UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: MOVEIT CUSTOMER DATA SECURITY BREACH LITIGATION	MDL No. 1:23-md-03083-ADB-PGL
This Document Relates To: C.A. No. 1:24-cv-11807-ADB BEN MORRIS, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. PROGRESS SOFTWARE CORPORATION; ERNST & YOUNG LLP; and BANK OF AMERICA CORPORATION, Defendants.	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARD FOR THE SETTLEMENT CLASS REPRESENTATIVE FROM THE BOA / EY SETTLEMENT

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INTRODUCTION

This multi-district litigation ("MDL") arises from a nationwide security incident 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 impacted by the data breach and who assert claims against Progress (the developer and licensor of MOVEit Transfer), and other downstream entities who exchanged individuals' sensitive personal information via MOVEit Transfer, including Defendants Bank of America Corporation ("BOA") and Ernst & Young LLP ("EY") (together, BOA and EY are "Defendants"). Since their appointment in January of 2024, Co-Lead Counsel, Liaison & Coordinating Counsel, and the Committee Chairs have diligently worked with this Court to organize this MDL, litigate threshold issues as to Article III standing, arbitration, and jurisdiction under the Class Action Fairness Act; and litigate the modified bellwether structure, which is in active discovery with the class certification deadline forthcoming.

Following the Court's entry of MDL Order No. 19 (as modified by MDL Order No. 32 & ECF No. 1798), finding that most Plaintiffs in the MDL have standing, Co-Lead Counsel and the Settlement Committee successfully negotiated a $2.5 million class action settlement to resolve the claims asserted against BOA and EY, without jeopardizing the Settlement Class's[1] remaining claims against Progress. Although this Settlement does not resolve the claims asserted against all relevant defendants, it provides significant benefits to the Settlement Class Members. Namely, the Settlement will address the principal harms of the breach—the risk that cybercriminals will misuse

[1] Unless otherwise defined, capitalized terms are the same as those used in the Class Action Settlement Agreement and Release, ECF No. 1796-1.

their data, the time and effort spent mitigating that risk, and any documented losses caused by the Security Incident.

Under Rule 23(h), Class Counsel now respectfully seek an award of attorneys' fees of $625,000.00 (one-fourth of the Settlement Fund), and $19,200.00 in reimbursement of reasonable litigation expenses. Given the risk Class Counsel undertook, the substantial resources Class Counsel have expended litigating the claims asserted in this MDL, 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. For his help in prosecuting the claims asserted against Defendants, Class Counsel further request that the Court award the Settlement Class Representative a modest Service Award of $2,500.00.

BACKGROUND

I. Factual Background.

Plaintiff's claims against Defendants arise out of a security incident stemming from a vulnerability in MOVEit Transfer. *See*, *e.g.*, Compl., ¶ 19; ECF No. 908.[2] MOVEit Transfer is a subscription-based managed file transfer application developed and licensed by Progress Software Corporation ("Progress") and used by numerous commercial and government entities, including Defendants, to store and transfer large data files. *See* Compl., ¶ 19; ECF No. 908, ¶¶ 11–12. Between May 27, 2023 and May 31, 2023, CL0P Ransomware Gang, exploited a vulnerability in the MOVEit Transfer application. *See* ECF No. 908, ¶¶ 90–155. CL0P used the MOVEit vulnerability to escalate user privileges, gain unauthorized access to customers' MOVEit Transfer environments, and access, copy, and exfiltrate the sensitive information stored therein (the

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[2] Citations to "Compl." are citations to the Amended Class Action Complaint (ECF No. 1784) filed in this action.

"Security Incident"). *See* ECF No. 908, ¶¶ 96–153. Shortly after exploiting the MOVEit Transfer vulnerability, CL0P threatened to name and publish the leaked data of any organizations that did not respond to its ransom demands. *See* ECF No. 908, ¶¶ 175–179, 207–208.

On or about May 31, 2023, Progress informed EY of a recently discovered vulnerability in MOVEit Transfer.[3] Specifically, Progress warned of an unauthenticated SQL vulnerability that could allow unauthorized actors to escalate user privileges and access EY's MOVEit Transfer environment. Following Progress's notification, EY conducted an investigation and concluded that the PII of approximately 198,000 people had been taken from EY's MOVEit Transfer environment due to an exploit of the MOVEit vulnerability. The compromised Personally Identifying Information ("PII"), related to services provided by EY to BOA, including PII in documents provided by BOA to EY. Plaintiff alleges Defendants could have prevented or mitigated the Security Incident by implementing reasonable data security measures when exchanging PII via MOVEit Transfer. *See* Compl., ¶ 19; ECF No. 908, ¶¶ 427–31. Defendants deny these allegations.

II. Summary of Class Counsel's Work.

This Court appointed Plaintiffs' Co-Lead Counsel, Liaison & Coordinating Counsel, and Committee Chairs on January 19, 2024. 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. Under MDL Order No. 10, this Court vested Co-Lead Counsel with the responsibility of "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 & Coordinating

[3] *Data Breach Notifications*, OFFICE OF THE MAINE ATTORNEY GENERAL, https://www.maine.gov/agviewer/content/ag/985235c7-cb95-4be2-8792-a1252b4f8318/c43aee1c-dbc4-4a6d-b0d1-147ad3b23c37.shtml (last visited August 17, 2026).

Counsel, and the Committee Chairs have dedicated tremendous resources to prosecuting this MDL on behalf of all plaintiffs, including resolving the claims asserted against BOA and EY. *See* Declaration of Gary F. Lynch ("Lynch Decl.") ¶ 6 submitted concurrently herewith.

Following their appointment, Co-Lead Counsel and Liaison & 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; *see also* Lynch Decl. ¶¶ 7–9. In conjunction with MDL Order No. 13, Co-Lead Counsel and Liaison & Coordinating Counsel also successfully negotiated a Stipulated Protective Order and Stipulation and Order for the Production of Documents and ESI for purposes of discovery in this MDL. *See* MDL Order Nos. 15 & 16.

For purposes of the Court addressing the threshold issue of Article III standing, and after engaging in their own substantial fact investigation, Co-Lead Counsel, Liaison & Coordinating Counsel, and the Committee Chairs drafted and filed the Omnibus Set of Additional Pleading Facts on behalf of all MDL plaintiffs. ECF No. 908; Lynch Decl. ¶ 10. The significant resources Co-Lead Counsel, Liaison & Coordinating Counsel, the Committee Chairs, and those working with them expended on drafting and researching the Omnibus Pleading Facts were invaluable to understanding the strengths and weaknesses of Plaintiff's and Settlement Class Members' claims against BOA and EY. Lynch Decl. ¶¶ 10, 17.

Following the filing of the Omnibus Pleading Facts, on July 23, 2024, all defendants in the MDL filed an omnibus motion to dismiss under Fed. R. Civ. P. 12(b)(1) asserting that the actions underlying this MDL should be dismissed for lack of Article III standing.[4] ECF No. 1114. On September 5, 2024, Plaintiffs filed their opposition (ECF No. 1194), and the motion was fully briefed as of September 26, 2024. ECF No. 1233. Following argument by the parties, on December 12, 2024, the Court issued an opinion denying the defendants' omnibus motion to dismiss in large part finding that "(most) Plaintiffs have standing to pursue their claims." MDL Order No. 19 (as amended by MDL Order No. 32 & ECF No. 1798).

During the pendency of the omnibus motion to dismiss briefing, Plaintiffs' Co-Lead Counsel and Defendants' Liaison Counsel negotiated a proposed structure for litigating claims asserted in the MDL, with the Court adopting a modified bellwether structure "to efficiently decide critical issues and facilitate reciprocal discovery" and ordering Plaintiffs to file a consolidated bellwether complaint against Progress and certain other defendants. MDL Order Nos. 17 & 18; Lynch Decl. ¶ 9. Plaintiffs later filed a bellwether complaint against Progress and other representative defendants. ECF No. 1543. BOA and EY were not named as bellwether defendants. Following the Court's rulings on the Bellwether Rule 12(b)(6) challenges, Co-Lead Counsel, Liaison & Coordinating Counsel, the Committee Chairs, and others have been engaged in extensive discovery in advance of the Bellwether Class Certification deadline. Lynch Decl. ¶ 13.

III. Mediation and Subsequent Negotiation.

During an early procedural phase of this MDL, Co-Lead Counsel, the Settlement Committee, and Defendants' counsel began discussing the possible resolution of the Litigation, which culminated in the Parties participating in an arm's-length settlement negotiation on May 13,

[4] Other defendants filed an omnibus motion to compel arbitration, which was later granted in part and denied in part. *See* MDL Order No. 21. And additional defendants challenged this Court's jurisdiction under the Class Action Fairness Act, which was denied. *See* MDL Order No. 19 (as amended by MDL Order No. 32 & ECF No. 1798).

2024. *See* Lynch Decl. ¶ 14. During the settlement negotiations, the Parties reached an impasse and thereafter agreed to continue their settlement discussions via the mediation process. *Id.* ¶ 15. Following the arm's-length settlement negotiation and the Court's order denying all defendants' 12(b)(1) motion in large part (MDL Order No. 19), the Parties then engaged in a full-day mediation session conducted on March 20, 2025 by the Honorable Diane M. Welsh (Ret.), a retired federal magistrate judge now with JAMS in Philadelphia, Pennsylvania. *Id.* ¶ 16. In preparation for the mediation, the Parties engaged in informal discovery, wherein Defendants provided confidential information related to the issues in the lawsuit and the Settlement Class Representative. *Id.* ¶ 17. As a result of the Parties' informal exchange of information, along with the Co-Lead Counsel's detailed fact investigation in conjunction with the filing of the Omnibus set of Pleading Facts, the Settlement Committee was therefore well-informed regarding the facts of the case, and the strengths and weaknesses of Plaintiff's claims and Defendant's defenses leading into the mediation. *Id.*

The good-faith, hard-fought mediation session was successful, resulting in an agreement in principle. *Id.* ¶ 18. The Parties thereafter engaged in a series of further arm's-length discussions, during which the Parties negotiated, drafted, and finalized the terms of the Settlement Agreement, reaching fully executed agreement as of April 14, 2026. *Id.* ¶ 19. To effectuate the Settlement Agreement, Plaintiff later filed an Amended Complaint on April 17, 2026. ECF No. 1785. The Settlement was then preliminarily approved by this Court on April 29, 2025. ECF No. 1804. Following entry of the Court's Preliminary Approval Order, the Parties worked with the Court-appointed Settlement Administrator to effectuate notice to the Settlement Class. Lynch Decl. ¶ 20.

ARGUMENT

I. Approving a Fee 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 DuPont Plaza Hotel Fire Litig.*, 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 (25%) of the Settlement Fund in attorneys' fees. The fee 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 In re Sovos Compliance Data Sec. Incident Litig.*, No.1:23-CV-12100-AK (D. Mass. July 23, 2024) (ECF No. 51) (awarding 1/3 of a $3,534,128.50 million settlement fund in attorneys' fees and $13,825.99 in expenses); *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); *In re Asacol Antitrust Litig.*, 2017 WL 11475275, at *4 (awarding 1/3 of the settlement fund in attorneys' fees); *Gordan v. Mass. 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 fee 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 In re Fortra File Transfer Software Data Sec. Breach Litig.*, No. 24-MD-03090-RAR, 2025 WL 457896, at *11 (S.D. Fla. Feb. 11, 2025) (awarding 1/3 of settlement fund in data breach settlement arising from breach of file transfer software, and $39,237.40 in reasonable litigation expenses); *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 and awarding $18,134.70 in reasonable litigation expenses); *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 settlement and awarding $13,453.57 in reasonable litigation expenses); *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 and $2,345,821.98 in reasonable litigation expenses); *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 and $166,925.19 in reasonable litigation expenses).

Accordingly, and as further demonstrated below, Class Counsel's fee request of one-fourth of the Settlement Fund is reasonable under the percentage of the fund method.[5]

II. Class Counsel's Undertaking, Effort, Expertise, Investment, and Results Merit a 25% Fee 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)

[5] As discussed in Argument Section IV below, Class Counsel separately request the reimbursement of reasonable litigation expenses.

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 confirms the reasonableness of Class Counsel's fee request.

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

Here, the Settlement creates a $2.5 million Settlement Fund to benefit approximately 198,000 Settlement Class Members. This compares favorably to other data breach settlements that have received final approval. *See, e.g.*, *In re Fortra*, 2025 WL 457896, at *14 (final approval granted to $7.5 million settlement fund that would benefit more than approximately one million class members); *In re Lincare Holdings Inc. Data Breach Litig.*, No. 8:22-CV-01472-AAS, 2024 WL 3104286, at *3 (M.D. Fla. June 24, 2024) (final approval granted to $7.5 million settlement fund that would benefit approximately 2.9 million class members); *Sherwood, et al. v. Horizon Actuarial Services LLC*, Case No. 1:22-cv-01495 (N.D. Ga. Apr. 2, 2024) (ECF No. 94) (final approval to $8.73 million settlement fund that would benefit approximately 1.3 million class members); *In re: MOVEit Customer Data Sec. Brech Litig.*, No. 1:23-MD-03083 (D. Mass.) (ECF Nos. 1432, 1485, 1610, 1744, 1969, & 2037).

Further, the Settlement is designed to provide relief for the harms and potential harms caused by the Security Incident—time and expenses spent responding to the breach, reimbursement for any actual misuse of data, and measures to prevent the future risk that the stolen data will be used for fraud or identity theft. The Settlement provides relief for these data breach injuries by enabling Settlement Class Members to file claims for benefits, including: (1) reimbursement of ordinary out-of-pocket losses (including lost time spent responding to the

Security Incident) due to the misuse of data or efforts to prevent the misuse of data; (2) reimbursement of extraordinary losses resulting from the misuse of data; (3) an alternative cash payment; and (4) two years of credit monitoring services. That means the Settlement's benefits are comparable to and, sometimes more valuable than those provided by other data breach settlements. *Harbour v. Cal. Health & Wellness Plan*, No. 5:21-CV-03322-EJD, 2024 WL 171192, at *2 (N.D. Cal. Jan. 16, 2024) (granting final approval to data breach settlement that provided credit monitoring, a cash payment, or a documented loss payment); *In re Forefront*, 2023 WL 6215366, at *2 (granting final approval to data breach settlement that provided credit monitoring, and reimbursement for documented losses and lost time); *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).

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

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 Plaintiff 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, Class 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. ¶¶ 6, 27. To date, neither Co-Lead Counsel, Liaison & Coordinating Counsel, or the Committee Chairs have been paid anything for their efforts to prosecute the claims against Defendants. 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 Class Counsel. Class Counsel's success in achieving a substantial and certain recovery under these circumstances demonstrates the reasonableness of the request fee.

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

The complexity of this MDL and its underlying cases weigh heavily in favor of the requested fee award. The BOA / EY Settlement resolves just one piece of the complex puzzle of related litigation arising out of the Security Incident. Here, while the Court issued favorable rulings on the omnibus Rule 12(b)(1) motion (MDL Order No. 19), and later on the Rule 12(b)(6) motions filed by the Bellwether Defendants (MDL Order Nos. 22 & 23), had the Parties moved forward with litigation, Defendants would have likely have argued that the Court's 12(b)(6) decisions are not applicable or instructive to the claims asserted against BOA and EY, or Defendants likely would have raised more arguments that the Court did not address during briefing on the Bellwether Defendants' Rule 12(b)(6) motions. While Class Counsel believe they would have prevailed on these issues, risk is inherent in all litigation.

Further, plaintiffs face risks inherent in all data breach actions. Plaintiff would need to prevail on issues of both liability and class certification to ensure his claims proceeded 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."). The Parties would likely face significant risks and costs from the dispute over whether Defendants' data security was unreasonable and negligent and competing expert testimony regarding 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").

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 the Parties not reached this agreement. Ultimately, Class 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.

Class Counsel are experienced class action attorneys generally, with significant experience litigating data breach actions specifically. ECF No. 1796 ¶¶ 3–5, 39. Courts have recognized Co-Lead Counsel's experience in this area of law and have repeatedly adjudged Co-Lead Counsel adequate under Rules 23(a)(4) and 23(g). *Id.* Class Counsel have demonstrated through this MDL that they are well-versed in data breach and privacy law, and have prosecuted this case and others in the MDL with vigor and commitment. Utilizing their combined skill and experience, Class Counsel negotiated a settlement with Defendants securing guaranteed compensation for the Settlement Class, while also allowing for continued litigation against Progress. As such, this factor supports the reasonableness of the requested fee award.

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

As shown above in Argument, *supra* § I, the fee request of one-fourth of the Settlement Fund to cover the time and effort of Class Counsel falls well within the range of reasonable fees awarded in this Circuit and in other data breach cases. 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 approaches to data security that continue to put consumers at risk. In 2023, there were over 3,000 data compromises in the United States, which impacted over 353,027,892 individuals.[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 198,000 Settlement Class Members impacted by the Security Incident, and the relatively small or difficult-to-quantify amounts of individual damages, pursuing claims individually 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 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.

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[6] Taelor Sutherland, *Data breaches increased throughout 2023*, Security (May 8, 2024), https://www.securitymagazine.com/articles/100638-data-breaches-increased-throughout-2023.

[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.

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. A Lodestar Cross-Check Confirms the Requested Fee Is Reasonable.

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*, 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," this MDL reaches a national scope as it consists 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.").

The complex nature of this MDL makes it difficult, if not impossible, for Plaintiffs' counsel to fully segregate tasks and hours on a defendant-by-defendant basis. The proposed BOA / EY Settlement is the eighth settlement submitted for approval to the Court in this MDL. Six of the seven prior settlements have been finally approved (ECF Nos. 1432, 1485, 1610, 1744, 1969, & 2037), with the final approval motion of the seventh currently pending (ECF No. 1979). Lynch Decl. ¶ 22. The six finally approved settlements, along with the fee requested in relation to seventh settlement, would result in a cumulative fee award of $7,824,994.00. *Id.* The settlements that have been achieved thus far, including the EY / BOA Settlement, have each resulted from the successful work performed litigating the claims of all plaintiffs in this MDL. *Id.* In MDLs with multiple defendants resulting in a series of successive settlements, prior courts have performed an ongoing, aggregate lodestar cross-check by dividing the total lodestar incurred during the course of the litigation by the aggregate fees and expenses requested, including previous fee and expense awards. *See*, *e.g.*, *In re Capacitors Antitrust Litig.*, No. 3:14-CV-03264-JD, 2018 WL 4790575, at *6 (N.D. Cal. Sept. 21, 2018) ("Because the total work performed by counsel from inception of the case makes each settlement possible, courts typically base fee awards in subsequent settlements on all work performed in the case."); *In re Auto. Parts Antitrust Litig.*, No. 12-MD-02311, 2020 WL 5653257, at *3 n.5 (E.D. Mich. Sept. 23, 2020) ("In calculating the lodestar for purposes of the cross-check, it would be impractical to compartmentalize and isolate the work that . . . Class Counsel did in any particular case at any particular time because all of their work assisted in achieving all of the settlements and has provided and will continue to provide a significant benefit to all of the ... classes."). Court-appointed Time, Fee, and Expense Counsel is reporting the time and expenses of plaintiffs' counsel to this Court on an ongoing basis, and most recently provided the Court with time, expenses, and lodestar on June 1, 2026. *See* Declaration of Alyson Oliver ("Oliver Decl.") ¶ 10 filed concurrently herewith.

At this point in this MDL, the lodestar cross-check can be satisfied by comparing the aggregate fees requested and approved with just a small subset of the hours worked to date in this litigation, such as Class Counsel's work on the following Litigation Task Codes (as set forth in MDL Order No. 11): "Fact Investigation / Development," "Pleadings," "Other Written Motions / Submissions," and "Court-Mandated Conferences." Lynch Decl. ¶¶ 23–25. Here, a lodestar cross-check of Class Counsel's work on pleadings and other motions alone confirms the reasonableness of the combined fee and expense request. As set forth in the Oliver Declaration, Class Counsel have submitted their collective total time worked by the firms' professionals in this MDL, prepared from contemporaneously made, daily time records. Oliver Decl. ¶ 6. Each Class Counsel 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; and that have been reviewed and approved by Time, Fee, and Expense Counsel. Lynch Decl. ¶ 26; Oliver Decl. ¶¶ 7–8. The reported hours by Class Counsel through June 30, 2026 on the above Task Codes, is 10,985.9 hours resulting in a lodestar of $8,916,348.00. Oliver Decl. ¶ 9.

The requested fee award of $625,000.00, representing twenty-five percent of the Settlement Fund, along with the previous awards of $7,287,494.00 and the pending request of $537,500.00 from the seventh settlement (ECF No. 1979) results in a multiplier of approximately 0.95. Lynch Decl. ¶ 28. This multiplier confirms the reasonableness of the requested fee. *See Roberts v. TJX Cos., Inc.*, No. 13-CV-13142-ADB, 2016 WL 8677312, at *13 (D. Mass. Sept. 30, 2016) (collecting cases where multipliers of 2 and more have been found reasonable in common fund cases).

The reasonableness of the lodestar cross-check is further supported by the nature of core common facts that led to the Security Incident—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 Class Counsel, the Committee Chairs, 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. 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 addition to their fee request, Class Counsel seek reimbursement for the reasonable expenses incurred to advance the litigation. Lynch Decl. ¶¶ 29–31. Class Counsel and the attorneys working with them have documented their expenses by category, in the accompanying declaration. *Id.* The schedule of expenses shows that counsel has litigated the case efficiently, with no unreasonable or unjustified expenditures. *Id.* ¶ 30. Moreover, these expenditures were of the type typically charged to hourly paying clients. *Id.* ¶ 32.

A significant percentage of the expenses incurred resulted from mediation. *Id.* ¶ 30. 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 sum, all of Class Counsel's expenses, in an aggregate amount of $19,200.00 are typical in litigation, were necessary to the successful prosecution and resolution of the claims against Defendants, and Plaintiff's request for Class Counsel's reasonable litigation expenses should be approved. Lynch Decl. ¶¶ 31–32.

V. The Service Award Request Is Reasonable.

Class Counsel request that this Court approve the payment of a modest Service Award of $2,500.00 to the Settlement Class Representative. A Service Award 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) (citation omitted); *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.

Plaintiff has been closely involved with the litigation against Defendants. Plaintiff's efforts were instrumental in providing the necessary background information and documents that made this case possible. Lynch Decl. ¶ 34. Plaintiff's 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 the Settlement Class Representative is reasonable and falls within the range of awards approved in other data privacy class actions. *See Novant Health*, 2024 WL 3028443, at *13 (concluding that a $2,500.00 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 $2,500.00 to named plaintiffs in data breach settlement).

CONCLUSION

For the above-mentioned reasons, Plaintiff respectfully requests that in conjunction with Plaintiff's forthcoming final approval motion, the Court grant this motion and approve an award of $625,000.00 for attorneys' fees, $19,200.00 for reimbursement of litigation expenses, and a Service Award of $2,500.00 to the Settlement Class Representative.

Dated: August 18, 2026

Respectfully submitted,

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Plaintiffs' Lead Counsel

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: August 18, 2026

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

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: MOVEIT CUSTOMER DATA SECURITY BREACH LITIGATION	MDL No. 1:23-md-03083-ADB-PGL
This Document Relates To: C.A. No. 1:24-cv-11807-ADB BEN MORRIS, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. PROGRESS SOFTWARE CORPORATION; ERNST & YOUNG LLP; and BANK OF AMERICA CORPORATION, Defendants.	

DECLARATION OF GARY F. LYNCH IN SUPPORT OF PLAINTIFF'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARD FOR SETTLEMENT CLASS REPRESENTATIVE FROM THE BOA / EY SETTLEMENT

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 Plaintiff's Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Award for the Settlement Class Representative as it relates to the Bank of America Corporation

("BOA") and Ernst & Young LLP ("EY") Settlement Agreement (the "Declaration").[1] 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 multi-district 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); *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. GD 14-003285 (Pa. Ct. Com. Pl.) (lead counsel on behalf of plaintiffs after obtaining reversal before the Pennsylvania Supreme Court);

[1] Unless otherwise defined, capitalized terms are the same as those used in the Class Action Settlement Agreement and Release, ECF No. 1796-1.

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 Liti*g., 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 J. McNamara, Karen H. Riebel, Charles E. Schaffer, and myself, appointed as Liaison & Coordinating Counsel, Kristen A. Johnson, and appointed as Committee Chairs, other attorneys. 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 this 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, Liaison & Coordinating Counsel, and the Committee Chairs have dedicated tremendous resources to prosecuting the claims of all plaintiffs in this MDL, including resolving the claims asserted against Defendants BOA and EY. This work has been performed on an entirely contingent basis.

7. Co-Lead Counsel and Liaison & Coordinating 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. In addition to MDL Order No. 13, Co-Lead Counsel, Liaison & Coordinating Counsel, and the Committee Chairs also successfully negotiated a Stipulated Protective Order and Stipulation and Order for the Production of Documents and ESI for purposes of discovery in this MDL. *See* MDL Order Nos. 15 & 16.

9. 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 "to efficiently decide critical issues and facilitate reciprocal discovery" in this MDL. *See* MDL Order No. 17. The Court thereafter entered MDL Order No. 18 (modified by ECF No. 1123) setting a deadline by which Plaintiffs were to file their Bellwether Complaint against Progress Software Corporation and the other Bellwether Defendants and further setting a briefing schedule on the Bellwether Rule 12(b)(6) motions. MDL Order No. 18.

10. Co-Lead Counsel, Liaison & Coordinating Counsel, the Committee Chairs, and others have conducted an extensive factual investigation and have consulted with a wide range of experts during their investigations. This extensive factual investigation enabled Co-Lead Counsel,

Liaison & Coordinating Counsel, and the Committee Chairs to draft and file the Omnibus Set of Additional Pleading Facts on behalf of all MDL plaintiffs (ECF No. 908) and later the Amended Bellwether Complaint (ECF No. 1543).

11. Co-Lead Counsel, Liaison & Coordinating Counsel, the Committee Chairs, 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, some defendants' motions to compel arbitration, and all MDL defendants' omnibus motion to dismiss for lack of Article III standing, which the Court denied in large part, finding that "(most) Plaintiffs have standing to pursue their claims." MDL Order No. 19 (as amended by MDL Order No. 32 and ECF No. 1798).

12. Co-Lead Counsel, Liaison & Coordinating Counsel, the Committee Chairs, and others have also prepared and filed comprehensive memoranda of law successfully in opposition to the Bellwether Defendants' Rule 12(b)(6) motions. On July 31, 2025, the Court entered MDL Order Nos. 22 and 23 resolving the Bellwether Defendants' Rule 12(b)(6) motions and holding, in part, that Bellwether Plaintiffs stated claims for common law negligence under the laws of California, Florida, Illinois, Indiana, Michigan, Minnesota, Nebraska, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Texas, Virginia, Washington, and Wisconsin, as to all Bellwether Defendants (as well as other state-law claims).

13. Following the Court's rulings on the Bellwether Rule 12(b)(6) challenges, Co-Lead Counsel, Liaison & Coordinating Counsel, the Committee Chairs, and others have been engaged in extensive discovery in advance of the forthcoming Bellwether Class Certification deadline.

14. After the appointment of Co-Lead Counsel, the Settlement Committee and Defendants' Counsel discussed the possible early resolution of the Litigation, which culminated in the Parties participating in an arm's-length settlement negotiation on May 13, 2024.[2]

15. During the settlement negotiations, the Parties reached an impasse and thereafter agreed to continue their settlement discussions via the mediation process.

16. Following the arm's-length settlement negotiation and the Court's order denying all defendants' 12(b)(1) motion in large part (MDL Order No. 19), the Parties then engaged in a full-day mediation session conducted on March 20, 2025 by the Honorable Diane M. Welsh (Ret.), a retired federal magistrate judge now with JAMS in Philadelphia, Pennsylvania.

17. Prior to the mediation, the Parties engaged in informal discovery, in which Plaintiff propounded certain information requests and Defendants provided confidential information related to the issues in the lawsuit and the Settlement Class Representative that allowed the Parties to assess the case and meaningfully engage in arm's-length settlement discussions. As a result of the informal exchange of information, along with the Co-Lead Counsel's detailed fact investigation in conjunction with the filing of the Omnibus set of Pleading Facts, the Settlement Committee was therefore well informed regarding the facts of the case, and the strengths and weaknesses of Plaintiff's claims and Defendants' defenses leading into the mediation.

18. On March 20, 2025, the Parties engaged in a full-day mediation session with Judge Diane Welsh (Ret.) of JAMS who has mediated several other cases in this MDL. During the mediation, the Parties reached an agreement in principle regarding the material terms of a

[2] The May 13, 2024 settlement negotiation concerned *Jacobs v. Ernst & Young Investment Advisers LLP et al.*, No. 1:23-cv-13021-ADB (D. Mass.)—which was filed by a different plaintiff but raised similar allegations against EY and BOA and was coordinated with the *MOVEit* MDL. The *Jacobs* plaintiff voluntarily dismissed his lawsuit on July 2, 2024. *In re: MOVEit* MDL ECF No. 1027.

classwide settlement, which if approved by the Court, will resolve all claims against Defendants in the Litigation.

19. The Parties thereafter engaged in a series of further arm's-length discussions, during which the Parties negotiated, drafted, and finalized the terms of the Settlement Agreement. The Settlement Agreement was fully executed by the Parties as of April 14, 2026 and was preliminarily approved by this Court on April 29, 2026.

20. Following 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. Class 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.

<u>LODESTAR AND EXPENSES</u>

21. The complex nature of this MDL makes it difficult, if not impossible, for Plaintiffs' counsel to fully segregate tasks and hours on a defendant-by-defendant basis.

22. The proposed BOA / EY Settlement is the eighth settlement submitted for approval to the Court in this MDL to date. Six of the seven prior settlements have been finally approved (ECF Nos. 1432, 1485, 1610, 1744, 1969, & 2037), with the final approval motion of the seventh currently pending (ECF No. 1979). The six finally approved settlements, along with the fee requested in relation to the seventh pending settlement, would result in a cumulative fee award of $7,824,994.00. The settlements that have been achieved thus far, including the BOA / EY

Settlement, have each been the result of the successful work performed litigating the claims of all plaintiffs in this MDL.

23. 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 BOA / EY-directed tasks (such as the settlement negotiations), Class Counsel have chosen a middle ground approach in submitting their Lodestar, including the time associated with the Litigation Task Codes "Fact Investigation / Development," "Pleadings," "Other Written Motions / Submissions," and "Court-Mandated Conferences" in conjunction with their fee application.

24. The hours provided for purposes of this cross check reflect Class Counsel's middle ground approach. These hours include only Class Counsel's work on the following tasks: "Fact Investigation / Development," "Pleadings," "Other Written Motions / Submissions," and "Court-Mandated Conferences." Class Counsel's hours and lodestar for these tasks are provided in the Declaration of Alyson Oliver, filed concurrently herewith.

25. Class Counsel believe 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.

26. The hourly rates for Class 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.

27. As detailed in the Oliver Declaration, Class Counsel have reported 10,985.9 hours of professional time expended on the prosecution of this MDL on "Fact Investigation / Development," "Pleadings," "Other Written Motions / Submissions," and "Court-Mandated

Conferences" through June 30, 2026. This represents a lodestar of $8,916,348.00, using Class Counsel's hourly rates. All Class Counsel performed this work on an entirely contingent basis.

28. The requested fee award of $625,000.00, representing twenty-five percent of the Settlement Fund, along with the previous awards of $7,287,494.00 and the pending request of $537,500.00 from the seventh settlement results in a multiplier of approximately 0.95.

29. Class 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.

30. Below is a summary of the total expenses for which Class Counsel seek reimbursement:

Expenses	
Category	**Amount**
Mediation	$19,200.00
Total:	**$19,200.00**

31. Class Counsel incurred $19,200.00 in expenses that were reasonably necessary to the prosecution of the claims against BOA and EY.

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

SETTLEMENT CLASS REPRESENTATIVE'S CONTRIBUTION TO THE DEVELOPMENT AND PROSECUTION OF THE LITIGATION AGAINST BOA / EY

33. The Settlement Class Representative's help was instrumental in prosecuting the claims against BOA / EY.

34. The Settlement Class Representative performed valuable services for members of the Settlement Class by bringing her claims to Class Counsel for investigation, agreeing to serve as a representative plaintiff, reviewing the complaint and amended complaint, remaining available to consult with Class Counsel when necessary regarding the progress of the litigation, and reviewing the progress of the litigation. Additionally, Plaintiff was prepared to search for and produce documents, respond to written discovery requests, and was prepared to give deposition testimony. Plaintiff's cooperation and participation in this litigation were beneficial in helping guide the litigation against BOA / EY and to develop damages models.

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

Executed on August 18, 2026,
in Pittsburgh, Pennsylvania.

/s/ Gary F. Lynch

Gary F. Lynch
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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: August 18, 2026

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

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: MOVEIT CUSTOMER DATA SECURITY BREACH LITIGATION	MDL No. 1:23-md-03083-ADB-PGL
This Document Relates To: C.A. No. 1:24-cv-11807-ADB BEN MORRIS, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. PROGRESS SOFTWARE CORPORATION; ERNST & YOUNG LLP; and BANK OF AMERICA CORPORATION, Defendants.	

DECLARATION OF ALYSON OLIVER IN SUPPORT OF PLAINTIFF'S MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARD FOR SETTLEMENT CLASS REPRESENTATIVE FROM THE BOA / EY SETTLEMENT

I, Alyson Oliver, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an attorney licensed in the States of Michigan and Texas, as well as numerous federal district courts. I am the founding partner of the law firm of Oliver Bell Attorneys at Law.

2. On January 19, 2024, the Court appointed me as Time, Fee, and Expense Counsel. *See* MDL Order No. 8.

3. I submit this Declaration in support of the hours, reasonableness of hourly rates and totals supporting Plaintiff's Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Award for the Settlement Class Representative as it relates to the Bank of America

Corporation and Ernst & Young LLP Settlement Agreement (the "Declaration"). The information set forth in this Declaration is based upon my personal knowledge.

4. 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.

5. MDL Order No. 11 requires each firm to contemporaneously record and transmit to myself 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 (Litigation Task Codes), a complete and accurate categorization of work performed, and the Lead Counsel who authorized the time.

6. 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, 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.

7. On March 26, 2025, Liaison & Coordinating Counsel emailed all plaintiffs' firms, requesting that they submit individual or firmwide CVs for each attorney and support staff member that has submitted or will submit time in this MDL in order for me to review the reasonableness of each firm's submitted hourly rates.

8. By July 13, 2025, I finished reviewing the submitted[1] CVs and hourly rates of each firm, and confirmed the reasonableness of the submitted hourly rates. This includes the hourly

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[1] There are firms who have not submitted the requested materials, who generally were involved with the litigation early on and have no significant ongoing billing, and who do not include any co-lead firm

rates for the professionals at Berger Montague, PC; Lynch Carpenter, LLP; Cohen Milstein Sellers & Toll PLLC; Lockridge Grindal Nauen PLLP; Levin Sedran Berman LLP; and Hagens Berman Sobol Shapiro LLP.

9. I have also reviewed all time and expenses submitted by all plaintiffs' firms from the inception of this MDL through June 30, 2026. For purposes of this declaration, Co-Lead Counsel have asked me to identify the lodestar associated with the Litigation Tasks Codes: "Fact Investigation / Development," "Pleadings," "Other Written Motions / Submissions," and "Court-Mandated Conferences" for the Co-Lead and Liaison & Coordinating Counsel firms. Based on my review of the time and expense reports, the total number of approved hours expended by the Co-Lead and Liaison & Coordinating Counsel firms on "Fact Investigation / Development," "Pleadings," "Other Written Motions / Submissions," and "Court-Mandated Conferences" from the inception of this MDL through June 30, 2026 is 10,985.9 hours, resulting in a lodestar of $8,916,348.00 based on the firms' hourly rates.

10. Consistent with my obligations under MDL Orders Nos. 10 and 11, I have been providing quarterly time and expense reports to the Court and most recently provided the Court with time, expenses, and lodestar on June 1, 2026.

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

Executed on August 18, 2026
in, Troy, Michigan.

Alyson Oliver

Alyson Oliver

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: August 18, 2026

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