

COMMONWEALTH OF MASSACHUSETTS
HAMPDEN SUPERIOR COURT

BONITA JOYNER,

Plaintiff,

v.

BEHAVIORAL HEALTH NETWORK,
INC.,

Defendant.

Case No. 2079CV00629

11/15/2021

**JOINT DECLARATION IN SUPPORT OF MOTION FOR APPROVAL OF
ATTORNEYS' FEES, EXPENSES, AND CLASS REPRESENTATIVE SERVICE
AWARD**

Michael S. Appel, J. Gerard Stranch, IV, Sam Strauss, and Lynn A. Toops declare as follows:

1. We are Settlement Class Counsel for Plaintiff and the Settlement Class under the Stipulation and Agreement of Settlement (the "Settlement") entered into between Plaintiff Bonita Joyner and Defendant Behavioral Health Network, Inc. We submit this declaration in support of Plaintiff's Motion for Approval of Attorneys' Fees, Expenses, and Class Representative Service Award. We have personal knowledge of the facts set forth in this declaration and could testify to them competently if called to do so.

2. On November 19, 2020, Plaintiff filed a Class Action Complaint against Defendant relating to a data breach that occurred between May 26 and May 28, 2020, in which an unauthorized person gained access to the confidential and protected personally identifiable information of nearly 130,000 of Defendant's patients. Plaintiff alleged that she and other patients faced a significant risk of identity theft as a result of the data breach.

3. On May 12, 2021, the parties agreed to attempt to resolve this action through mediation.

4. On June 28, 2021, the parties participated in an arm's-length mediation facilitated by the Honorable Morton Denlow (ret.) of JAMS Resolution Center. Throughout the mediation session, and for several weeks thereafter, the parties continued to engage in extensive evaluation of the strengths and weaknesses of each party's claims and defenses. Taking into account that evaluation, as well as the risks, uncertainties, costs, and delays of continued litigation, the parties eventually reached a proposed compromise and executed a term sheet on July 20, 2021. The parties then negotiated the detailed terms of the Settlement over several months and executed the final Settlement Agreement on September 16, 2021. The Settlement was filed on September 23, 2021, as Exhibit 1 to the Unopposed Motion for Preliminary Approval of Class Action Settlement Agreement, and the Court has granted preliminary approval to the Settlement.

5. The Settlement provides for a non-reversionary cash payment of \$1,200,000 by Defendant, as well as for Defendant to take concrete steps to attempt to better secure personal information contained on its computer systems.

6. In our experience, this recovery represents a fantastic result for the Settlement Class. The nature of this case was a complex class action involving a data breach, which presents complicated issues of standing, causation, class certification, and damages. Indeed, data breach cases have been dismissed for lack of standing or damages and class certification has been denied. *See, e.g., Reetz v. Advocate Aurora Health, Inc.*, No. 20CV2361 (Wisc. Cir. Ct. Feb. 18, 2021) (dismissing data breach class action); *Turner v. Mid Michigan College*, No. 20-10503-CK (Mich. Cir. Ct. Oct. 13, 2021) (same); *Keach v. BST & Co. CPAs, LLP*, No. 903580-20 (N.Y. Comm'l Ct. Mar. 30, 2021) (same); *Fero v. Excellus Health Plan, Inc.*, 502 F. Supp. 3d 724

(W.D.N.Y. 2020) (denying class certification for damages claims in data breach). While it is difficult to estimate the total potential damages involved, the result of a \$1,200,000 non-reversionary Settlement Fund represents a significant and timely recovery. Further, the Settlement provides data security measures that the Class could only obtain in the settlement context.

7. We have devoted significant resources to litigating this case, including to-date \$145,579 in lodestar comprised of 221 hours of billed time. The lodestar incurred so far (and not including the fees motion) by firm is Branstetter, Stranch & Jennings, PLLC (\$79,895.50); Cohen & Malad, LLP (\$47,964.00); Turke & Strauss LLP (\$14,170); and Sugarman, Rogers, Barshak & Cohen, P.C. (\$3,549.50). This time includes pre-suit investigation, research and drafting of the complaint and amended complaint, preparation and participation in the mediation and subsequent settlement discussions, drafting of the final detailed Stipulation and Agreement of Settlement, including the class notices, reimbursement forms, and proposed orders, working with the Settlement Administrator, and moving for preliminary approval. This figure does not include the significant additional work that will be involved in final approval of the Settlement, the final approval hearing, and administration of the Settlement, including handling correspondence and calls from Class Members throughout the claims period. The requested lodestar multiplier is only 2.75 currently and will decrease as our firms continue to work on this matter. As a percentage of the recovery, the fee is one-third, which is the standard fee that Class Counsel is awarded in common fund cases. *See, e.g., Chambers v. Together Credit Union*, No. 19-CV-00842-SPM, 2021 WL 1948452, at *2 (S.D. Ill. May 14, 2021) (“Class Counsel has submitted a declaration showing that one-third of the settlement is the amount of fees that have been awarded in comparable cases, including to Class Counsel in comparable cases.”).

8. In the course of litigating this case, our firms advanced ordinary litigation expenses of \$11,312.93. These expenses are comprised of mediation fees (\$9,000), filing and pro hac vice fees (\$2,160), and FedEx, copying, and conference call expenses (\$152.93). Reimbursement of these expenses was contingent on the outcome of the case, so we were incentivized to only incur expenses that were reasonable and necessary because repayment of these expenses was not guaranteed.

9. We are experienced, able, and well-respected attorneys who have a national practice involving complex class action litigation, including data breach litigation in particular. The usual price charged in this type of litigation is a one-third fee or a similar fee paid on top of non-monetized benefits, such as credit monitoring. *See, e.g., In re Med. Informatics Eng'g, Inc. Data Breach Litig.*, (\$1,000,000 fee paid on top of \$750,000 in administrative costs and \$2,000,000 to buy credit monitoring and pay economic loss claims). We were able to leverage our experience in complex data breach litigation to negotiate an early settlement that provides for data security measures that are important to obtain sooner rather than later to protect class members' data that is still in the hands of Defendant.

10. The Class Representative was an integral part of this case. She consulted with us regularly and was involved in the settlement process. Without the Class Representative there would be no recovery for any Class Member and the Defendant would not be paying \$1,200,000 to the Class. In our opinion a \$5,000 service award to the Class Representative is appropriate and is similar to awards in other data breach cases.

I affirm, under the penalties for perjury, that the foregoing representations are true.

Dated: November 15, 2021 /s/ Michael S. Appel
Michael S. Appel

Dated: November 15, 2021 /s/ Lynn A. Toops
Lynn A. Toops

Dated: November 15, 2021 /s/ J. Gerard Stranch, IV \
J. Gerard Stranch, IV

Dated: November 15, 2021 /s/ Samuel J. Strauss
Samuel J. Strauss