>Amount</b>
Court Filing Fees	\$350.00
Service of Process	\$123.00
<b>TOTAL</b>	<b>\$473.00</b>

33. Collectively, Class Counsel incurred a total of \$6,567.16 in out-of-pocket expenses in the course of performing legal work on behalf of Plaintiff and the Class in this matter, as set forth in the following chart:



<b>Firm</b>	<b>Expenses</b>
Pastor Law Office, PC	\$473.00
Barnow and Associates, P.C.	\$6,094.16
<b>TOTAL</b>	<b>\$6,567.16</b>

34. Plaintiff 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 a class representative.

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

Executed at Boston, Massachusetts on December 22, 2023.

  
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David Pastor