

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

JESSICA GUERRERO, JEFFREY MATTHEWS  
and JOSEPH CASTILLO, individually, and on  
behalf of all others similarly situated,

Plaintiffs,

v.

MERRITT HEALTHCARE HOLDINGS, LLC  
d/b/a MERRITT HEALTHCARE ADVISORS,

Defendant.

Case No.: 3:23-cv-00389-MPS

**PLAINTIFF'S MEMORANDUM OF LAW IN  
SUPPORT OF MOTION FOR ATTORNEYS' FEES AND COSTS**

## MEMORANDUM OF LAW

Plaintiffs Jeffrey Matthews, Jessica Guerrero and Joseph Castillo (collectively, “Plaintiffs”), individually and on behalf of all others similarly situated, by and through their undersigned counsel, respectfully submit this memorandum of law in support of their Motion for Attorneys’ Fees and Costs (“Motion”).

### **I. Introduction**

This action arises out of an incident between July 30, 2022 and August 25, 2022 where Defendant Merritt Healthcare Holdings, LLC d/b/a Merritt Healthcare Advisors (“Defendant” or “Merritt”) internal administrative system was accessed by an unknown, unauthorized actor (the “Data Security Incident”). The unauthorized third party allegedly gained access to Defendant’s inadequately protected network servers and full names, treatment information, provider names, patient identification numbers, health insurance information, treatment cost information and health insurance numbers (these types of information, inter alia, being thereafter referred to, collectively, as “protected health information” or “PHI” and “personally identifiable information” or “PII”).

Recognizing the risks of protracted litigation, the Parties executed the Settlement Agreement on April 19, 2024 which was the result of hard fought and adversarial negotiations lasting many months. Through extensive arms’-length negotiations with the assistance of a mediator, the Parties reached an agreement that provides for significant monetary and equitable relief for the Settlement Class.

In exchange for a common fund settlement on behalf of the Settlement Class, the year of hard work spent securing it, and the work that will persist throughout the compliance period, Cole & Van Note; Laukaitis Law LLP; Scott + Scott Attorneys at Law LLP; and Jeffrey Glassman Injury Lawyers, LLP (collectively, “Class Counsel”) reasonably request \$508,283 for their fees and costs. Particularly given this is a reasonable amount for making a sizable benefit available to class members who could elect (or not) to participate, Class Counsel respectfully request the Court grant their Motion.

### **II. Case Summary**

#### **a. Procedural Posture**

This matter arises from an Incident whereby Plaintiffs Jessica Guerrero, Jeffrey Mathews, and Joseph Castillo (“Plaintiffs”) allege an unauthorized third-party was able to gain access to Defendant’s (“Merritt”) computer network, which Defendant first discovered on or about November 30, 2022, and remove certain files containing sensitive information stored therein. ECF No. 50, ¶¶ 1-4. The Incident allegedly impacted 88,740 people. *Id.*, at ¶ 2. The information compromised in the Incident potentially included individuals’ full names, treatment information, provider names, patient identification numbers, health insurance information, treatment cost information, and health insurance numbers. (information breached) *Id.* at ¶ 1.

## **b. History of Negotiations**

After agreeing to mediate, but prior to the mediation session, the Parties engaged in informal discovery to help facilitate resolution discussions. See Declaration of Kevn Laukaitis in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement, Preliminary Certification of Settlement Class, and Approval of Notice Plan. ECF No. 67-2. On December 21, 2023, the Parties engaged in a mediation session overseen by the experienced Hon. Wayne R. Andersen (Ret.) of JAMS. *Id.* ¶ 5. After a successful full-day mediation session, the Parties were able to reach an agreement in principle, which if approved by the Court, will resolve all claims in the litigation. *Id.* The Parties then worked toward drafting and finalizing the proposed Settlement Agreement. *Id.* ¶ 6. They further obtained quotes from several claims administrators and agreed that Digital Settlement, LLC would best serve as Settlement Administrator. The Parties continued drafting and finalizing the Settlement Agreement and proposed exhibits, and the Settlement Agreement was fully executed by all Parties as of April 19, 2024. *Id.* ¶ 8.

The negotiations leading to the settlement were contentious and hard-fought, with Plaintiffs' Counsel and Defendant's Counsel each advocating for the best interests of the Class and Defendant, respectively. *Id.* ¶ 9. The resulting settlement reflects an agreement reached at arm's length, in good faith, and free of any collusion. *Id.* Based upon their independent analysis, and recognizing the risks of continued litigation, counsel for Plaintiffs believe that the proposed settlement is fair, reasonable, and adequate, and is in the best interest of Plaintiffs and the proposed Settlement Class. *Id.* Although Defendant denies liability, it likewise agrees that settlement is in the Parties' best interests.

The resulting Settlement Agreement provides substantial benefits to the Settlement Class, eliminates the costs and burdens of continued litigation and fully accomplishes Plaintiff's goals in this Action.

## **I. Summary of the Settlement**

### **a. The Settlement Class**

The Settlement Agreement provides for significant monetary and equitable relief for settlement class members. The Settlement provides relief for a nationwide Settlement Class as defined as: "All individuals within or who are residents of the United States of America whose PHI/PII and/or financial information was exposed to unauthorized third parties as a result of the data breach discovered by Defendant on November 30, 2022."

### **b. The Settlement Benefits**

The settlement benefits consist of: (1) compensation for Out-of-Pocket Losses up to \$5,000 per Class Member, and (2) All Settlement Class members may file a claim for a pro rata portion of the Settlement Fund. ECF No. 67-1 at § II(H)(3). The amount of this benefit shall be based on the number of claims received and the amount of funds remaining in the Settlement Fund following the payment of claims for Out-of-Pocket Losses, approved Class Counsel Fees, Service Payments,

and Administrative Costs. *Id.* For any individual, a Pro Rata Cash Payment may not exceed \$500. *Id.*

**c. Notice and Claims Process**

This Court granted preliminary approval on May 14, 2024. ECF No. 80. The claims period is in progress and runs through August 12, 2024. The Fairness Hearing is set for October 15, 2024.

**II. Argument**

**a. Legal standard**

“Courts have used two methods to calculate attorneys’ fees: the lodestar method and the percentage-of-recovery method. ‘Whatever method is used, the reasonableness of a common fund fee award is governed by the so-called *Goldberger* factors: (1) counsel’s time and labor; (2) the litigation’s complexities and magnitude; (3) the litigation risks; (4) quality of representation; (5) the relationship of the requested fee to the settlement; and (6) considerations of public policy.’” *Allen v. Taylor* (2d Cir. 2020) 795 F. App’x 79, 80. “It is up to the district court, rather than counsel, to choose whether to use the lodestar or percentage methods.” *Id.*

The lodestar is “the product of a reasonable hourly rate and the reasonable number of hours required by the case.” *Millea v. Metro-North R.R. Co.* (2d Cir. 2011) 658 F.3d 154, 166.

“Even where fees are reasonable when analyzed under the percentage method, courts will additionally perform a lodestar ‘cross-check’ and compare the fees generated by the percentage method with those generated by the lodestar method.” *Escobar v. Variedades Belen Corp.* (E.D.N.Y. Mar. 25, 2024) 2024 U.S. Dist. LEXIS 52992, at \*12 (internal citations omitted). Where “[the lodestar method is] used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court. Instead, the reasonableness of the claimed lodestar can be tested by the court’s familiarity with the case.” *Id.* at 13.

Here, the lodestar method demonstrates that the requested fee is reasonable. At this point, Class Counsel spent 465.30 hours prosecuting and resolving the lawsuits from their inception in March and April 2023 through July 9, 2024. Based on Class Counsel’s standard and approved rates, this amounts to a lodestar of \$287,011.75 This does not include time that will be spent preparing for and attending the final approval hearing, overseeing the claims review and distribution process and the work associated with addressing Class Member concerns thereafter, work which is common in such situations. Class Counsel drew on their collective experience litigating hundreds of complex and class actions against defendants much like this one to minimize wasted effort.

**b. Time consumed, reasonable expenses and fee arrangement with the clients**

The fee arrangement of class counsel was solely and exclusively contingent upon the outcome of this case. The litigation has been vigorously prosecuted during which time class

counsel has received no compensation. In addition to the loadstar amount, Class Counsel also acquired \$20,919.33 in costs. Class counsel assumed all of the risks associated with a full contingent fee arrangement and would not be entitled to any fees if the litigation resulted in no recovery or a final judgment in favor of the Defendant.

**c. The litigation was Risky and presented complex issues of law and fact**

Class Counsel litigated Plaintiffs' claims over the course of a year years despite facing numerous litigation risks. Although Plaintiffs and Class Counsel believe in the merits of their claims, they are also cognizant of the time and expense that would have been required to prosecute this action through summary judgment, trial, potential appeals, etc., as well as the difficulties and delays inherent in all litigation.

Class Counsel achieved an impressive result here, making available a simple claims process for otherwise unrepresented individuals. The Lawsuits raised complex issues of law and fact that required skill to maneuver. Regardless of the number of Settlement Class Members who ultimately made a claim, Class Counsel made an extraordinary amount of recovery available to otherwise underrepresented individuals with no guarantee of repayment, even of their litigation costs. Their work and risk should be rewarded.

**d. The responsibility assumed by Class Counsel supports the fee**

The weight of the responsibility assumed by Class Counsel is significant. Class Counsel conducted a thorough investigation of the claims, possible defenses, and the Data Security Incident on a contingency basis. For their part, proposed Class Counsel contend Plaintiff's claims have merit and Counsel would vigorously prosecute this action through trial. However, both parties agree the settlement is a fair, reasonable and adequate path to resolving the action given the risks of obtaining class certification, success at trial and the expense of continued litigation. The Settlement Agreement meets all of the requirements of Rule 23(e) of Federal Rules of Civil Procedure.

Throughout the course of the litigation, Representative Plaintiff's Counsel vigorously pursued class claims contested by Defendant and its Counsel. Following extensive negotiations, the parties successfully reached a settlement, where the parties drafted a detailed Settlement Agreement, including its accompanying exhibits, notices and claim form. In negotiating Class Counsel assumed and fully discharged its' responsibilities as Class Counsel.

**e. Relationship of Requested Fee to Class Settlement**

The Settlement Agreement contemplates an award of attorneys' fees and litigation costs not to exceed 33 1/3 percent of the Settlement Fund (\$508,283). Such a fee is not inherently unreasonable given the complexity and risk of the case. "Class Counsel's request for 33-1/3% of the Settlement Fund is typical in class action settlements in the Second Circuit." *Maced. Church v. Lancaster Hotel, LP* (D. Conn. 2011) 2011 U.S. Dist. LEXIS 62063, at \*35.

**f. Public policy supports the fee award**

Public Policy should incentivize attorneys to prosecute complex actions such as this matter, which may not otherwise be brought if plaintiffs could only pursue the matters on an hourly basis and/or individually. The Settlement Agreement provides significant benefit to Class Members as described above. Settlements like this one also create an incentive for businesses to improve their data security, which will protect consumers overall.

**III. Conclusion**

In conclusion your petitioner respectfully requests this Court approve Class Counsel's requested attorneys' fee and costs award of \$508,283.

Dated: July 29<sup>th</sup>, 2024

/s/ Laura Van Note  
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